

Summary of IRS Revenue Procedure 2007-47

The purpose of this revenue procedure is to set forth conditions under which a research agreement does not result in private business use under § 141(b) of the Internal Revenue Code of 1986 (the Code). The revenue procedure also addresses whether a research agreement causes the modified private business use test in § 145(a)(2)(B) of the Code to be met for qualified 501(c)(3) bonds.

Under the Patent and Trademark Law Amendments Act of 1980, as amended (the Bayh-Dole Act), the federal government and sponsoring federal agencies receive the nonexclusive, nontransferable, irrevocable, paid-up licenses to the use of the products of federally sponsored research. They also receive certain "march-in rights" that include the granting of licenses to third parties to ensure the public dissemination and use of the products of the research where the original contractor of the research has not taken, or is not expected to take within a reasonable time, effective steps to practically apply the results of the research.

Corporate-sponsored research: corporate-sponsored basic research (i.e., the advancement of scientific knowledge not having a specific commercial objective) will not result in private business use if the corporate sponsor must pay a competitive price for any license or other use of the resulting technology. Such use can be exclusive to the sponsor, but the price it pays for the license or use must be no less than the price that would be paid by any nonsponsoring party.

Industry-sponsored research: industry-sponsored governmentally performed basic research does not result in private business use as long as 1) the state or local government or 501(c)(3) institution where the research takes place (the Qualified User) selects the research to be performed and the manner in which it is to be performed, 2) title to any patent or product incidentally resulting from such research lies exclusively with the Qualified User and 3) the sponsors of the research are entitled to no more than a nonexclusive, royalty-free license to use the results of the research.

Federal government-sponsored research/Bayh-Dole exceptions: the rights of the federal government and its agencies mandated by the Bayh-Dole Act will not cause a research agreement to fall outside the private use safe harbors if 1) the Qualified User selects the research to be performed and the manner in which it is to be performed, 2) title to any patent or product incidentally resulting from such research lies exclusively with the Qualified User and 3) the license granted to any party other than the Qualified User (such as the federal government) to use the product of the research is no more than a nonexclusive, royalty-free license. The march-in rights of the federal government under Bayh-Dole will not violate the private use safe harbors provided that the Qualified User selects the research to be performed and the manner in which it is to be performed, title to any patent or product incidentally resulting from such research lies exclusively with the Qualified User, and the license granted to the federal government or the sponsoring federal agency (or to any third-party nongovernmental person) to use the product of the research is no more than a nonexclusive, royalty-free license. These safe harbors, do not cover situations where third parties receive more than nonexclusive, royalty-free licenses as the

result of the exercise by a sponsoring federal agency of its rights under the Bayh-Dole Act, such as march-in rights.