

3004 APPROVAL PROCESS FOR JOINT VENTURES WITH TAXABLE ENTITIES

Effective: June 2009
Last Revised:
Last Reviewed: April 2016
Responsible Office: Office of General Counsel
Approval: Office of General Counsel

PURPOSE

This policy establishes procedures for the authorization and approval of joint ventures between the University of Pennsylvania including its exempt affiliated entities, and unrelated taxable entities. The purpose of this policy is to manage and monitor joint venture activities to safeguard the tax exempt status of the University and its exempt affiliated entities. Reference to “University” below shall be read to include the affiliated exempt entities of the University, as appropriate.

DEFINITION

For purposes of this policy, Joint Venture means any joint ownership or contractual arrangement through which there is an agreement that the University, either directly or indirectly, will jointly undertake a specific business enterprise, investment, or exempt-purpose activity with an unrelated taxable third party or entity. For purposes of this policy, the term Joint Venture does not include a venture or arrangement where (1) 95% or more of the venture’s or arrangement’s income for its tax year ending with or within the University’s tax year is described in sections 512(b)(1)-(5) of the Internal Revenue Code (which include generally dividends, interest, royalties, certain rents, capital gains and losses), and (2) the primary purpose of the University’s contribution to, or investment or participation in, the venture or arrangement is the production of income or appreciation of property.

POLICY

All proposed Joint Venture documents, including amendments and renewals, must be reviewed by the Office of the General Counsel prior to and during negotiations, and approved by the Vice President-Finance, to assure that the University’s tax exempt status is protected.

In the negotiation and review of proposed Joint Ventures and Joint Venture documents, the University will evaluate participation in such Joint Ventures under applicable Federal tax law and take steps to safeguard the exempt status of the University with respect to such Joint Ventures. The University will negotiate in its Joint Ventures such terms and safeguards adequate to ensure the University’s tax exempt status is protected. Such safeguards may include:

- assuring that the Joint Ventures further the charitable exempt purposes of the University;
- providing that the University has sufficient control over the Joint Ventures to ensure that the Joint Ventures at all times are operated and managed in a manner that furthers the exempt purposes of the University;
- requiring that the Joint Venture give priority to exempt purposes over maximizing profits for other participants;
- assuring that the Joint Ventures not cause the University to act other than exclusively in furtherance of its tax exempt purposes or adversely affect its tax exempt status;
- assuring that the Joint Ventures do not directly or indirectly engage in any activities that would jeopardize the University's exemption (such as political intervention or substantial lobbying); and
- requiring that sufficient operating controls be implemented at the Joint Ventures to assure all contracts and transactions involving the University and the Joint Ventures are at arms-length or more favorable to the University.

Senior administration for the University in consultation with the Office of General Counsel will determine whether approval is also needed by an entity board or committee of a board.