

Post-Issuance Tax Compliance Annual Training Session

Today's topic: Private Business Use

I. Introduction
Nancy Winkler,
City Treasurer



II. Overview

Private Use 101

Kim Betterton

Ballard Spahr



Tax Exemption = Subsidy

- Congress promoting public purposes of, and investment by, state and local governments by lowering cost of capital
- Issuers must ensure that uses of bond financed facilities are for the public good for federal tax purposes



The Holy Grail: Governmental Bonds

- Federal tax code allows for tax-exempt interest on:

- ✓ Governmental Bonds
- ✓ “Qualified” Private Activity Bonds



PAB Tests: Don't Want No Satisfaction

- A Bond is a Private Activity Bond (PAB) if it meets either:
 - BOTH the Private Business Use and Private Security and Payment Tests
 - OR
 - Private Loan Financing Test



PAB Tests: Don't Want No Satisfaction

- ***Private Business Use Test***: No more than 10% of the **proceeds** of the issue can be used in private business
- ***Private Security or Payment Test***: No more than 10% of the debt service on the bonds may be secured by private security or payment (capped at \$15,000,000)
- For each of these tests, the 10% is limit is reduced to 5% if the private business use is *unrelated* OR *disproportionate* to the governmental use



PAB Tests: Don't Want No Satisfaction

- ***Private Loan Financing Test:*** No more than the lesser of 5% and \$5,000,000 of the **proceeds** of the bonds can be used to finance private loans
- Grants, unlike loans, are not private use



What is Private Business Use

- **Ownership**
- **Leases**
 - *There are exceptions for short-term contracts*
- **Management contracts**
 - *See Rev. Proc. 97-13, as supplemented by Rev. Proc. 2001-39 for “safe harbors”*
- **Output contracts**
 - *There are exceptions for certain types of contracts*
- **Research agreements**
 - *See Rev. Proc. 2007-47 for safe harbors*
- **Other agreements giving special legal entitlement**
- **Special economic benefit in facilities not used by general public**



III. Departmental Spreadsheets

Charles Jones,
Executive Director,
Sinking Fund Commission

IRS Concerns

- a) What facilities does the City spend tax-exempt bond money on?

- b) How are those facilities are being used?



Examples of Private Business Use

- a) Transfer of ownership of City property to a nongovernmental person or entity.
- b) The lease of a City facility to a nongovernmental entity.
- c) A management contract between the City and a service provider.
- d) Short-term rentals for more than 100 days.
- e) Output contracts for the Water Dept.
- f) Parking facilities.
- g) Naming rights.
- h) Advertising.
- i) An arrangement that conveys special legal entitlements comparable to the other examples already mentioned.
- j) An informal, unwritten arrangement between City employees and a non-profit or a neighborhood group, such as an athletic association or an after-school group.



IV. Panel Discussion

- Kim Betterton, Ballard Spahr
- Jonathan Lichtenstein, Cozen O'Connor
- George Magnatta, Saul Ewing
- Bob Tuteur, Blank Rome



V. Questions and Answers



Thank you for coming.

Forms are due back to
Charles.Jones@Phila.gov on November
15th

