



## **GUIDELINES FOR THIRD-PARTY USE OF UNIVERSITY PROPERTY**

Seattle University is a 501(c)(3) tax-exempt educational institution. University property is therefore entitled to certain tax benefits, including an exemption from Washington state property taxes. Additionally, some of the University's buildings were financed using tax-exempt 501(c)(3) bonds. To maintain the tax exemption, the University must carefully limit and manage the third party "private" use it allows on its property. This document provides guidelines for allowing third parties to use University property and remain in compliance with federal and state tax laws. Please read it carefully and contact the Office of University Counsel if you have questions.

### **GUIDELINES FOR PRESERVING UNIVERSITY PROPERTY TAX EXEMPTIONS**

Any person considering permitting the use of University property by a third party must adhere to Washington's requirements for preserving property tax exemptions. In general, these requirements provide that the University may use its property for its tax-exempt (educational) purpose only. Failing to adhere to these requirements will jeopardize the property's tax exemption and could subject the University to property taxes it would normally not have to pay. The following are the limited exceptions to this rule:

**1. University property may be leased to another entity that is entitled to a tax-exemption.**

University property may be used by another entity that is entitled to a property tax exemption without a time limitation if the rent or donation received in exchange for the use is (1) reasonable and (2) does not exceed the maintenance and operation expenses attributable to the property being used. During this time, the third-party may use the property for its own fundraising events, if (1) such events are consistent with the third party's mission, (2) the event is less than five days long, and (3) 51 percent or more of the profits from the fundraising event are disbursed to the entity that is entitled to a property tax exemption.

**"Maintenance and operation expenses"** means the expenses allowed under generally accepted accounting principles ("GAAP") to maintain and operate the property.

So, for example, if an organization that is entitled to a property tax exemption wished to use one of the University's conference rooms for its annual retreat, the University could allow it to do so without limiting the length of time of the organization's use, so long as the rent or donation made by the organization in exchange for the use was reasonable and did not exceed the maintenance and operation expenses attributable to the property that is being used.

**2. The University can allow a non-tax-exempt third party to use its property if the third party's use is consistent with the University's educational, social, or athletic programs.**

The University's educational, social, or athletic programs are those programs offered or functions performed by the University, such as putting on a job fair, seminar, alumni event, conference, athletic camp, musical performance, or technology exhibition. A good question to ask in this scenario is whether the third party's activities on campus are those the University itself might conduct. The fees or rent the University charges to the third party in this situation must be reasonable and may not result in net income to the University.

**"Net income"** means the amount received from the rental of property that exceeds the amount of the

maintenance and operation expenses attributable to the portion of the property loaned or rented. This includes costs such as utilities and repairs, as well as other legally recognized costs, like depreciation and expenses relating to security, sales and marketing, and administrative costs.

3. **The University can contract with non-exempt third parties for school or college-related programs or services directed at students, faculty, and staff, and not primarily at the general public.** This exception permits the University to allow third parties to operate its bookstore and provide catering services. The fees or rent the University charges to the third party in this situation also must be reasonable and may not result in net income to the University.
4. **University property may be leased to non-tax-exempt individuals, groups, or businesses not falling within one of the exceptions described above for up to 50 days in each calendar year for each specific space on the property. During 15 of these 50 days, non-tax-exempt third parties may generate pecuniary gain or promote their business activities.** Such uses are measured separately with respect to each specific portion of the property. For example, the University could allow a business to lease a classroom to store equipment for 50 days, and it could allow another business to lease a different classroom to store equipment for 50 days (as long as storing the equipment is not a commercial activity for the business). The uses of the two classrooms would be counted separately. Also, for one classroom, the University could allow one business to lease the classroom to store equipment for 25 days in July and another to lease the same classroom for storage for 25 days in August. The University could also allow each of these businesses to conduct their business operations in the respective leased classrooms for 15 days or less during the calendar year.

“**Pecuniary gain**” means the generation of monetary receipts from commercial operations or other sales activities when those receipts exceed expenses of operations or are intended to exceed expenses of operations.

#### **WHAT CAN THE UNIVERSITY CHARGE?**

Generally, the University cannot realize net income/pecuniary gain on the use of its property because the property is supposed to be used for the University’s tax-exempt purpose as opposed to generating revenue. Specifically, as mentioned above:

- When the University leases property to another tax-exempt organization, it must charge a rental fee that is **reasonable** and **does not exceed the maintenance and operation expenses** attributable to the property being used.
- When the University leases property to a non-exempt third-party in a manner that is consistent with the University’s educational, social, or athletic programs, and not for the third party’s pecuniary gain or to promote its business activities, **the fees/rent the University charges to the third-party must be reasonable and may not result in net income to the University.**

**The above does not mean the University cannot recoup the costs of operating and maintaining the property and permitting the third party to use it. Rather, the University can charge rental fees that broadly cover its costs, including operating costs, maintenance, and even depreciation. Such expenses can include janitorial, catering, utilities (water, sewer, garbage), electricity, insurance, security, sales and marketing, administrative costs, and depreciation. The Office of Finance and Business Affairs, in consultation with University Events, will determine the maintenance and operations expenses attributable to the property being used.**

## **GUIDELINES FOR MAINTAINING 501(c)(3) TAX EXEMPTION**

Some of the University's property was developed using 501(c)(3) tax-exempt bonds. The Director of Treasury and Risk Management maintains a list of the University property that was financed using these bonds. ***Under the Internal Revenue Code, the proceeds the University received in exchange for these bonds must be directed to the University's tax-exempt (educational) purpose and not to private business or security interests.*** Therefore, the use of bond-financed property for private business purposes unrelated to the University's educational purpose requires further analysis. Please contact the Director of Treasury and Risk Management and University Counsel regarding any such proposed use.

### **EXAMPLE SCENARIOS**

#### ***Examples of uses that do not nullify property tax exemption.***

To clarify the guidelines above, this section gives examples of uses by third parties that do not nullify the property's tax-exempt status. However, the tax results of each specific situation will be determined based on the facts and circumstances of each specific scenario. These scenarios also all assume that the property in question was not financed with tax-exempt (501(c)(3)) bonds.

1. University property use by students, alumni, faculty, staff, or other third parties for weddings, anniversary celebrations, family or school reunions, funeral services, or similar events. These uses are consistent with the educational or social programs of the University and the property remains exempt even when the persons or groups using the property also hire persons such as a caterer, a musical group, or a wedding photographer specifically for the event.
2. University property is used by third parties, such as members of the community, for lectures, presentations, musical recitals, seminars, debates, or similar educational activities. If the third-party use is contracted for and permitted by the University (for example when it pays the presenter directly, or when the participants or patrons pay the presenter directly) there is no loss of exemption. The presenter may also offer for sale, at the time of the presentation, books, tapes, CDs, or similar items that relate directly to the presentation.
3. University property is used by third parties such as students, alumni, faculty, staff, or members of the community for athletic activities or events on sports fields, tennis courts, and in buildings used for athletics. These uses are consistent with the athletic programs of the school or college and the property remains exempt.
4. University property is leased to third parties for educational or instructional programs, such as private instruction, tutoring, driving instruction, English as a second language or other language courses, examination preparation, or other similar programs. These programs are consistent with the educational programs of the University and the property remains exempt.
5. The University provides courses in vocational-technical skills, such as culinary arts, hotel management, automotive mechanics, or cosmetology. As a part of the course work, students obtain practical experience by providing products or services to the public, and charge fees for these services. As long as the charges to the public for these products or services are used for the University's educational, social, or athletic programs, this use of exempt property is consistent with the school's educational programs and functions and will not result in the loss of exemption.
6. A bank or credit union is invited to participate in student orientation by giving students information from a variety of local businesses about services that they may need while attending a school or college. This is considered a social or educational program of the school or college and will not cause the property to lose its exemption.
7. The University contracts with and permits third parties to use exempt property to conduct fundraising events when the funds raised will be used for educational purposes or cultural or art educational programs of the school or college. Such events are considered directed to the University's students,

faculty, and staff, and not primarily at the general public, and therefore will not result in a loss of exemption.

8. The University permits a business to use a conference room in University property to conduct its annual board retreat. This use constitutes promotion of business activity and would not result in loss of the property's tax exemption if the specific conference room had not already been used for 15 days of business activities.

***Examples of uses that would result in the loss of tax exemption.***

1. The University allows a bank or credit union to operate its business on University property. Such an activity is using the exempt property for pecuniary gain and to promote business activities and will cause the loss of exemption if the length of use exceeds 15 days.
2. An antique shop, gift shop, or retail store that sells a variety of merchandise, not necessarily directed to University students, faculty, or staff and occupies a University-owned building. Such a store does not provide a specific school or college related program or service and is being operated for pecuniary gain and to promote business activities. The tax exemption is nullified for the portion of the building occupied by the business.

\* \* \*

**Questions?** Please keep in mind that these guidelines and the examples below do not address every situation. If you have any questions about permitted and prohibited use of University property, please contact the Office of the University Counsel at (206) 296-2043. Your cooperation is appreciated.

*Updated December 5, 2023*