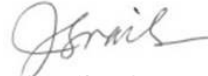


MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

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| Subject: Use of the Determination of Tax-Exempt Category for Capital Projects Form | Number: 105.05 Amended |
| Date: November 2, 2020 | By Direction of:  Jen Swails, Secretary of the Budget |
| Contact Agency: Office of the Budget, Bureau of Redevelopment, Capital and Debt, Telephone 717-787-7342 | |

This directive establishes policy, responsibilities, and procedures to ensure that all Commonwealth agencies and state-related institutions prepare and submit a Determination Form when using tax-exempt general obligation bond proceeds for public improvement projects to comply with the federal Tax Reform Act of 1986, as amended.

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 the "Determination Form").
2. **SCOPE.** This directive applies to all departments, offices, boards, commissions and councils (hereinafter referred to as "agencies") under the Governor's jurisdiction and state-related institutions (institutions) using tax-exempt general obligation bond proceeds to incur debt for public improvement projects that will be acquired, constructed, or delegated by the Department of General Services (DGS), Office of Public Works, its successors or assigns.
3. **OBJECTIVE.** To ensure that all agencies and institutions comply with the federal Tax Reform Act of 1986, as amended, by preparing and submitting the Determination Form prior to using tax-exempt general obligation bond proceeds.
4. **DEFINITIONS.**
 - a. **E-Builder.** The E-Builder Enterprise Software Program (E-Builder) is the electronic project management system utilized to implement public improvement projects and owned by DGS.
 - b. **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.

- c. **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 non-governmental and governmental facilities. An example is a privately operated cafeteria in a state or local government building or facility.
 - d. **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.
- 5. **POLICY.** To comply with the federal Tax Reform Act of 1986, as amended, all agencies and institutions, when using tax-exempt general obligation bond proceeds for public improvement projects of the Commonwealth, shall prepare and submit the Determination Form prior to the start of design and/or construction of a public improvement project. The act, as amended, requires that no more than 10% (ten percent) of any tax-exempt bond issue be used in any direct or indirect business activity carried on by an entity other than a governmental entity. Any direct or indirect private business activity, whether for Related or Unrelated Private 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.
- 6. **RESPONSIBILITIES.**
 - a. **DGS** is responsible for ensuring that the Determination Form is completed and, when appropriate, completing the *Supplemental Determination Form* and the *Project Category Summary Form* in E-Builder.
 - b. **Agencies and Institutions** are responsible for utilizing E-Builder to complete the initial submission of the Determination Form. The Determination Form is to be created prior to the start of design and/or construction or prior to the full execution of a delegation agreement or memorandum of understanding.
- 7. **PROCEDURES.**
 - a. **Agencies and Institutions** shall:
 - (1) complete the Determination Form questions through the E-Builder project management process. For information on the start of the E-Builder process contact:

Department of General Services
Bureau of Capital Projects Planning and Procurement
Office of Public Works
18th and Herr Streets
Telephone: 717-787-4054

(2) provide supplemental information regarding total project area and percent of areas allocated for special uses if their responses to any of the four determination questions is "Yes".

- b. **DGS, Office of Public Works, Bureau of Capital Projects Planning and Procurement** shall review the information provided by the agency or institution. The process may be returned to the agency or institution if there are questions or inaccuracies.

If there are no questions or concerns, and if all the questions are answered "No", the process will be completed. The responses in the E-Builder process will be translated into forms which will be stored in the project's E-Builder project document file.

If the agency or institution answered "Yes" to any of the determination questions, project percentage information and costs will be forwarded to the Office of the Budget, Bureau of Redevelopment, Capital and Debt for a determination.

- c. **Office of the Budget, Bureau of Redevelopment, Capital and Debt** may require additional information to make a determination and may return the process to the agency or institution. Upon receipt of sufficient information, the Bureau of Redevelopment, Capital and Debt shall make a determination to approve or deny.

The decision will be forwarded via E-Builder to the agency or institution for review and then to the Bureau of Capital Projects Planning and Procurement, which will complete the process.

- d. **DGS, Office of Public Works, Bureau of Pre-Construction** shall initiate a recertification process for projects requiring the completion of supplemental information upon approval of the final project design. Using actual design specifications, all items on the *Supplemental Determination Form* requiring square footage information or project cost information will be updated. If the information has not changed, the process will go to the Bureau of Capital Projects Planning and Procurement. If there are no questions or concerns, the process will be completed.

Based on the actual project design, if the percentage of project costs associated with Unrelated and Related Private Use have increased since the initial completion of the form, the process will go to the Bureau of Capital Projects Planning and Procurement. If there are no questions or concerns, the process will continue to the Office of the Budget, Bureau of Redevelopment, Capital and Debt for a determination to approve or deny.

The decision will be forwarded via E-Builder to the agency or institution for review, then to the Bureau of Capital Projects Planning and Procurement for review, and then to the Bureau of Pre-Construction who will complete the process and comply with the determination.

Copies of the completed Determination Form, the *Supplemental Determination Form*, and the *Project Category Summary Form* will be kept in the E-Builder project file.

This directive replaces, in its entirety, *Management Directive 105.05*, dated September 12, 1991.