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LEGEND

Corporation =

University =

Authority =

Stadium A =

Stadium B =

Stadium C =

Arena =

Conference =

Date 1 =

Date 2 =

a =

b =

c =

d =

Dear :

This responds to your request for a ruling that the rights exercisable by Corporation under the agreement described below will not cause the private business use test in § 141(b)(1) of the Internal Revenue Code (the “Code”) to be met with respect to the proposed bonds and the improvements financed thereby.

FACTS AND REPRESENTATIONS

The University, part of a statewide system of higher education, conducts its football, basketball, baseball, and softball intercollegiate athletics (collectively, the “Sports”) in Stadium A, Arena, Stadium B, and Stadium C, respectively. The Authority has temporarily financed certain improvements to Stadium A, Arena, Stadium B, and Stadium C (collectively, the “Venues”) with taxable commercial paper. The University proposes to permanently refinance most of that taxable commercial paper using tax-exempt bonds (the “Bonds”) to be issued by the Authority.

The Bond-Financed Improvements

The Bonds will refinance the following improvements (the “Bond-Financed Improvements”) in the Venues.

The Stadium A Bond-Financed Improvements include (1) club seats and an improved food service area, (2) widening and adding lighting to the pedestrian concourses, (3) field area improvements, (4) improvements to the Letterman’s Club, (5) improvements to the public entrance plaza, (6) renovations to the press box (7) possible reconditioning of the concourse surface areas just inside Stadium A, and (8) minor repair to the tunnel walkway to the playing field used by the team.

The Arena Bond-Financed Improvements include (1) club seats, (2) replacement of seating throughout public seating areas, (3) a pedestrian bridge, (4) refurbishment of corridors and vestibule areas, and (5) improvements to the electrical infrastructure.

The Stadium B Bond-Financed Improvements include (1) seats along the first base line, (2) new home and visitor dressing rooms, (3) the enclosure of open space beneath Stadium B to create storage rooms, (4) additional club seats, (5) an upgrade to the hospitality area, including an improved food service area, and (6) a new batting cage.

The Stadium C Bond-Financed Improvements consist of a new softball stadium and a parking lot.

The Agreement

As of Date 1, the University and Corporation entered into an agreement (the “Agreement”) for a term of a years.¹ Corporation’s rights under the Agreement generally can be categorized as (1) radio broadcast and telecast rights, (2) advertising sales and corporate sponsorship program rights, and (3) publishing and vending rights. The Agreement does not give Corporation any rights to control the teams, ticket sales, security, personnel management, or general management of the Venues. Corporation also has certain responsibilities with respect to these rights. Rights and responsibilities relevant to the Bond-Financed Improvements are described below.²

Generally, Corporation has the right to the revenues resulting from the exercise of its rights under the Agreement and pays certain of the related expenses. For these rights, Corporation must (1) pay a stated annual fee to the University in semi-annual installments over the term of the Agreement, (2) pay the University a royalty in each contract year, equal to b percent of certain net revenues (as particularly defined in the Agreement) in excess of specified threshold amounts, (3) make investments in signage and technological upgrades, and (4) promote the University’s athletics scholarship fund by providing a media package with a specified value.

Broadcast and Telecast Rights

The Agreement provides Corporation with the right and the responsibility to produce, distribute, and syndicate radio broadcasts and telecasts of certain of the Sports games (the “Productions”). Corporation’s rights to televise particular games are subject to the University’s approval, and to any telecast agreements of the Conference, the National College Athletic Association (“NCAA”), or the University and to Conference guidelines. As of Date 2, Corporation has been precluded by the Conference from televising home football games except for one per season. The University sets the game schedules for the Sports in conjunction with other members of its division of the NCAA, in accordance with the rules of the Conference and the NCAA, and without the participation of Corporation.

Corporation arranges contracts with radio stations (the “Radio Affiliates”) to broadcast the games. It may create a television network to telecast the games, subject to the University’s approval of the participating television stations (the “TV Affiliates”). The University will own the copyrights to the Productions.

¹ Subsequently, the Agreement was extended but no other material changes were made.

² The rights and responsibilities under the Agreement are much more extensive than described herein. The representations provided by the Authority indicate that Corporation’s other rights and responsibilities relate to property other than that included in the Bond-Financed Improvements (for example, facilities other than the Venues or portions of the Venues financed with taxable bonds).

Under the Agreement, Corporation must furnish specified personnel in connection with the Productions. These personnel, including those employed outside the Venues, are subject to the University's approval. The University must furnish free admission passes to allow Corporation's employees access to and egress from the site of each game for productions or recordings and to remove equipment. One such employee is a sideline reporter, who is not stationary and is assigned no fixed space. Currently, in Stadium A, Corporation broadcasts the games from a small portion comprising about 2 percent of the new press box, using 3 broadcast personnel. In Arena, Corporation broadcasts basketball games from a folding courtside table. In Stadium B, Corporation broadcasts baseball games from an existing press box that is not part of the Bond-Financed Improvements. In Stadium C, Corporation broadcasts softball games from a space comprising about 3 percent of the press box, using the services of 5 or fewer broadcast personnel. The University also must furnish free parking passes for Corporation's employees, if needed. However, the parking lot at Stadium C is open to the general public on a first-come, first served basis without charge during softball games, which is when Corporation's employees would be parking there.

Advertising Sales and Corporate Sponsorship Program Rights

Corporation has the exclusive right to obtain agreements for sponsorships, promotions, and advertising related to the games and productions. This includes advertising displayed on signage; on food containers and/or drink cups used by the University or its concessionaires; on ticket backs, ticket envelopes, and parking passes; and on the official game programs and print items described in the publishing and vending rights section below. None of the signage itself will be financed with proceeds of the Bonds. While generally the tickets, concession, and program sales or distribution occur outside of the improved areas, some of these sales or distribution in certain Venues do occur in or on areas included in the Bond-Financed Improvements.

Corporation has the exclusive right to develop, market, and promote a corporate sponsorship program for the University home games. The corporate sponsorship program includes advertising, marketing, and promotional activities. Specifically, Corporation may conduct promotional activities. Issuer expects the activities to occur for no more than a couple of minutes per game.

Corporation has the option to purchase at face value specified numbers of game tickets for the games in Stadium A, Arena, and Stadium B, respectively, for distribution to advertisers, sponsors, and Radio and TV Affiliates. Corporation also has the option to purchase additional tickets to any sports games in the Venues, if available.

Publishing and Vending Rights

Corporation has the exclusive right to produce and sell official game programs for the Sports. Corporation also has the exclusive right to produce promotional schedules, posters, pocket schedule cards, and any other agreed upon promotional print items. Corporation must provide minimum quantities of the various game programs and other publications; the University may purchase additional programs at cost. Corporation is responsible for the design, layout, and production of the game programs, subject to the University's approval. Corporation is responsible for all program vending operations including staffing, selling, collections and accounting for the programs. Corporation will bear all costs and retain all revenues from the sale of the programs. Corporation has the right to vend the programs inside and outside of each Venue, and must maintain a minimum of c program vendor booths at each home football game and d program vendor booths at each home men's and women's basketball game. The program vendor booths currently used by Corporation are temporary, portable booths with the footprint of each booth being approximately 9 square feet. The University must provide for a small number of public address announcements and scoreboard announcements at each game to promote the vending sales. Issuer expects these announcements to occur for no more than one minute per game.

The Authority has represented that Corporation's use of the Bond-Financed Improvements within each respective Venue related to the broadcast equipment and personnel used by Corporation; the presence of signs on which the advertisements secured by Corporation appear; the sale or other distribution of tickets, parking passes, programs and other print items, and cups and food containers with advertisements secured by Corporation; the promotional activities and announcements; and the seats associated with specified numbers of game tickets (as applicable to the specific Venue) when added to nonpossessory uses (as defined in § 1.141-3(d)(5) of the Income Tax Regulations) of the Bond-Financed Improvements within each respective Venue by private business users other than Corporation, if any, does not exceed 2.5 percent of the Bond proceeds allocable to the Bond-Financed Improvements in such Venue. Further, the Authority has represented that the uses of the Bond-Financed Improvements within each respective Venue by Corporation and other users as described in this paragraph do not involve the use of more than 2.5 percent of such respective Bond-Financed Improvements.

LAW AND ANALYSIS

Section 103(a) of the Code provides that gross income shall not include interest on any state or local bond. Section 103(b)(1) provides that § 103(a) shall not apply to any private activity bond which is not a qualified bond (within the meaning of section 141).

Section 141(a) defines the term private activity bond to mean any bond issued as part of an issue which meets either (1) the private business use test and the private security or payment test (the “private business tests”), or (2) the private loan financing test.

Section 141(b)(1) states that except as otherwise provided, an issue meets the private business use test if more than 10 percent of the proceeds of the issue are used for any private business use.

Section 141(b)(6)(A) defines private business use to mean use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. Section 141(b)(6)(B) clarifies that any activity carried on by a person other than a natural person shall be treated as a trade or business.

Section 1.141-(2)(d)(1) provides that, in general, an issue is an issue of private activity bonds if the issuer reasonably expects, as of the issue date, that the issue will meet either the private business tests or the private loan financing test. An issue is also an issue of private activity bonds if the issuer takes a deliberate action, subsequent to the issue date, that cause the conditions of either the private business tests or the private loan financing test to be met.

Section 1.141-3(a)(1) provides that use of financed property is treated as the direct use of proceeds. Section 1.141-3(b) provides that both actual and beneficial use by a nongovernmental person may be treated as private business use. Section 1.141-3(b)(1) provides that, in most cases, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. In general, a nongovernmental person is treated as a private business user of proceeds and financed property as a result of ownership; actual or beneficial use of property pursuant to a lease, or a management or incentive payment contract; or certain other arrangements such as a take or pay or other output-type contract. Under § 1.141-3(b)(7)(i), any other 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) through (6) results in private business use.

Section 1.141-3(b)(3) provides that, except as provided in § 1.141-3(d), the lease of financed property to a nongovernmental person is private business use of that property. For this purpose, any arrangement that is properly characterized as a lease for Federal income tax purposes is treated as a lease. In determining whether a management contract is properly characterized as a lease, it is necessary to consider all the facts and circumstances, including the following factors – (i) The degree of control over the property that is exercised by the nongovernmental person; and (ii) Whether the nongovernmental person bears the risk of loss of the financed property.

Section 1.141-3(b)(4) provides that, except as provided in § 1.141-3(d), a management contract (within the meaning of § 1.141-3(b)(4)(ii)) with respect to financed property may result in private business use of that property, based on all of the facts and circumstances. Section 1.141-3(b)(4)(ii) defines a management contract as a management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility.

Section 1.141-3(c)(1) provides that use as a member of the general public (general public use) is not private business use. Use of financed property by nongovernmental persons in their trades or businesses 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, in general, use under an arrangement that conveys priority rights or other preferential benefits is not use on the same basis as the general public. 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.

Under § 1.141-3(d)(5), certain incidental uses of a financed facility are disregarded to the extent that those uses do not exceed 2.5 percent of the proceeds of the issue used to finance the facility. A use of a facility is incidental if: (A) Except for vending machines, pay telephones, kiosks, and similar uses, the use does not involve the transfer to the nongovernmental person of possession and control of space that is separated from other areas of the facility by walls, partitions, or other physical barriers, such as a night gate affixed to a structural component of a building (a nonpossessory use); (B) The nonpossessory use is not functionally related to any other use of the facility by the same person (other than a different nonpossessory use); and (C) All nonpossessory uses of the facility do not, in the aggregate, involve the use of more than 2.5 percent of the facility. Section 1.141-3(d)(5)(ii) provides that incidental uses may include pay telephones, vending machines, advertising displays, and use for television cameras, but incidental use may not include output purchases.

The Agreement gives Corporation a variety of rights and responsibilities with respect to the multi-media functions associated with the Sports. We analyze the Agreement to determine whether it gives rise to private business use of the Bond-Financed Improvements and, if so, whether the private business use test is met. In doing so, we consider whether the Agreement conveys special legal entitlements for Corporation's use of the Bond-Financed Improvements that are comparable to ownership, leases, management contracts, output contracts, or research agreements.

First, the Agreement does not give Corporation ownership rights to the Bond-Financed Improvements.

Certain aspects of the Agreement resemble a management contract as Corporation is providing services for various functions of the Venues among other services it provides to the University. For example, Corporation uses its expertise to vend the official game programs and other promotional print items and is responsible for developing, marketing, and promoting the corporate sponsorship program. Other aspects of the Agreement resemble a lease in that Corporation retains certain revenues, pays certain expenses, and pays the University, among other amounts, a stated annual fee in exchange for the right to use certain University property. Yet, the lease-like rights set forth in the Agreement concern mainly intangible property, such as the right and responsibility of Corporation to produce, distribute, and syndicate radio broadcasts and telecasts of certain of the Sports games and to sell advertisements to be aired during the broadcasts and telecasts. Further, even where Corporation's right is to use certain tangible property of the University, like the advertising signs and other articles on which the advertisements appear, these items themselves are not part of the Bond-Financed Improvements. However, regardless of how we characterize the Agreement, as discussed below, it does provide Corporation with special legal entitlements to use portions of the Bond-Financed Improvements. Therefore, we must analyze these uses to determine if they cause private business use.

Corporation's right to broadcast and telecast certain of the Sports games is a valuable, intangible legal entitlement that goes beyond the right to use the necessary equipment and personnel within the Venues. However, the value of these broadcast and telecast rights lies in Corporation's right to sell the advertisements that air during such broadcasts and telecasts. We think that the airing, distribution, and syndication of the Productions and the sale of the advertisements to be aired during the Productions are too remote to be considered use of the Bond-Financed Improvements. Importantly, while we think that possession is not necessary to finding private business use where there is control of the bond-financed facility, *cf.* § 1.141-3(f), *Example 5*, the Agreement does not give Corporation control over the teams, ticket sales, security, personnel management, or general management of the Venues. Corporation does not have control over any element of the game schedules, such as the number of games, the dates games are played, or the selection of opposing teams. Corporation's rights to televise particular games are subject to the University's approval and to any telecast agreements of the Conference, the NCAA, or the University and to Conference guidelines. The University owns the copyrights to the Productions.

In addition to the intangible uses of the Venues, the Agreement specifically provides Corporation with certain rights to tangible use of the Bond-Financed portions of the Venues. Corporation uses broadcast equipment and certain personnel at the Venues. These include the personnel broadcasting courtside or from the press boxes and the sideline reporter. Corporation has the exclusive right to sell advertising displayed on the tickets, parking passes, programs and other print items, cups, food containers, and signs within the Venues. Corporation's rights also include the right to conduct promotional home game activities. Corporation has the right to vend the official game

programs and other game-related publications within the Venues. Corporation has the right to a small number of public address announcements and scoreboard announcements at each game to promote program vending sales. To the extent that the equipment, personnel, or signs are present; tickets, parking passes, programs, other print items, cups, or food containers are sold or otherwise distributed; or promotional activities or announcements occur in or on the Bond-Financed Improvements, these are uses of the Bond-Financed Improvements. Corporation also has the right to obtain the specified numbers of game tickets for the Radio and TV Affiliates, advertisers, and sponsors.

However, these tangible uses are incidental uses within the meaning of § 1.141-3(d)(5). The use of television cameras and advertising displays are specifically mentioned as examples of an incidental use in § 1.141-3(d)(5), as are kiosks. Corporation's use of broadcast equipment and temporary vendor booths are similar to these examples. It broadcasts from the press room with many other broadcasters or courtside. The promotional activities and announcements occur during the games and involve no physical barriers. Corporation's right to purchase the game tickets is solely for the use of the Radio and TV Affiliates, advertisers, and sponsors, and not its own possessory use. Thus, these uses are nonpossessory (as defined in § 1.141-3(d)(5)). These uses are not functionally related to any other possessory use of the Bond-Financed Improvements. The Authority has represented that the nonpossessory uses of the Bond-Financed Improvements within each respective Venue do not exceed 2.5 percent of the Bond proceeds allocable to the Bond-Financed Improvements in such Venue.

The Authority has further represented that the incidental uses of the Bond-Financed Improvements within each respective Venue do not involve the use of more than 2.5 percent of such respective Bond-Financed Improvements. Accordingly, the incidental uses by Corporation of the Bond-Financed Improvements may be disregarded.

In addition to the above incidental uses, Corporation has the right to free parking passes, if needed, for Corporation's employees. However, the parking lot at Stadium C (the only parking lot included in the Bond-Financed Improvements) is open to the general public on a first-come, first served basis without charge during softball games when Corporation's employees would be parking there. Accordingly, Corporation's right to park on the Stadium C parking lot is on the same basis as the general public and, therefore, does not give rise to private business use. Similarly, Corporation has the option to purchase game tickets at face value in addition to the specified numbers of tickets if such tickets available. This use of the Venues is on the same basis as the general public and accordingly is not private business use.

CONCLUSION

The rights exercisable by Corporation under the Agreement do not give rise to private business use of the Bonds, and therefore, do not cause the private business use test to be met.

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 rulings, it is subject to verification on examination.

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. In particular, no opinion is expressed or implied concerning the private business use of areas of the Venues or other University facilities that are not part of the Bond-Financed Improvements, of the Bonds by parties other than the Corporation, or of any other bonds issued to finance the University's facilities.

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 this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel
(Financial Institutions & Products)

By: _____
Johanna Som de Cerff
Senior Technician Reviewer
Branch 5

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes