## Joint Ventures with For-Profits UT CLE - Higher Education Taxation Institute

June 13, 2024 Austin, TX

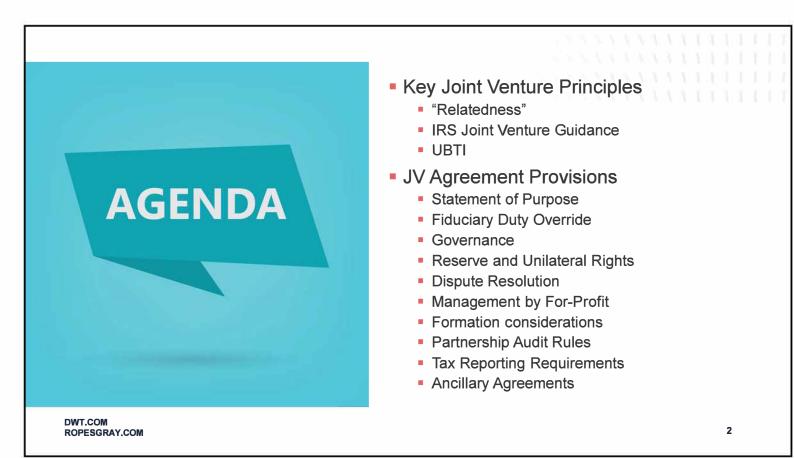
Thomas C. Schroeder | Davis Wright Tremaine LLP H. Colby Rogers | Ropes & Gray LLP

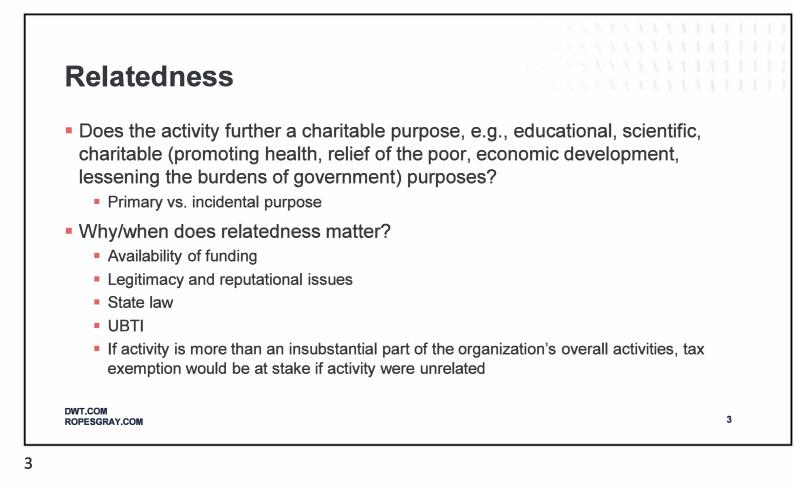
DWT.COM ROPESGRAY.COM



Davis Wright Tremaine LLP

1

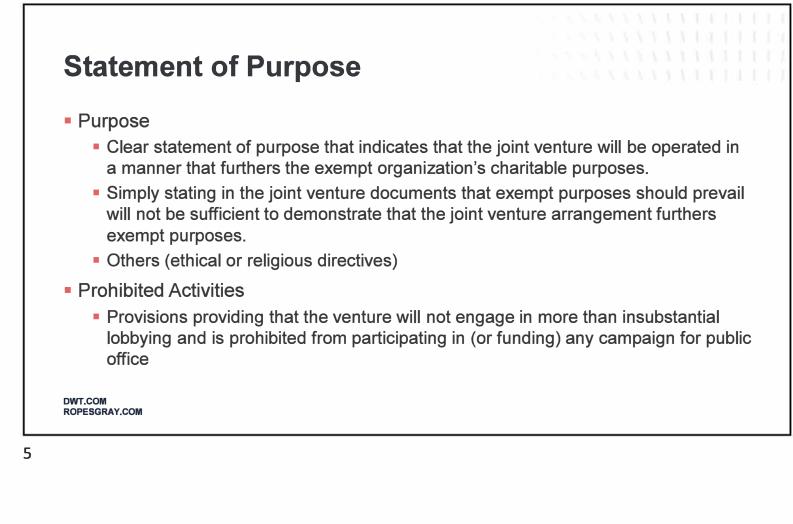




## **Joint Venture Guidance**

- 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?

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 <u>UT Law CLE eLibrary (utcle.org/elibrary)</u>

## 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 12<sup>th</sup> Annual Higher Education Taxation Institute session "Joint Ventures with For-Profits"