UT LAW CLE

Joint Ventures

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The Agenda

I. Joint Ventures, UBIT and Private Benefit Issues
- Establishing an exempt purpose for "substantially related" (and UBIT-free) joint ventures
- Considerations for unrelated (and subject to UBIT) ancillary joint ventures
- Unrelated activity and UBIT - How much is too much?

II. Structuring Joint Ventures
- Modern Trends – Scaling / Private Equity / Strategic Partnerships
- Control is KEY
- Bi-Partisan Budget Act Partnership Audit Rules
  -- operating agreements and avoiding private benefit
- Exit Strategy
- Contractual Joint Ventures – IP Revenue Sharing Policies

INTRODUCTION: JOINT VENTURES

- Charities are receiving less support from budget-constrained governmental agencies.
- How will charitable giving be impacted as the country continues to navigate a pandemic/post-pandemic world.
- Nonprofits are forging partnerships and other co-investment relationships with nonprofits and for-profit entities alike to access otherwise unavailable capabilities, capital and resources.

Examples:

- Sponsored Research Agreements with Revenue Sharing (even private foundations are asking for a "cut")

- Commercialization agreements involving funders, owners of IP, and tech transfer/commercialization specialists

- Remote Health Monitoring / Telehealth Services (Medical Expertise, Software, Hardware)

- Opportunity Zone Funds ("OZF")

- Low-income support organizations using the low-income housing and New Markets Tax Credits ("NMTC") programs

- Universities partnering with for-profits to offer online programs

- Universities, research organizations and other nonprofits seeking venture capital partners to fund research and new programs

University and Other "Public/Private" Partnership Examples

Many colleges, universities, scientific research organizations and others are seeking structures to allow for private investment dollars to fund their research and other projects.

Can be done through a taxable subsidiary. Should it be?

These projects often utilize LLCs taxable as partnerships. In other words, the nonprofits are partnering "directly" in joint ventures with for-profit investors.

When seeking investors, the LLC can issue a private placement memorandum and have investors sign subscription agreements, pursuant to which they are issued LLC interests in exchange for cash (all meeting the applicable SEC exceptions/qualifications for non-public securities offerings).

Often, the nonprofit partner contributes know-how, intellectual property, facilities, faculty and other resources, and sometimes cash.

Impact on Exemption

- JVs amongst 501(c)(3) organizations generally do not present exemption issues
- JVs amongst 501(c)(3) organizations and for-profit organizations must be carefully structured to avoid private benefit and inurement
  - Who controls the activity?
  - Are the JVs activities a significant portion of the 501(c)(3)'s activities?
- UBTI exposure should also be taken into account
- Private foundations should ensure that its JV structures do not create excise tax exposure
  - Jeopardizing investments (IRC § 4944)
  - Excess business holdings (IRC § 4943)

Title search: Joint Ventures

Also available as part of the eCourse
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