

**CHARITABLE USE AND PURSUIT OF ENTREPRENEURSHIP ACTIVITIES: INCUBATORS,
ACCELERATORS, PRIZES, FUNDS, AND MORE**

UT Austin Nonprofit Organizations Conference,
January 18-19, 2018

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I. Introduction - Entrepreneurship Activities

- a. Entrepreneurship is inherently not charitable, but certain approaches to it can be charitable.
- b. There are various vehicles for charitable and non-charitable entrepreneurship activity, including: incubators, accelerators, investment funds, venture funds and prizes.

II. Incubators and Accelerators

a. Introduction

- i. While the terms “incubator” and “accelerator” do not have legal definitions, the terms generally refer to programs designed to incubate and accelerate the growth and success of start-up organizations by providing resources and, in some cases, capital. Incubators tend to be defined as programs that nurture start-ups in their early stages by providing office space and services such as guidance in developing ideas and business plans, and help with management. Accelerators give developing companies (at a later stage than incubators) access to mentoring, potential investors and other support to bring them to the next level.
- ii. Incubators and accelerators can be for-profit or non-profit.
 1. Accelerators often take an equity interest in start-ups in exchange for the benefits provided.
 2. Incubators sometimes charge fees or rent for the benefits provided.¹
- iii. There is little guidance under U.S. federal tax law on how to set up not-for-profit accelerators or incubators consistent with tax-exempt status. The guidance that is there is primarily in the college and university context. The analysis of whether an accelerator or incubator is consistent with charitable,

¹ See IRS GCM 37789 (Dec. 18, 1978).

educational purposes, however, looks to principles under the law regarding defining a charitable/educational purpose, unrelated business income tax, private benefit and private inurement, and the law of joint ventures.

b. Tax Analysis – Charitable Purpose and Unrelated Business Income Tax (UBIT) -
The first question is whether an accelerator or incubator is being set up in a way which furthers a tax-exempt purpose under Section 501(c)(3) of the Internal Revenue Code, as amended (the “Code”) . The law of UBIT is relevant to this analysis.

i. Will the activity give rise to UBIT? UBIT is defined as a **trade or business regularly carried on** that is **not substantially related to the organization’s exempt purpose**.

1. “Trade or Business” – an activity engaged in primarily for the purpose of generating income or profit.
2. “Regularly Carried On” – a trade or business is regularly carried on if (a) it is conducted with a frequency and continuity similar to comparable commercial activities of for-profit organizations; and (b) the activity is pursued in a manner generally similar to such commercial activities.
3. “Not Substantially Related” – is the activity in furtherance of the organization’s purposes as stated in its charter. To be related the activity must have more than a casual relationship with the purpose. Certain activities that would be unrelated activities in one context, may further an exempt purpose when conducted in another.

ii. Bases for Relatedness - Education

1. Defined as (a) the instruction and training of the individual for the purpose of developing his capabilities or (b) the instruction of the public on subjects useful to the individual and beneficial to the community.²
2. Example: The sale of advertising (generally an unrelated trade or business) can be substantially related to an exempt purpose where it is by students for a school newspaper under the supervision of the faculty because it furthers the school’s educational mission by providing training for students.³

² See Treas. Reg. 1.501(c)(3)-1(d)(3)(i)

³ See Treas. Reg. 1.513-1(d)(4)(iv), Ex. 5.

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First appeared as part of the conference materials for the
36th Annual Nonprofit Organizations Institute session

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