

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

UT CLE HIGHER EDUCATION TAXATION  
INSTITUTE  
JUNE 5, 2023

Brittany Cvetanovich  
The Ohio State  
University

Thomas C. Schroeder  
Davis Wright Tremaine  
LLP

1

---

## 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
- 

2

2

---

# KEY JOINT VENTURE PRINCIPLES



3

---

## 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

---

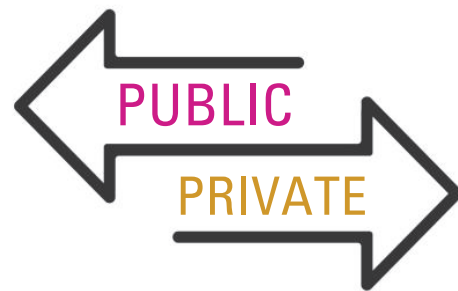
4

4

---

## 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



---

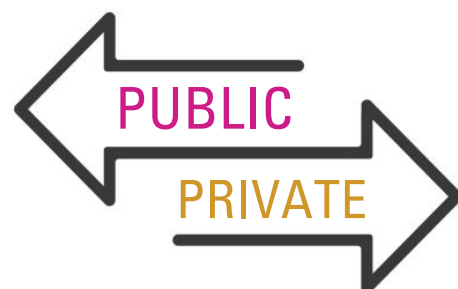
5

5

---

## 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



---

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

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

Also available as part of the eCourse

[First Looks, Incubators and Other \(Surprise!\) Joint Ventures](#)

First appeared as part of the conference materials for the  
11<sup>th</sup> Annual Higher Education Taxation Institute session  
"First Looks, Incubators, and Other (Surprise!) Joint Ventures"