

MANAGEMENT DIRECTIVE

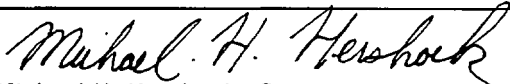
Commonwealth of Pennsylvania
GOVERNOR'S OFFICE

105.5
Number

Subject:

Use of the Determination of Tax-Exempt Category for Capital Projects Form

By Direction of:


Michael H. Hershock, Secretary of the Budget

Date:

September 12, 1991

To comply with the Federal Tax Reform Act of 1986, as amended, all agencies are required to prepare and submit a Determination form when using tax-exempt general obligation bond proceeds for public improvement projects.

1. **PURPOSE.** To provide direction for the completion and processing of the Determination of *Tax-Exempt Category for Capital Projects* form, hereinafter referred to as "Determination" form (Enclosure 1).

2. **SCOPE.** Applies to all Commonwealth agencies filing requests for project action with the Department of General Services, Office of Public Works.

3. **OBJECTIVE.** To ensure that all agencies comply with the Federal Tax Reform Act of 1986, as amended, by preparing and submitting the Determination form when filing a request for project action.

4. **POLICY.** The Federal Tax Reform Act of 1986, as amended, requires all agencies when using tax-exempt general obligation bond proceeds for public improvement projects of the Commonwealth, to prepare and submit the Determination form when filing a request for project action. The act, as amended, requires that no more than the lesser of \$5000,000 or five percent of any tax-exempt bond issue be used in any direct or indirect business activity carried on by other than a governmental entity. A private business activity use can arise if a private business conducts its business operations pursuant to a management contract, lease, or other agreement in facilities constructed or renovated using tax-exempt bond funds.

5. RESPONSIBILITIES.

a. **The Department of General Services** (DGS) is responsible for ensuring that the Determination form is completed and, when appropriate, the *Supplemental Determination Form* (Enclosure 2) is completed. DGS is also responsible for completing the *Project Category Summary* (Enclosure 3) form and transferring the resulting percentages of unrelated and related private use and governmental use project costs to Form GSEA-152 and the Honeywell System PRJPW Project Inquiry Screen.

b. **Agencies** are responsible for the initial submission of the Determination form. The form is to be submitted, along with a *Project Scope Form* (Form GSPW-2), when filing a request for initiation of project action.

c. **The Central Services Comptroller** is responsible for ensuring that capital construction project invoices are paid from the appropriate pools of governmental and private use bond funds. All invoices submitted to the Central Services Comptroller shall contain a breakdown of the invoice total by governmental use and related and unrelated private use.

6. DEFINITIONS.

a. Governmental use. Any activity or business conducted by state or local government, public school districts, or other political subdivisions, but not the U.S. Government.

b. Related private use. Any activity or business conducted by other than a governmental entity, which is operationally related to activity carried on by a governmental entity. Such use usually requires close physical proximity of the nongovernmental and governmental facilities. An example is a privately operated cafeteria in a state or local government building or facility.

c. Unrelated private use. Any direct or indirect business activity carried on by an individual or entity other than a governmental unit and unrelated to a governmental activity. The federal government and nonprofit organizations are not governmental units.

7. PROCEDURES.

a. Agencies are to prepare an initial certification of the Determination form and attach it to the Project Scope Form. Copies of all forms mentioned in this directive can be obtained from the:

Department of General Services
Office of Public Works
18th and Herr Streets
Telephone: 783-8468

The initial certification should be forwarded, along with the scope form and the request for project action, to the Department of General Services at the address shown above.

b. The Deputy for Public Works, Department of General Services, will forward copies of the certification to the Bureau of Engineering and Architecture. The Bureau of Engineering and Architecture is to review the Determination form. If any questions on page one of the form are answered "Yes," the bureau will complete the appropriate information on the *Supplemental Determination Form* based on estimated square footage of the project.

c. The Bureau of Engineering and Architecture will:

(1) Transfer the necessary dollar figures from the Determination form and the *Supplemental Determination Form* to the *Project Category Summary*, (attached to the form) and will calculate the percentages of project costs associated with unrelated and related private use and governmental use.

(2) Enter the percentages in the applicable spaces on the GSEA-152, *Design Completion* form, and will also transmit such percentages to the Administrative/Data Processing Division, Bureau of Contract and Support Services. The Administrative/Data Processing Division will enter the percentage information on the Honeywell System, PRJPW Inquiry Screen. The Public Works Fiscal Unit will forward the percentage information to the Treasury Department and the comptroller, along with invoices for payment.

(3) Complete a recertification of the *Supplemental Determination Form* upon approval of the final project design by the Office of Public Works. Using actual design specifications, all items on the *Supplemental Determination Form*, requiring square footage information or project cost information will be updated. If the percentages of project costs associated with unrelated and related private use and governmental use have changed since the initial form completion, based on the actual project design, the Administrative/Data Processing Division will be responsible for updating Form GSEA-152 and the Honeywell PRJPW Inquiry Screen.

Copies of the completed Determination form, the *Supplemental Determination Form*, and the *Project Category Summary* form will be kept on file with the Bureau of Engineering and Architecture.

3 Enclosures:

- 1 – Determination of Tax-Exempt Category for Capital Projects Form
- 2 – Supplemental Determination Form
- 3 – Project Category Summary Form

DETERMINATION OF TAX-EXEMPT CATEGORY FOR CAPITAL PROJECTS

THIS FORM IS:
an initial submission

PROJECT NO: _____

a recertification
PROJECT TITLE: _____

Purpose: This questionnaire is designed to assist in the determination of the use of tax-exempt bond proceeds on public improvement projects for purposes of complying with federal tax law.

Instructions: Check the appropriate box for the following questions. Answer all questions on page 1 of this Project Determination Form. IF the answer to any question is Yes, a Supplemental Determination Form must be completed. Definitions to the terms in bold print are provided.

1. Does any portion of the project involve construction or improvements to an **output facility** (gas and electric generation and transmission facilities, but not water)?

No

Yes → Complete part I of Supplemental Determination Form

2. Will any **non-governmental** entity (including non-profit organizations) be conducting a trade or business, or carry on any business activity in or on any portion of the proposed project?

No

Yes → Complete part II of Supplemental Determination Form

3. Are any operations, activities or businesses to be conducted or engaged in by a **non-governmental** entity within the project pursuant to a management contract?

No

Yes → Complete part II of Supplemental Determination Form

4. Will any general research (versus product development research) by **non-governmental** persons, pursuant to cooperative research agreements with universities or government agencies, be conducted within the project?

No

Yes → Complete part III of Supplemental Determination Form

Review all questions in the Supplemental Determination Form to see if any questions can be answered Yes, or if a project appears to have a mixture of public and private uses. If all four questions above have been answered "No," and no questions on the Supplemental Determination Form can be answered "Yes," check governmental bond at bottom because the project can be entirely funded by governmental bonds.

GOVERNMENTAL BOND

(G) \$ _____

Project Approval Amount

DEFINITIONS

Terms defined here are in bold text in the questionnaire.

Direct or indirect payments - A payment made to anyone for use of a facility in a private trade or business activity by anyone other than a governmental entity. Revenues from special charges for use of a facility and taxes not generally applicable to non-user of a facility are included. Payments made for use of a facility as a member of the general public are not included.

Functionally related - An operational relationship exists between a private and a governmental use of a facility that usually requires close physical proximity for the related use. An example is a privately operated school cafeteria and a school.

Governmental - A state or local government, public school district or other political subdivision, but not the U.S. Government.

Loan - Transaction involving direct loans or transfers (or those deemed to be transfers) of tax ownership, including installment payment arrangements and leases. Management contracts or take-or-pay or output contracts may be a loan if significant burdens and benefits of ownership are transferred.

Management contract - An incentive payment contract, take-or-pay contract, some other type of output contract for utility service or any other type of legally binding contract.

Non-governmental - The U.S. Government and entities other than a state or local government, public school district or other political subdivision.

Output facility - A facility such as electric and gas generation, transmission and related facilities but not facilities for the furnishing of water.

Private trade or business - Any direct or indirect business activity carried on by an individual or entity other than a governmental unit. The federal government and non-profit organizations are not governmental units and are considered as carrying on a trade or business. Business use as a member of the general public where one organization or limited group of organizations has an extended right to use the facilities is not considered private trade or business.

Supplemental Determination Form

Project Title: _____ Project Number: _____

PART I – Output Facilities

5. Will any portion of the project include the financing of **output facilities** whose outputs will be sold to any person or entity other than a **governmental** user?

No → Project can be funded by governmental bond. STOP. Return to question 2 of Determination Form.

Yes → What is estimated percentage of generated output that will be sold to **non-governmental** users? _____ % (1)

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Acquisition and construction cost of output facility \$ _____ (2)

Output facilities for **non-governmental** users (multiply (1) times (2))

(A) \$ _____ (3)

Is item (3) greater than \$15,000,000?

No

Yes Maximum project size exceeded. Contact Office of the Budget.

PART II – Unrelated Business Use

6. If a **non-governmental** entity will be involved in the project pursuant to a management contract, check all provisions that apply.

- (a) The term of the **management contract** (including all renewal options) exceeds 5 years;
- (b) Some portion of the payments under the **management contract** are made on the basis of net profits;
- (c) Less than one-half of all payments under the project are on a fixed fee basis;
- (d) The Commonwealth, as owner of the project, cannot terminate the **management contract** without cause and without penalty before the end of each three-year contract period.

If any box is checked, go to question 10, otherwise continue with the remaining questions. If other **non-governmental** entities are also involved in project, return to this point and complete the remainder of this Part II.

7. Does the project, directly or indirectly, involve a loan to a **non-governmental** entity?

No

Yes → Purpose of loan? _____
Will Commonwealth funds be disbursed

in advance of expenditures by the **non-governmental** recipient

to reimburse expenditures made by the **non-governmental** recipient

Amount of loan? (B) \$ _____

8. Will any **non-governmental** entity be conducting a **private trade or business** or carry on any business activity in connection with the project, other than for **output facilities**, under the provisions of **management contracts** or research agreements?

No → Enter the project cost (G) \$ _____

Yes → If Yes, describe the **private trade or business** to be conducted, provide the name of the person, firm or organization who will conduct the business activity, amount of square footage of the project to be used in the **private trade or business** and its portion of the total cost of the project.
 \$ _____ (I) Total Project Cost

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Name of Business	Total Project Square Footage (2)	Square Footage Allotted to Business (3)	% of Total Square Footage Allotted to Business (4) $((3) \div (2))$	Project Cost Allocable to Business (5) $((4) \times (1))$

9. Will the Commonwealth, or any other entity on behalf of the Commonwealth, receive **direct or indirect payments** from a **non-governmental** user of the project in a **private trade or business**?

No → Enter the project cost (G) \$ _____

Yes → If Yes, is the payment received a payment of a generally applicable tax or a payment for the use of the project for a **private trade or business** by a member of the general public?

No

Yes → Enter the project cost (G) \$ _____

10. Is the project or any portion of the project to be used in a **private trade or business functionally related** to a **governmental** use by a **governmental** entity in that same project or in another project physically located nearby?

No → Enter the total project cost \$ _____ (1)

Enter the amount of square footage allotted to the **private trade or business** _____ (2)

_____ % (3) of total project square footage

(C) \$ _____ cost allocable to **private trade or business** $((3) \times (1))$

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Yes →

Does the square footage of the portion of the project to be used in a **private trade or business** exceed the square footage of the portion of the project to be used by a government for **governmental** use?

Enter total project cost \$ _____ (1)

No → Square footage used for **private trade or business**
_____ (2)
_____ % (3) of total project
square footage

(F) \$ _____ Portion of Total
Project Cost used in **private trade or business**
related to **governmental** use ((3) x (1))

Yes → Square footage used for **private trade or business**
_____ (2)
_____ % (3) of total project
square footage used in private trade or business

\$ _____ (4) Portion of Total
Project Cost used in **private trade or business**
related to **governmental** use ((3) x (1))

_____ % (5) percent of total
project square footage used for **governmental**
purposes (100% - (3))

\$ _____ (6) Portion of Total
Project Cost used for **governmental** purposes ((5)
x (1))

(D) \$ _____ Portion of Project
Financing used for private trade or business that
exceeds cost of governmental use portion ((4) - (6))

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PART III – Research

11. If a research agreement is part of the project, does it provide for the use of the resulting technology by other unrelated parties on the same terms by which use by the sponsoring person is permitted?

- No → Enter the amount of project financing for research agreement in which the sponsoring person receives preferential use.
(E) \$ _____
- Yes → Enter the project cost.
(G) \$ _____

Project Category Summary

Project Title: _____ Project Number: _____

Enter the appropriate dollar amounts next to each letter in the following summary. The letters correspond to the amounts which are already entered in the Supplemental Determination Form.

	Unrelated Private Use	Related Private Use	Governmental Use
A. Amount for output facilities	\$	N/A	N/A
B. Amount for loan or loans	\$	N/A	N/A
C. Amount for unrelated private use.	\$	N/A	N/A
D. Amount used in private trade that exceeds the cost of the governmental portion	\$	N/A	N/A
E. Amount for private research where sponsor has preferential use.	\$	N/A	N/A
F. Amount used in business related to governmental use.	N/A	\$	N/A
G. Governmental portion of the project cost.	N/A		\$
COLUMN TOTAL	\$	\$	\$
*Total of 3 columns	\$		
Enter the total project cost	\$		

* If the total project cost does not equal the total of the 3 columns, complete all questions in the supplemental determination form. The total cost of the project must be allocated among the three categories.

FOR DGS USE ONLY	_____ %	Unrelated Private Use (Column One Total ÷ Total Project Cost)
	_____ %	Related Private Use and Governmental Use ((Column Two Total + Column Three Total) ÷ Total Project Cost)