

**Internal Revenue Service**

Department of the Treasury

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Date:  
December 18, 2001

**LEGEND:**

- Center =
- University =
- State =
- Issuer =
- Bonds =
- Hospital =
- County =
- District =
- County Board of Education =
- Commission =
- Date =
- Year =

Dear :

This is in response to your request for a ruling that the proposed use of the Center by specified groups of users (“proposed user groups”) and for the specified uses (“proposed uses”) described in the request does not constitute private business use under § 141 of the Internal Revenue Code (the “Code”).

**FACTS AND REPRESENTATIONS**

You represent the following facts. The University is a land-grant, state university, publicly funded and governed by State laws. The Issuer, the governing body of the University, is a body corporate of the State and is authorized to issue bonds in order to carry out its function under State law. On Date, the Issuer issued the Bonds, in part, for the purpose of paying a portion of the costs of acquiring, constructing, and equipping of the Center and related capital improvements at the University and reimbursing the University for certain prior capital expenditures made for such purpose. The Hospital is an instrumentality of the State, established pursuant to State law as a 501(c)(3)

corporation and created, in part, to provide teaching facilities for the University.

The Center is a multipurpose fitness and recreation center with the following facilities: two swimming pools; a wet classroom; two gymnasiums for basketball, volleyball and badminton; weight and fitness areas; a climbing wall; a running and walking track; racquetball and squash courts; multipurpose rooms for aerobics, martial arts and dance activities; an outdoor recreation equipment center; a wellness center; a resource library; study areas; a classroom; a conference room; a juice bar; and socialization areas. The Center is operated by University employees.

The Center will be used for credit-bearing University courses including internships or practical training for exercise physiology, occupational therapy, sports management, recreation and physical education, and other curricular activities. In addition, the Center furthers the educational mission of the University by facilitating health and fitness activities with the goal of teaching health and fitness values and establishing lifelong wellness habits to its users.

Students are automatically members of the Center. Faculty and staff may join upon payment of a membership fee. Activity fees paid by students are used as the primary source of repayment for the Bonds. Membership fees paid by faculty and staff are intended solely to cover the attendant costs of operating the center. The Center was opened for use by students, faculty, and staff in July of Year.

In addition to students, faculty, and staff already using the Center, the University would like to open the Center for use by the proposed user groups and for the proposed uses. The proposed user groups and the proposed uses are described as follows:

Spouses and dependent children of students, faculty, and staff of the University. The use by this group will be conditioned upon the payment of additional fees. As with the faculty and staff membership fees, the additional fees for this group are intended to cover the attendant costs of operating the Center.

Retired faculty and staff of the University who continue to obtain their health insurance coverage through the University. Eligible retired faculty and staff of the University are offered access to health care coverage through the University based upon their prior employment with the University.

Employees of the Hospital and their spouses and dependent children. The Hospital is the successor to the prior University-owned teaching hospital. As part of the transition from the University-owned and operated teaching hospital to the Hospital, employees of the University-operated hospital were permitted to elect either to become Hospital employees or to remain University employees. Consequently, the Hospital is staffed by University employees and, distinct from them, Hospital employees.

Limited number of guests of members of the Center. Guest passes would be available to out-of-town guests (limited to two per visit) or to University employees

interested in membership at a cost of \$7 per visit. The use of the Center by guests will be restricted to use for their personal health, recreational, and educational use.

Participants in on-campus programs sponsored, presented, and operated by the University such as professional enrichment conferences. Aside from its function of education of undergraduate and graduate students, the University provides agricultural, fire safety, and other educational programs that are open to the general public on the same basis to all. These programs require preregistration and payment of fees which are retained by the University. The University may contract with an individual to make one or more presentations as part of a conference that is sponsored, presented, and operated by the University. The Center will not be used by contracted individuals for their presentations. The compensation paid to the contracted individuals will be a flat fee and will not be based upon the number of program participants. The Center will not be open for use by participants in programs sponsored, presented, or operated by any nongovernmental person.

Participants in University-sponsored on-campus programs such as summer youth sports camps. The University sponsors and operates summer youth sports camps on the University campus as part of its community educational mission. The camp personnel are compensated through the University employee payroll and operate the youth sport camps in the capacity of University employees. The fees collected for these activities are deposited into and expended from special State revenue accounts.

Participants in University-sponsored non-credit classes at the Center. The University offers to the general public, on the same basis to all, non-credit classes such as yoga, aerobics, dance, nutrition, and self-defense classes. These classes are taught by University employees and require preregistration and payment of designated fees which are retained by the University.

Students participating in activities conducted by the County Board of Education and the Commission. The University is located in County. The University proposes to open the Center for use by students of the District aquatics program. Such use would be regulated by a contract between the University and the County Board of Education, a public body and governmental instrumentality of the District, which is a political subdivision of the State. Also, the University proposes to open the swimming pools at the Center for use in the interscholastic swimming competitions sponsored by the Commission, a governmental agency of the State.

Persons being recruited by the University as students, faculty, and staff. The University proposes to open the Center to persons who are visiting the University while being recruited as students, faculty, and staff.

Members undergoing health and fitness appraisals, for which there is a fee. The University proposes to make available to the members of the Center health and fitness appraisals. The health and fitness appraisals will be conducted by University employees. The additional fee charged for the appraisal will be retained by the

University and is intended solely to cover the cost of the appraisals.

Use by members of University-employed personal trainers, for which there is a fee. The University proposes to make available to the members of the Center the services of personal trainers. The personal trainers will be employed by the University. The additional fee charged for the use of personal training services will be retained by the University and is intended to cover the cost of the training, including the cost of employing personal trainers.

Use by members of equipment necessary for outdoor recreational activities, for which there is a fee. The University proposes to rent outdoor recreational equipment such as canoes, bicycles, skis, etc., to the members of the Center. The equipment is owned by the University. The rental counter, located in the Center, is operated by University employees. The additional fee charged for the rental is retained by the University and is intended solely to cover the cost of upkeep and periodic replacement of the equipment.

Use of juice bar, which is located in an area accessible to the public, by nonmembers. A juice bar, located in an area of the Center open to the general public, serves snacks such as juice and muffins. The juice bar is operated by University employees. The University proposes to open the juice bar for use by the general public.

## LAW AND ANALYSIS

Section 103(a) excludes from gross income interest on any state or local bond. Section 103(b) provides that § 103(a) shall not apply to any private activity bond which is not a qualified bond (within the meaning of § 141).

Section 141(a) provides that the term "private activity bond" means any bond issued as part of an issue which meets (1) the private business use test under § 141(b)(1) and the private security or payment test under § 141(b)(2), or (2) the private loan financing test under § 141(c). Under § 1.141-2(a) of the Income Tax Regulations, private activity bond tests serve to identify arrangements that have the potential to transfer the benefits of tax-exempt financing, as well as arrangements that actually transfer these benefits, to a nongovernmental person.

Under § 141(b)(1), the private business use test is met by an issue if more than 10 percent of the proceeds of the issue are used for any private business use. Section 1.141-3(a)(2) provides that, for the purpose of the private business use test, the use of financed property is treated as the direct use of proceeds. Under § 141(b)(6)(A), private business use means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. Under § 1.141-1(b), a governmental person is a state or any local governmental unit as defined in § 1.103-1 or any instrumentality thereof.

Section 1.103-1(b) defines a state or governmental unit, in part, as any state or political subdivision thereof. Section 1.103-1(b) also provides that a political subdivision for purposes of § 103 denotes any division of any state or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit. As examples of what may be considered a political subdivision of a State or local governmental unit, § 1.103-1(b) lists special assessment districts and divisions such as road, water, sewer, gas light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of any such unit.

Under § 141(b)(6)(B), any activity carried on by a person other than a natural person shall be treated as a trade or business. Section 141(b)(7) provides that government use means any use other than a private business use.

Section 1.141-3(b)(7)(i) provides that any arrangement that conveys special legal entitlements for beneficial use of bond proceeds or of financed property that are comparable to special legal entitlements described in § 1.141-3(b)(2), (3), (4), (5), or (6) results in private business use. Section 1.141-3(b)(7)(ii) provides that, when the financed property is not available for use by the general public (within the meaning of § 1.141-3(c)), private business use may be established solely on the basis of a special economic benefit to one or more nongovernmental persons even if those nongovernmental persons have no special legal entitlements to use of the property. Section 1.141-3(b)(7)(ii) further provides that, in determining whether special economic benefit gives rise to private business use, it is necessary to consider all of the facts and circumstances, including one or more of the following factors: (A) whether the financed property is functionally related or physically proximate to property used in the trade or business of a nongovernmental person; (B) whether only a small number of nongovernmental persons receive the special economic benefit; and (C) whether the cost of the financed property is treated as depreciable by any nongovernmental person.

Section 1.141-3(c)(1) provides that use as a member of the general public (general public use) is not private business use. Section 1.141-3(c)(1) further provides that use of financed property by nongovernmental persons in their trades or business is treated as general public use only if the property is intended to be available and in fact is reasonably available for use on the same basis by natural persons not engaged in a trade or business. Section 1.141-3(c)(2) provides that use of bond proceeds under an arrangement that conveys priority rights or other preferential benefits is not use on the same basis as the general public. Section 1.141-3(c)(2) further provides that arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits.

The direct use of the Center by the individuals comprising each proposed user group would constitute use by natural persons. In order to meet the private business use test, the proposed use must be (directly or indirectly) in a trade or business by any person other than a governmental unit. As represented by the Issuer, the proposed use

by the individual users would be for personal health, recreational, and educational purposes and not in a trade or business. Under § 141(b)(6), use of proceeds by natural persons not engaged in a trade or business does not constitute private business use and, thus, would not meet the private business use test of § 141(b)(1).

The University will be, directly or indirectly, benefitting by the use of the Center by the proposed user groups or for the proposed uses. However, the University is an integral part of the State. Similarly, use of the Center by the employees of the Hospital and their spouses and dependent children will inure indirectly to the benefit of the Hospital, which is an instrumentality of the State. Likewise, the County Board of Education is a governmental instrumentality of the District, which is a political subdivision of the State, and the Commission is an agency of the State. Accordingly, under §§ 1.103-1 and 1.141-1(b), use of proceeds by the University, as an integral part of the State, the Hospital and County Board of Education, as governmental instrumentalities, and the Commission, as an agency of the State, is use by governmental units within the meaning of § 141(b)(6) and, thus, does not meet the private business use test of § 141(b)(1).

The University may contract with individuals to make one or more presentations as part of the on-campus programs sponsored, presented, and operated by the University such as professional enrichment conferences. There is potential for an indirect beneficial use of the Center by these contracted individuals because such programs will include the use of the Center by program participants. This potential, however, is eliminated by the representation that the Center will not be used by contracted individuals for their presentations and the compensation paid to the contracted individuals will be a flat fee not based upon the number of program participants.

The use of the Center by the participants at the professional enrichment conferences and the University-sponsored non-credit classes, as well as the use of the juice bar at the Center are intended to be available and will be reasonably available to nongovernmental persons in a trade or business on the same basis as natural persons not engaged in a trade or business. Therefore, under § 1.141-3(c)(1), any use in a trade or business by nongovernmental persons would not be private business use.

## CONCLUSION

As demonstrated above, none of the proposed user groups or proposed uses involve any use of the Center by a nongovernmental person in a trade or business that is taken into account for purposes of the private business use test. Accordingly, use of the Center by the proposed user groups and for the proposed uses would not constitute private business use under § 141(b)(1) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter under any other provision of the Code or regulation thereunder, including §§ 103 and 141 through 150. Specifically, no opinion is expressed concerning

whether interest on the Bonds is excludable from gross income under § 103(a).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of the letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Sincerely,  
Assistant Chief Counsel  
(Exempt Organizations/Employment  
Tax/Government Entities)  
By: Timothy L. Jones  
Assistant Branch Chief,  
Tax Exempt Bonds Branch