

payment made by the owners of the garage. The Developer has an option to purchase the garage at fair market value for which the City was not compensated. As structured it appears the land and associated ground lease constitute an encumbrance on the property.

In addition, the intent of the transaction was to get funds to the developer to help in the financing of the overall project. The fact that it was done through a methodology that essentially attempted to conceal this fact does not change the outcome. The Bond proceeds while escrowed were used as collateral, by the Developer, for construction loans. These loans were for the garage and the Nordstroms portion of the project. Upon the sale the loans were paid off. The true nature of the use of the Bond proceeds was concealed in the valuation situation. The indebtedness was used not only for the garage but also for the Nordstroms portion of the project which is owned by the Developer. The City will not obtain title to this property.

It is clear from the facts of this case that the Spokane Downtown Foundation is not a qualified "on behalf" of issuer under Revenue Ruling 83-20. It is also clear that the Spokane Downtown Foundation is not an organization described in IRC § 501(c)(3) as generally alluded to in the Articles of Incorporation. The Bonds are taxable private activity bonds.

### Qualified Bonds?:

In addition to the qualified issuer question addressed above, these bonds had to be qualified under the Internal Revenue Code for tax exemption.

- (1) IRC §141(a) provides the term "private activity bond" means any bond issue as part of an issue—(1) which meets—
- (A) the private business use test of paragraph (1) of subsection (b), and
  - (B) the private security or payment test of paragraph (2) of subsection (b), or

The private business use test is met if more than 10% of the proceeds of an issue are to be used for any private business use.

The private security or payment test is met if the payment of the principle of, or the interest on, more than 10% of the proceeds of an issue is (under the terms of such issue or any underlying arrangement) directly or indirectly—(A) secured by any interest in—(i) property to be used for private business use, or (ii) payments in respect of such property, or (B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

Income Tax Regulation §1.141-3(b)(2),(3)(4) & (7) provide definitions of types of private business use arrangements.

- ITR 1.141-3(b)(2) states that ownership by a nongovernmental person of financed property is private business use of the property
- ITR 1.141-3(b)(3) states that a lease of financed property to a nongovernmental person is private use...to determine the arrangements proper characterization it is necessary to consider all the facts... (i) degree of control exercised over the property by nongovernmental person; and (ii) whether the nongovernmental person bears risk of loss ...
- ITR 1.141-3(b)(4) states a management contract with respect to financed property generally results in private business use of