

Policy 3.04 Non-Tax Levy Funds

Guidelines on the Use and Reporting of Non-Tax Levy Funds

INTRODUCTION

The City University of New York (CUNY) receives funds from a variety of sources. Many of the funds received are for specific, limited purposes or are subject to restrictions; however, some of the funds received are of a discretionary nature and considered unrestricted non-tax levy funds. The University and its colleges shall use all funds, regardless of type, in a manner consistent with applicable laws and regulations, policies, and other restrictions or designations governing their use.

PURPOSE

The purpose of this document is to provide guidance on the use of unrestricted non-tax levy funds and the annual reporting of such use.

NON-TAX LEVY FUNDS DEFINED

The following are examples of non-tax levy funds:

- Gifts to the college, its affiliated foundation(s) or its related entities;
- Commissions and royalties from service contracts such as pouring rights, food service, vending, and bookstore operations (including virtual);
- Revenue from the licensing of CUNY facilities, such as classrooms, gyms, theatres, conference centers and other spaces;
- Royalties from the licensing or other commercialization of CUNY intellectual property, including trademarks, copyright, patents and technology;
- Admission fees and revenues from ticket sales, such as for athletic and entertainment events;
- Membership fees, such as for alumni and community memberships to athletic and wellness facilities;
- Revenues from parking lots and garages, including sale of parking permits;
- Revenues from sales of publications and subscriptions;
- Child care center tuition and fees;
- Indirect cost recoveries on grants and contracts administered through The Research Foundation of the City University of New York (RFCUNY) or elsewhere; and
- Other miscellaneous revenues such as interest income, forfeited bond deposits, and insurance proceeds, regardless of where the funds are held or who administers them.

The following are examples of what are considered tax-levy funds:

- Funds appropriated by the State and City of New York, including funds appropriated for tuition revenue;
 - Federal, State and City financial aid;
 - Funds held by New York State Treasury in income fund reimbursable accounts or deposited with New York City as non-miscellaneous income (such as technology fees); and
 - Reimbursements of tax-levy expenditures such as vendor refunds or summary salary reimbursements from RFCUNY.
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For purposes of these Procedures, "Non-Tax Levy Funds" also include student activity fees; however, the use of student activities fees should follow the CUNY Fiscal Handbook for the Control and Accountability of Student Activity Fees and the Financial Management Guidelines related to the College Associations, both of which are currently being updated and which have been and will continued to be closely aligned with New York State's Procurement policies.

UNRESTRICTED AND RESTRICTED NON-TAX LEVY FUNDS

Non-Tax Levy Funds can be either unrestricted or restricted. Restricted non-tax levy funds must be administered and spent in accordance with the associated grant document, contract or gift agreement

Unrestricted Non-Tax Levy Funds are funds that are not government appropriated and do not carry restrictions as to usage or purpose. These funds can generally be used for any legal purpose that will advance the mission of the University; however, there are several overarching principles governing the use of these funds.

Expenditures:

1. Shall be for a valid and necessary business purpose;
2. Shall not be for a personal benefit;
3. Shall not be neither lavish or excessive;
4. Shall advance the University's mission;
5. Shall not support a political party or the campaign of any particular candidate for public office;
and
6. Shall not support any organization that restricts membership by race, creed, sex, religion or sexual orientation.

For purpose of these Procedures, Restricted Non-Tax Levy Funds refers to funds that are restricted because of the terms of a grant document, gift agreement or other contract, and must be administered and spent in accordance with terms of such document.

Other Non-Tax Levy Funds are "restricted" in the sense that the entity generating the revenue is organized with a specific, limited purpose (i.e., operating a childcare center, performing arts center, etc. rather than more generally benefitting the University) and any revenues must be used in support of that specific purpose. Or, in the case of student activity fees, the funds are restricted in that they may be spent only for the purposes set forth in the eleven expenditure categories described in Section 16.2 of the CUNY Board of Trustees Bylaws ("CUNY Bylaws"). For purposes of these Procedures, these types of funds are deemed to be Unrestricted Non-Tax Levy Funds.

TYPES OF NON-TAX LEVY FUNDS

There are two types of Non-Tax Levy Funds: College Non-Tax Levy Funds and Related Entity Non-Tax Levy Funds, each of which is described below.

COLLEGE NON-TAX LEVY FUNDS

College Non-Tax Levy Funds are held in local college bank accounts. The source of these funds are not tax levy in nature and include things such as interest income; commissions, royalties, fees and other payments that are not otherwise generated or held by a separately-incorporated related entity. They may also include revenues from unincorporated college associations.

RELATED ENTITY NON-TAX LEVY FUNDS

Related Entity Non-Tax Levy Funds are controlled by separately incorporated entities that are related to CUNY or the colleges, and are held in the entities' own bank accounts. Related Entity Non-Tax Levy Funds can become College Non-Tax Levy Funds when, for example, a college foundation transfers funds to the college for college expenditure.

Examples of sources of Related Entity Non-Tax Levy Funds include:

Auxiliary Enterprise Corporations ("Auxiliaries"). These are separately incorporated tax-exempt entities created and operated for the principal purpose of benefiting the students, faculty, staff, and other members of the community of the various colleges by providing “auxiliary” services and by otherwise supporting the educational mission of the college and the University. Each Auxiliary supports a particular college. Examples of “auxiliary” services that an Auxiliary may provide include: food service, operations, including catering and vending; beverage “pouring rights” contracts and similar arrangements; bookstores and campus stores, both physical and virtual; copy machines, laundry centers, games and amusements, and similar operations; ATMs and other banking services; student, faculty and staff housing and related services; sports, health, and recreation facilities licensing, memberships and camps; parking operations and transportation services; childcare centers, art galleries, and performing arts centers; short-term licensing of college facilities to third parties; trademark licensing; campus telecommunication services such as Wi-Fi extenders; such other auxiliary services as mutually agreed by the Auxiliary and the college.

Auxiliaries provide auxiliary services through: (i) direct operation (e.g., parking operations), (ii) a subcontract with another vendor (e.g., transportation services), or (iii) by acting as the college’s fiscal agent in connection with a college or University contract or facility (e.g., pouring rights, theater operations) or asset licensing program (e.g., short-term facility use, trademarks).

The Auxiliaries use these funds pursuant to their board-approved budgets to support their operations, directly support college activities, and provide discretionary support for the college or the college president.

College Associations ("Associations"). These are separately incorporated ¹ tax-exempt entities that support the colleges by administering student activity fee-supported budgets and otherwise supporting the student body. Association funds consist of student activity fees held by the Associations, revenues generated from student activity fee-supported activities (e.g., ticket revenues from concerts, advertising revenue from student publications, fundraising by student clubs, etc.), and such other revenues that an Association may from time-to-time generate or receive. The Associations adopt budgets and use these funds pursuant to the CUNY Fiscal Handbook for the Control and Accountability of Student Activity Fees and other University policies and procedures. Student activity fee funds (including revenues generated from student activity fee-supported activities) must be expended in accordance with the categories set forth in Section 16.2 of the CUNY Bylaws. Student activity fees may not be used to provide discretionary support for the college or the college president except as permitted by Section 16.9 of the CUNY Bylaws regarding a college purposes fund.

[Footnote:] ¹ Some college associations are not separately incorporated but are instead operated as fund groups of a particular college. Monies held by these unincorporated college associations are College Non-Tax Levy Funds.

Student Services Corporations ("SSCs"). These are separately incorporated tax exempt entities that support the colleges by operating the student union/center on campus or otherwise providing student support services). SSC funds consist of a portion of the college student activity fee earmarked for use by the SSC, revenues from licensing their facilities, and such other revenues that an SSC may from time-to-time generate or receive. SSCs are restricted in the same manner as Associations regarding their use of student activity fees and their operations generally.

College Foundations ("Foundations"). These separately incorporated tax-exempt entities support the colleges by soliciting donors and gifts, and related activities. Foundation funds consist primarily of restricted and unrestricted donations to the Foundations. The Foundations use these funds pursuant to their board-approved budgets to, among other things, support their operations, directly support college activities, provide scholarships, and provide discretionary support for the college president. Discretionary support may take the form of the transfer of funds to the college president (in which case the funds become College Non-Tax Levy Funds) or direct payment of expenses at the college president's request. Any discretionary support for the college president must be in accordance with the memorandum of understanding between the Foundation and its supported college, as well as any University policies and procedures regarding such support. A Foundation's use of donor-restricted funds must be consistent with the purpose and other restrictions set forth in any written agreement with the donor.

The Research Foundation of the City University of New York ("RFCUNY"). The RFCUNY is a private, not-for-profit educational corporation that manages private and government sponsored programs and grants on behalf of CUNY. The RFCUNY supports CUNY faculty and staff in identifying and obtaining external support (pre-award) from government and private sponsors and is CUNY's fiscal agent, responsible for the administration of all such funded programs (post-award). The Non-Tax Levy Funds held and administered by the RFCUNY include federal, state, city, and private grants, as well other non-grant funds such as Overhead Receipts and other Non-Grant or Institutional Funds. "Overhead Receipts" are generated by charging a predetermined percentage, often known as the Facilities and Administrative Rate, to externally sponsored projects. Each college is responsible for determining who has authority over the use of those funds. "Non-Grant/Institutional Funds" are other non-tax levy funds that are deposited at the RFCUNY and spent from the RFCUNY. Examples include Adult and Continuing Education funds per the University's Standard Operating Procedures for use of such funds and other institutional funds.

Child Care Centers, Performing Arts Centers and Other Separately Incorporated Related Entities: These separately incorporated tax-exempt entities benefit the colleges typically by providing specific support services. Non-Tax Levy Funds generated or held by these entities include childcare fees, federal, state and local grant funds, ticket revenues, gifts from donors and other fundraising revenues. These entities use these funds pursuant to their board-approved budgets to support their operations.

PROCUREMENT AND APPROVALS

Purchasing using College Non-Tax Levy Funds is governed by CUNY's Procurement Policy and Procedures, adopted by the CUNY Board of Trustees on February 21, 2017. Purchasing using Related Entity Non-Tax Levy Funds is governed by the New York Not-for-Profit Corporation Law; the related entity's own policies and procedures; and any policies, guidelines, and procedures issued by the University with respect to any or all related entities, including Financial Management Guidelines and the CUNY Fiscal Handbook for the Control and Accountability of Student Activity Fees.

SYSTEM TRANSPARENCY AND SIMPLIFICATION

The University currently uses an integrated administrative system called CUNYfirst to process its tax levy operating transactions. However, currently the system is not used to process CUNY's non-tax levy funds; instead, separate systems are used on every campus to record those transactions and periodically they are summarized and uploaded into CUNYfirst for financial reporting purposes.

In order to streamline the financial and non-tax levy reporting process (noted below), allow CUNY to budget and report data using an 'all funds' model, and take advantage of the internal control structures in CUNYfirst, CUNY will transition these non-tax levy funds into CUNYfirst. The scope of this project includes all separately incorporated auxiliary enterprise corporations, college associations, student services corporations, child care centers, performing arts centers and art galleries, adult and continuing education activities, and other non-tax levy funds.

REPORTING THE USE OF UNRESTRICTED NON-TAX LEVY FUNDS

Beginning for FY 2017 (July 1, 2016 to June 30, 2017), each college and the central office shall report the College Non-Tax Levy Funds it has expended, as well as the Related Entity Non-Tax Levy Funds expended by the related entities that support the college.

Reports shall be certified by the Chief Fiscal Officer and the College President for each college submission and the University's Chief Financial Officer and the Chancellor for the Central Office's submission.

Additionally, the colleges and central office shall report any exceptions granted on the use of funds as outlined in the All Funds Expense Matrix.

Completed and certified reports shall be submitted to the University's Office of Internal Audit (OIA). OIA may request additional information and support from the colleges.

Reports are due within 90 days of the year-end.

(Board of Trustees Minutes,1981,03-23,6,X. Amended: Board of Trustees Minutes,2017,06-26,3,D. Superseded: Board of Trustees Minutes,2017,06-26,3,D. Amended: Board of Trustees Minutes,2017,12-04,3,D.)

ADDENDUM - ALL FUNDS EXPENSE MATRIX

An All Funds Expense Matrix is included as an Addendum to this policy, the purpose of which is to provide the University community with a reference document as to the appropriateness of funding sources for individual expense categories.

ALL FUNDS EXPENSE MATRIX

As an entity that is funded primarily by public support and that also relies on student tuition and fee payments, gifts from donors, and sponsored awards, the City University of New York (CUNY) has a fiduciary obligation to use its funds prudently. This means that all CUNY employees must use University

resources in the fullest support of CUNY's mission. To that end, all expenses must be reasonable and necessary and not lavish or extravagant.

The below matrix of 'All Funds Expenses' should be consulted when purchasing goods and services using the various types of funds outlined in the matrix columns. Please note that this matrix serves as guidance for determining how funds may be used. Any proposed use of funds that are not consistent with these guidelines, in the case of extraordinary circumstances, must be justified in writing and approved prior to commitment of funds by the Vice President of Finance (for college expenditures), the University's Chief Financial Officer (for CUNY central expenditures), or the Treasurer or designee (for separately-incorporated related entity expenditures). In all cases, purchases are subject to budget availability and most require a pre-approval by the college, Central Office or the related entity's board, as the case may be.

The colleges, their separately incorporated affiliated entities, and the Research Foundation of the City University of New York (RFCUNY) may prepare their own guidance on the use of funds; those guidelines can be more restrictive than the matrix but can never be less restrictive. In those cases, the more restrictive policy takes precedence.

Definitions of Matrix Funding Sources

- **Tax Levy**; in the context of this matrix, refers to payments made by the State and City of New York on behalf of CUNY for both personal service (PS) and other than personnel costs (OTPS). The funding for these payments are derived from amounts appropriated by the State and City of New York; student tuition collected by CUNY and deposited with New York City; and other funds collected by CUNY and deposited with the New York State Treasury in Income Fund Reimbursable Accounts (IFR) for senior colleges and graduate and professional schools, and as miscellaneous deposits with New York City for community colleges. These deposits include Adult and Continuing Education tuition and fees.
 - **Indirect Cost Recoveries** are generated by charging a pre-determined rate to externally sponsored projects and can be used at the discretion of the University. The majority of indirect cost recoveries are generated through grants and contracts administered through the Research Foundation of the City University of New York (RFCUNY). Also included in this category are funds generated from interest income and other unrestricted college-funded activities that are administrated through the RF.
 - **Auxiliary Enterprise Corporations (AEC)** are separately incorporated not for profit entities created and operated for the principal purpose of benefiting the students, faculty, staff, and other members of the community of the various colleges by providing non-instructional auxiliary services and by otherwise supporting the educational mission of the college and the University. Examples of auxiliary services that an AEC may provide include: food service operations, including catering and vending; beverage "pouring rights" contracts and similar arrangements; bookstores and campus stores, both physical and virtual; student, faculty and staff housing and related services; sports, health, and recreation facilities licensing, memberships and camps; parking operations and transportation services; short-term licensing of college facilities to third parties; and such other
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auxiliary services as mutually agreed by the AEC and the college. **The AEC column on the matrix below represents the costs associated with operating the Auxiliary’s activities.** An AEC may have funds remaining after paying its expenses related to the auxiliary services it provides (“surplus funds”); **these surplus funds are considered part of the Other Non-Tax Levy funds column for the purpose of the matrix.** Refer to the Auxiliary Enterprise Corporation Guidelines for further information.

- **College Foundations** are separately incorporated not-for-profit entities created and operated exclusively to benefit a particular college, operation, or CUNY generally by conducting fundraising, investment and fund management including endowment management, and otherwise aiding and promoting the educational and charitable purposes and lawful activities of that college, operation or CUNY. The majority of the foundations’ funds are derived from philanthropic dollars. The matrix below only covers the expenses from the unrestricted gifts or other unrestricted revenues of the college foundation.
- **All Other Non-Tax Levy** funds may include surplus auxiliaries funds of separately incorporated entities as defined above, auxiliary activities that are not in a separately incorporated AECs, philanthropic dollars that support the college (and not donated to the college foundation), funds provided by the foundation for the college’s use, forfeited bond deposits, interest income and insurance proceeds, etc.

What is Not Included?

- Separately incorporated childcare centers, performing arts centers, art galleries, and other special purpose entities (e.g., Main Street Legal Services, Inc.) are not included in the below matrix. The funds generated or received by these entities shall be used to support the services that they provide.
- Restricted gifts, grants, and contracts are NOT covered by this matrix; instead, those funds can only be used in accordance with their associated agreements.
- The use of student activity fees are not included in the attached matrix; the University is currently revising its policies and procedures related to student activity fees and once completed, those funds will be included in this matrix.

MATRIX LEGEND

WHITE – means that the type of expense can be purchased using the funding sources as noted in the column header. All purchases are however are subject to budget availability and proper approvals, and should support the university’s mission.

GRAY– means that the type of expense cannot be purchased using the funding sources noted in the column header. Any proposed and infrequent use of funds that are not consistent with these guidelines must be justified in writing, follow the approval processes noted above, and reported annually as part of the non-tax levy reporting requirement.