

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

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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

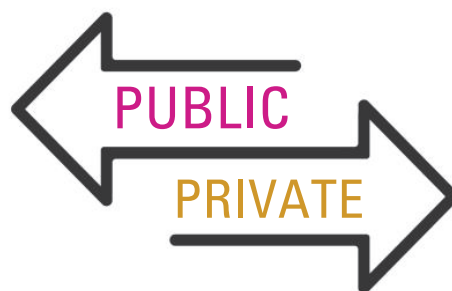
- Does the activity further a charitable purpose, e.g., educational, scientific, charitable (relief of the poor, economic development, lessening the burdens of government) purposes?
 - Primary vs. incidental purpose
- Why/when does relatedness matter?
 - Availability of funding
 - Legitimacy and reputational 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

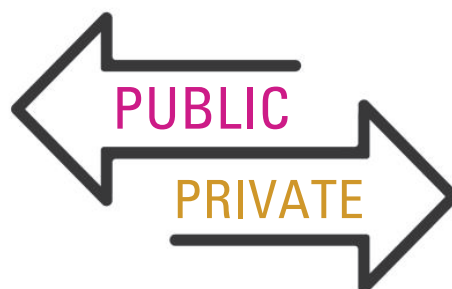


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PRIVATE BENEFIT

- 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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