

# FIRST LOOKS, INCUBATORS, AND OTHER (SURPRISE!) JOINT VENTURES

UT CLE HIGHER EDUCATION TAXATION  
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## AGENDA

- Key Joint Venture Principles
    - “Relatedness”
    - Private Benefit
    - IRS Joint Venture Guidance
    - UBTI
    - Other Key Tax and Charitable Legal Issues
  - Incubators
  - Private Investment Transactions
    - First Look Arrangements
    - In-House Investment Pools
    - Other Transactions
  - Accidental Joint Ventures
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# KEY JOINT VENTURE PRINCIPLES



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## RELATEDNESS

- Does the activity further a charitable purpose, e.g., educational, scientific, charitable (relief of the poor, economic development, lessening the burdens of government) purposes?
  - Primary vs. incidental purpose
- Why/when does relatedness matter?
  - Availability of funding
  - Legitimacy and reputational issues
  - State law
  - UBTI
  - If activity is more than an insubstantial part of the organization's overall activities, tax exemption would be at stake if activity were unrelated

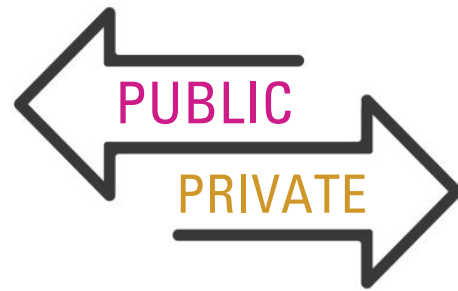
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## PRIVATE BENEFIT



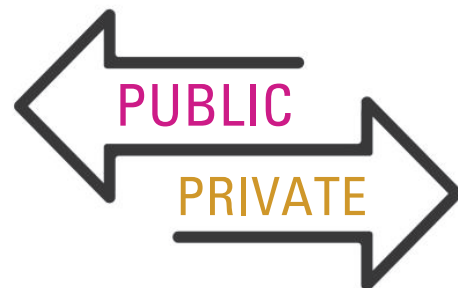
- A 501(c)(3) entity must serve a public rather than a private benefit and not be organized or operated for the benefit of private interests
  - Key hurdle for programs that assist businesses
  - Is private benefit more than incidental – qualitatively or quantitatively – to the public benefit?
    - Qualitatively incidental: Private benefit is a necessary by-product of the public benefit provided, in that the public benefit cannot be achieved without the private benefit
    - Quantitatively incidental: Compare the magnitude of the private benefit to the magnitude of the public benefit based on all facts and circumstances
  - Critical to ensure transaction terms are negotiated at arm's length and for fair market value
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## PRIVATE BENEFIT



- Depends on all relevant facts and circumstances
    - GCM 39883: Look to nexus between assistance being provided to businesses and charitable activity being furthered
    - PLRs 200010052, 200614032: Private benefit deemed incidental because assistance to companies a “step along a continuum of activities” necessary to fulfill an educational mission
    - Receipt of FMV is relevant
  - Commerciality? IRS has acknowledged value of technology transfer programs, noting commercial successes of such programs make funds available for future research
    - PLR 200326035; *but see* PLR 201403017
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First appeared as part of the conference materials for the  
11<sup>th</sup> Annual Higher Education Taxation Institute session  
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