UCONN Tax Compliance Training

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November 9, 2021
Agenda

- PURPOSE OF TODAY’S MEETING
- OVERVIEW OF TAX COMPLIANCE
- PRIVATE ACTIVITY
- MANAGEMENT CONTRACTS/RESEARCH AGREEMENTS
- ARBITRAGE/REBATE
- DUE DILIGENCE/RECORD KEEPING
- QUESTIONS/WRAP UP
“Tax Lawyer of the Year!”
I’d like to thank the IRS, without whose incomprehensible regulations I wouldn’t have a job.
Purpose of Meeting

A. High Level Education of IRS Private Activity Concerns

B. Contract Review Process Prior to Execution

C. Goal is to accommodate University
Overview

A. Compliance with IRS regulations and requirements
   i. Bond Documents (reasonable expectations at time of issuance)
      a. Tax Questionnaires
      b. Tax Regulatory Agreement
      c. IRS Form 8038
   ii. Compliance required for Life of Bonds
      a. Change in Private Use
      b. Sale of Bond-financed Property
      c. Violations go back to Bond issue date
      d. Remedial Actions
   iii. Importance
      a. Tax status of Bonds
      b. Cost of IRS audits
      c. Reputation in credit markets
      d. Increased debt service costs
      e. Reputation in Connecticut
University Procedures

a. Private Activity Compliance Procedures
b. Management Contract Guidelines
c. Research Agreement Guidelines
d. Tax-Exempt Equipment Lease Procedures
A. Private Business Use Test
   i. Private Use Definition
      a. Direct or indirect use of a tax-exempt financed facility in a trade or business carried on by any person other than a State or Local governmental unit
   b. Types of private users - includes federal government and 501(c)(3)s
   c. Examples
      • Lease/license of space (e.g. restaurants, private offices, UCHC Research Tower)
      • cell towers
      • solar panel installations
      • management contracts
      • sponsored research
      • output facilities and contracts (electric, gas and water)
      • P3 arrangements (sports facilities)
      • Corporate naming rights
      • Equipment Leasing/Financing
   d. Sale of Bond-Financed Facility
      • Remedial Actions
A. Private Business Use Test
   ii. Private Use Exceptions
      a. General Public Use (e.g. parking garage or auditorium)
         • 200-day exception
         • 100-day exception
         • 50-day exception
      c. Incidental Use (e.g. vending machines or advertising display)
      d. Qualified Improvements
      e. Qualified Management Contracts
         • Revenue Procedure 97-13
         • Revenue Procedure 2017-13
      f. Qualified Research Contracts
         • Revenue Procedure 2007-47
Management Contracts

A. Revenue Procedure 97-13

i. Applicable to management contracts executed prior to August 18, 2017 and not modified or extended on or after August 18, 2017

   a. Reasonable Compensation
   b. Safe Harbors
      • 95% Fixed Fee Arrangement
      • 80% Fixed Fee Arrangement
      • 50% Fixed Fee Arrangement
      • Per-Unit Fee Arrangement
   c. Service Provider has no role or relationship with University
B. Revenue Procedure 2017-13 (less objective)

i. Applicable to management contracts executed on or after January 17, 2017

   c. No Net-Profit Arrangements
      a. No automatic safe-harbors
      b. Reasonable Compensation
      c. No Bearing of Net Losses
      d. Permissible Compensation
      f. Term of Contract
      g. University control of facility
      h. Service Provider has no role or relationship with University
Research Contracts

A. Revenue Procedure 2007-47
   i. Basic Research definition
   ii. Corporate Sponsor Research
      a. Sponsor pays FMV for license or resulting technology
      b. FMV determined at time license or technology becomes available
   iii. Industry Sponsor Research
      a. University controls and performs research
      b. License or resulting technology owned by University
      c. Nonexclusive, royalty free licenses permitted
A. **Revenue Procedure 2007-47**

iv. Federal Government Sponsor
   a. University controls and performs research
   b. License or resulting technology owned by University
   c. Nonexclusive, royalty free licenses permitted

v. Clinical Trials
   a. Performed on general patient population
   b. Performed at facilities that serve general patient population
   c. University is paid objective fee
   d. Collected date given to sponsor, except for records typically retained by University
   e. Sponsor does not dictate what facilities are used for trial
   f. Not undertaken for discovering patentable inventions
   g. University retains right to publish results
A. Measurement of Private Use
   i. Measured on issue-by-issue basis
   ii. Measurement Period
   iii. Time and Space Analysis
   iv. Allocation of Qualified Equity
      a. University funds
      b. Taxable bond proceeds

B. Private Payment Test
   i. Private payments relating to financed facilities
      a. Operating expense exception
      b. Generally applicable tax exception
A. Arbitrage Bonds
   i. A bond which the issuer “reasonably expects to earn or intentionally earns more from any portion of the proceeds of the bond than it pays in interest”
      a. Some investment earnings are inevitable
      b. Code and Regulations provide ways to deal with investment earnings
      c. Spend proceeds quickly

B. Rules Regarding Arbitrage
   i. Temporary Period (typically 3 years)

C. Rules regarding Rebate
   i. 24-month exception
   ii. 18-month exception
   iii. 6-month exception
   iv. Other
A. Tracking Private Business Use

i. Real Estate provides information to Treasury Services
   a. unexecuted agreement
   b. Project Tax Information Compliance Questionnaire
   c. description of bond-funded asset (building identifier, location, square footage, etc.)
   d. funding history for building
   e. profitability analysis
   f. other requested information

ii. Treasury Services/Bond Counsel review information
Due Diligence/Recordkeeping

A. Tracking Private Business Use (continued)
   iii. Real Estate forwards and reviews necessary information with Attorney General Office
   iv. Real Estate forwards and reviews necessary information with State Treasurer Office
   v. State Treasurer Office sign-off
   vi. Real Estate maintains records

B. Documentation
   i. Monitoring private business use
   ii. Maintaining detail records for each financed facility
In Conclusion

The hardest thing to understand in the world is the income tax.

- Albert Einstein

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Questions
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