

Joint Ventures with For-Profits

UT CLE - Higher Education Taxation Institute

June 13, 2024

Austin, TX

Thomas C. Schroeder | Davis Wright Tremaine LLP

H. Colby Rogers | Ropes & Gray LLP

DWT.COM
ROPESGRAY.COM



1

AGENDA

- Key Joint Venture Principles
 - “Relatedness”
 - IRS Joint Venture Guidance
 - UBTI
- JV Agreement Provisions
 - Statement of Purpose
 - Fiduciary Duty Override
 - Governance
 - Reserve and Unilateral Rights
 - Dispute Resolution
 - Management by For-Profit
 - Formation considerations
 - Partnership Audit Rules
 - Tax Reporting Requirements
 - Ancillary Agreements

DWT.COM
ROPESGRAY.COM

2

2

Relatedness

- Does the activity further a charitable purpose, e.g., educational, scientific, charitable (promoting health, 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

Joint Venture Guidance

- Applies to tax partnerships (including “accidental” partnerships)
- Consequence if IRS JV standard is not met – whole entity vs. ancillary
 - If JV is insubstantial => UBTI (also consider Private Business Use). Rev. Rul. 2004-51.
 - If JV is more than insubstantial => Tax exemption is at stake. Rev. Rul. 98-15.
- IRS JV standard (Rev. Rul. 98-15):
 - Do the JV's governing documents give the exempt organization sufficient control to ensure the JV is operated exclusively for charitable purposes, and that any private benefit is incidental to the accomplishment of those charitable purposes?

Statement of Purpose

- Purpose
 - Clear statement of purpose that indicates that the joint venture will be operated in a manner that furthers the exempt organization's charitable purposes.
 - Simply stating in the joint venture documents that exempt purposes should prevail will not be sufficient to demonstrate that the joint venture arrangement furthers exempt purposes.
 - Others (ethical or religious directives)
- Prohibited Activities
 - Provisions providing that the venture will not engage in more than insubstantial lobbying and is prohibited from participating in (or funding) any campaign for public office

DWT.COM
ROPESGRAY.COM

Fiduciary Duty Override

- Express language to reflect the for-profit partners' recognition and understanding of the fact that the operations of the joint venture will not be conducted in a manner solely designed to maximize profits.
 - "fiduciary duty override" because it supersedes the general duty that partners have to maximize profits of the joint venture.
- The joint venture documents should give the exempt organization the right to bring suit to enforce the provisions regarding charitable activities under the laws of the state where the joint venture is formed.

DWT.COM
ROPESGRAY.COM

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 \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Joint Ventures with For-Profits

Also available as part of the eCourse

[2024 Higher Education Tax eConference](#)

First appeared as part of the conference materials for the
12th Annual Higher Education Taxation Institute session
"Joint Ventures with For-Profits"