

**TAX COMPLIANCE
FOR PROPOSITIONS
108 AND 116 BOND FUNDS**

NO ARBITRAGE / TAX COMPLIANCE ISSUES FOR PROPOSITIONS 108 AND 116 BOND FUNDS

PART I BACKGROUND INFORMATION

A. LOANS

A loan of tax-exempt bond proceeds to a nongovernmental person could pose private activity problems and affect the tax-exempt status of the bonds. The problem would arise regardless of whether the State made the loan directly or the State made a loan to a local agency which then made a loan of the borrowed proceeds. Thus, such loans are prohibited under the Propositions 108 and 116 bond programs.

A "loan" is any transaction where the borrower receives the right to use the money and must repay the money (whether to the State or the local agency). In addition to direct loans, a situation in which a local agency used bond proceeds to purchase land and then resold the land to a nongovernmental person, with the purchaser paying for the land over time rather than paying up front, would also be considered a loan. A nongovernmental person means either a for-profit or non-profit organization, but does not mean any governmental agency, whether state or local. For tax purposes, the Federal government is treated as a nongovernmental entity.

B. PRIVATE ACTIVITY

Private activity issues arise in cases where there is both "private use" and "private payments." In certain cases, execution of a management or service contract for the operation of the bond-financed project will raise "private activity" questions.

PRIVATE USE:

Private use exists when the proceeds of a bond issue are used to finance a portion of a project that is used in the trade or business of a nongovernmental person (see definition under "Loans") on a basis which is different from that which the general public can use it. For example, if bond proceeds are used to finance a train station that is used by employees of a business on the same basis and in the same manner as the general public uses the station, there is no private use. However, if the private business is given a preferential right, such as the right to set up a coffee shop in the station, there is private use. Depending on the specific circumstances, the following are a few examples in which there could be private use associated with transit projects:

- Leasing office or retail space in a bond-financed train or ferry terminal to a private or non-profit entity.
- Allowing a private developer to develop the adjacent property or air rights over (or under) a bond-financed transit station, parking lot or rail tracks. Such development is considered private use regardless of whether the local agency or the State retains title over the property or the title is transferred to a private developer.
- Granting or selling easements, such as pipeline or fiber-optic cable easements, on a bond-financed right-of-way.
- Allowing private ferry operators to utilize a bond-financed ferry dock.

INCIDENTAL USE:

Certain types of private use are ignored if the private use falls under the category of "Incidental Use" as defined in federal regulations. In general, "Incidental Use" is use that does not involve the transfer to a private person of possession and control over 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). "Incidental Use" may not comprise in the aggregate more than 2-1/2% of the cost of the bond-financed project, nor involve the use of more than 2-1/2% of the bond-financed portion of the facility. Examples of "Incidental Use" include vending machines, telephones, and billboards.

PRIVATE PAYMENTS:

Private activity issues arise when, in connection with the private use of a bond-financed project, there are also private payments made to the State or to a local agency. Private use without private pavement does not constitute private activity. Private payments include, among other things, rental and other payments made to the local agency for the use of property financed with bond proceeds, even though such payments are not used to pay debt service on the State bonds. However, payments made for use of the property as a member of the general public would not be treated as a prohibited private payment. Examples of private payments include revenue from a nongovernmental person for office space rental, land or airspace leases, pipeline or fiber-optic cable easements, or docking fees.

Private payments are only counted to the extent that they exceed the allocable costs of operation and maintenance (O&M) experienced by the State or a local agency in connection with the operation of the privately used facility or equipment. To the extent that any private payments do not exceed the O&M costs, there is no private activity problem. For example, providing space in a transit station, rent free, to a private or non-profit operator of a child-care center would not constitute private activity (even though this would involve private use). Likewise, a local agency leasing for rent a transit terminal office space to a private baggage handling service, and the local agency's O&M costs allocable to that portion of the facility is less than the rental fee, would not be considered private activity.

C. IDENTIFYING POTENTIAL TAX COMPLIANCE ISSUES

If the State Treasurer's Office and State's bond counsel determine that the proposed project raises private activity concerns, bond counsel will work with the Department and the potential bond fund recipient to do whatever restructuring is necessary to accommodate the project plans while ensuring compliance with federal tax guidelines.

TAX COMPLIANCE QUESTIONNAIRE FOR PROPOSITIONS 108 AND 116 BOND FUNDS

RECIPIENT AGENCY: <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>	MAILING ADDRESS: STREET _____ CITY/STATE _____ ZIP CODE _____
CONTACT PERSON: NAME _____ PHONE() _____ TITLE _____ FAX () _____	
CALIFORNIA TRANSPORTATION COMMISSION (CTC) BOND FUND ALLOCATION:	
CTC RESOLUTION NO.# _____ DATE: _____ AMOUNT: _____	FUND SOURCE: _____ (PROP 108 OR 116) PROJECT APPLICATION (PA) APPROVAL PA No# _____ FUND TRANSFER AGREEMENT NO.# _____
PROJECTS COVERED BY THIS QUESTIONNAIRE:	
	RIGHT OF <u>CONSTRUCTION</u> <u>WAY</u> <u>OTHER</u>
1. _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
2. _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
3. _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
4. _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
5. _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Note: The Tax Compliance Questionnaire will be returned if it contains unanswered question, missing information, or is unsigned.	
<u>DATE RECEIVED</u> <u>BY BUDGETS</u>	<u>DATE</u> <u>CERTIFIED</u>

PART II
TAX COMPLIANCE QUESTIONNAIRE

(Refer to Part I for background information)

1. Repayment of existing debt:

Will any State bond proceeds be used to repay any existing debt of the local agency?

YES ___ NO ___

If yes, please describe the debt and provide information regarding repayment.

2. Loans:

Will any of the bond proceeds be loaned to one or more nongovernmental persons? If yes, describe the details of the loan. Attach a copy of the loan agreement.

YES ___ NO ___

3. Private Use:

a. Will any portion of the bond-funded facility or project be used in the trade or business of any nongovernmental person?

YES ___ NO ___

b. If so, describe the private use in detail.

c. Will the bond-funded project or facility be used on a basis different from that for which the general public can use it? If Yes, there is private use. (See Part I - Private Use, for more information.)

YES ___ NO ___

4. Private Payment:

- a. Will payments be made to the State or local government agency which represent payments for trade or business use of the bond-funded property or facility?

YES ___ NO ___

- b. If yes, please provide an estimate of the revenue expected to be received from each nongovernmental use over the life of the bond (20 years).

5. Operations and Maintenance Costs:

If the answer to #4a is yes, will the operations and maintenance (O&M) costs be greater than or less than the private payments? If the O&M is less than the payments your agency is to receive, please provide an estimate of the O&M costs over the life of the bond. (See Part I - Private Payments, for more information.)

6. Related and Unrelated Use:

If both #3a and #4a are yes, will any of the bond proceeds be used by a nongovernmental person(s) in ways that are unrelated to the governmental purpose of the bonds (i.e., rail, bicycle or ferry transportation, or other uses allowed under propositions 108 and 116)? A use is related to the governmental purpose of the bonds if it is "functionally related" to the governmental use. One example of related use is a privately operated cafeteria in a bond-financed rail terminal. An office for the cafeteria manager, however, is not considered related the rail terminal.

YES ___ NO ___

7. Right-of-Way:

Will the State bond proceeds be used to acquire right-of-way in connection with this project?

YES ___ NO ___

8. Disposition of Project:

Is the portion of the bond-funded project expected to be sold or otherwise disposed of, in whole or in part, within the next 20 years?

YES ___ NO ___

CERTIFICATION

The undersigned, a representative of the applicant public agency, has authority to execute this document and hereby certifies that the data submitted herein is true, correct and complete to the best of my knowledge.

Signature:

Date:

Print Name

Title

Agency:
