

Private Use Policy and
Guidelines
Sponsored and Commercial
Research Activity

RARA and River Rats Presentation
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Overview

- UR is a tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (IRC).
- To be exempt from income tax under IRC 501(c)(3), organizations must be organized “**exclusively** for charitable, **scientific** or **educational** purposes.”
- As a non-profit organization, UR borrows through the issuance of qualified 501(c)(3) tax-exempt bonds to finance capital projects, the interest on which is exempt for tax.
- Engaging in certain activities with 3rd parties or allowing 3rd party use of space can have adverse tax consequences for UR.



Unrelated Trade or Business Income

- To the extent UR engages in activities not substantially related to its tax-exempt purpose, such activities are considered unrelated trade or business activities and, absent any exception, subject to federal and state income tax (“UBIT”), even though these activities may generate funds that support UR’s tax-exempt purposes.

- Activities not considered unrelated trade or business activities:
 - investment income
 - rents from real property (but rental income from personal property or rental income when services are also provided are unrelated trade or business activities)
 - royalty income
 - research performed by a university



Unrelated Trade or Business Income

- What qualifies as “research” activities for purposes of the UBIT exemption?
 - aiding in scientific education of students
 - obtaining scientific information, which is published
 - discovering a cure for a disease



Unrelated Trade or Business Income

- What is NOT considered “research” activities (and thus subject to UBIT)?
 - activities ordinarily carried on as an incident to industrial or commercial operations, such as ordinary testing or inspection of products



Unrelated Business Income Tax

- Prevents tax-exempt entities from using status to compete with for-profit entities.
- Tax is imposed at regular corporate rates.
- Tax must be considered in the pricing (cost) when engaging in unrelated trade or business activities.
- UR Finance Office surveys departments annually to obtain information regarding unrelated trade or business activities.
- UR reports unrelated trade or business income on Form 990-T, which is filed annually with the IRS.



Private Business Use (PBU)

- Federal tax law generally requires that property financed by a nonprofit with tax-exempt bonds be owned by the nonprofit and used to further its charitable, educational or other exempt purposes.
- PBU is use of UR's tax-exempt bond-financed property by a person in a private trade or business or by the University in an unrelated trade or business.
 - So, if UR has unrelated trade or business income in bond-financed facility = private business use
 - Even if activity is excluded from unrelated trade or business income, if it occurs in bond-financed facility, still counted for PBU



Private Business Use (PBU)

- Only an insubstantial use of the property (generally 5%) may be for non-exempt or private business use purposes.
 - Up to 2% of the 5% limitation could be used up by the costs of the bond offering, leaving just 3% available for private use.
- PBU is measured over the life of the bonds (generally 30 years).
- PBU that exceeds limits may cause tax-exempt bonds to be taxable to the bond holder.



PBU and Research Activities

- Rules with respect to using bond financed property for sponsored research set forth in IRS Rev. Proc. 2007-47.
- Research considered “basic research” can be excluded from calculation of PBU.
 - “basic research” defined as original investigation for the advancement of scientific knowledge not having a specific commercial objective
- Corporate sponsored research activities do not result in PBU if:
 1. the qualified user permits any license or other use of resulting technology by the sponsor on the same terms as such use by any unrelated, non-sponsoring party (that is, the sponsor must pay a competitive price for its use), and
 2. the price paid for use of any license or other use of resulting technology is determined at the time the license or other resulting technology is available for use.



PBU and Research Activities

- PBU associated with sponsored research contracts require evaluation of each contract to determine whether safe harbors are met to exclude from PBU calculation.



Unallowable Use of Research Facilities

- Use of significant UR resources for faculty consulting.
- Use or lease of UR facilities and other resources to a start-up company.
- Use or lease of UR facilities to a small business in receipt of an SBIR/STTR award.
- Testing agreements if these prohibit publication or have no programmatic benefit to the UR.



Allowable Use Maybe ...

- Use of UR research services/cores by external entities if within the research and educational mission of the UR.
- Collaborations with external entities for shared resource use (e.g., bio banking) that benefits the research and educational mission of the UR.
- Seek determination by Divisional Finance Leaders and Office of Counsel.



Monitoring PBU

- PBU of facilities and equipment financed with tax-exempt bonds requires monitoring procedures.
- University Finance annually surveys departments regarding PBU in order to report this information on Form 990.
- PBU is reported on the University's Form 990 (Schedule K) – which is filed annually and available to the public (at Guidestar.org).
- UR must have detailed records and information in the event of an IRS audit where the exempt status of our bonds is challenged.



University Guidelines

- UR Tax-Exempt Bond Policies located on University Finance website at:
<https://www.rochester.edu/adminfinance/finance/assets/pdf/UR%20Tax%20Exempt%20Bonds%20Policies%20June%202012%20final.pdf>.
- Consult with Divisional Finance Leaders and Office of Counsel on any contracts / activities that may result in private business use.
- Review “Guidelines on Private Use of University of Rochester Research Facilities” (in draft).

