

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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Title search: First Looks, Incubators, and Other (Surprise!) Joint Ventures

Also available as part of the eCourse 2023 Higher Education Tax eConference

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