

Form 990 Policy Series

The attached Memorandum is a part of the *Form 990 Policy Series*, developed by a group of lawyers, all members of the California bar and practicing nonprofit law (the “Form 990 Policy Series Group”). The *Form 990 Policy Series* includes Memoranda containing rationales and procedures for legal counsel to use in advising their clients on drafting and adopting appropriate policies responding to the new Form 990 as well as form policies and/or questionnaires.

The members of the Form 990 Policy Series Group with respect to the attached Memorandum (posted May, 2013) were as follows: Martin J. Trupiano, Chair; Elizabeth Bluestein; Lani Meanley Collins; Joel S. Corwin; Louis Michelson; Joy P. Paeske; Alicia Plerhoples; Robert Siemer; Ronit M. Stone; and J. Patrick Whaley. The views expressed in the Memoranda do not necessarily reflect the views of the law firms or employers at which these lawyers practice or any individual member of the Group.

The date at the top of the attached Memorandum is the date that the Memorandum was finalized, and the Memorandum may not reflect changes in law or practice since that date.

**FORM 990 POLICY SERIES
MEMORANDUM**

Re: Joint Venture Policy – Form 990, Part VI, Section B, Line 16b (Form 990 Policy Series Memo #15)

Date: 05/21/13

NOTE ON THE SCOPE OF THIS MATERIAL

This material is designed to provide general guidance about an aspect of nonprofit corporate governance in the specific and limited context of the governance questions contained in the new IRS Form 990 (first published by the IRS in 2008 and revised in 2013). It is intended to provide some general guidance on the establishment of processes and/or policies to address a specific governance question in the Form. The subject matter of that question implicates a broad array of legal and practical issues ranging far beyond the immediate subject matter of the question itself. This material may address some of those issues but does NOT attempt to review them comprehensively and is NOT intended to be relied on for guidance on how they should be addressed in any specific situation.

Whether or not a nonprofit organization adopts a specific governance process or policy (or modifies an existing one), either in response to the disclosure requirements of the IRS Form 990 or to change its governance practices for other reasons is a matter to be carefully considered by that organization, with input from its board and advisors and evaluation of its specific circumstances. The IRS has explicitly stated that adoption of the policies and practices about which the Form 990 asks is not mandatory, although the IRS has also indicated that it attaches significance to the manner in which all tax-exempt nonprofit organizations govern themselves. The inclusion of a sample policy in this material is not intended to suggest that the policy is appropriate for every nonprofit organization nor that, if a policy on that topic is determined to be appropriate, the formulation in the sample necessarily fits the needs of an individual nonprofit organization. A customized approach, with outside professional advice, is recommended. Accordingly, this material is intended as general information for legal practitioners advising nonprofit organizations as to their governance and does not constitute legal advice for any particular nonprofit organization.

Although the subject matter of this material may have relevance to nonprofit organizations that are not required to file informational tax returns with the IRS or are permitted to file on an IRS form other than Form 990, the focus of this material is 990 filers. While this material is meant to apply to Form 990 filers who are exempt under Section 501(c) of the Internal Revenue Code, certain portions of this material may be applicable only to Section 501(c)(3) organizations. In addition, although this material may be of assistance with respect to nonprofit organizations that are not subject to oversight under California law, there may be portions of this material that are relevant only to nonprofits organized under, or (by reason of their California-related activities) otherwise subject to, California law and, except as specifically discussed in this material, the laws of other States are not addressed.

A. Summary

Line 16a of Internal Revenue Service Form 990, at Part VI, Section B asks, “Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year” Contingent upon whether the organization has entered into a joint venture, line 16b asks, “Did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization’s exempt status with respect to such arrangements?” The Form 990 Instructions permit a “Yes” response on line 16b if, as of the end of the organization’s tax year, the organization met two requirements. First, it must have followed a written policy

or procedure that required the organization to negotiate, in its transactions and arrangements with other members of the venture or arrangement, such terms and safeguards as are adequate to ensure that the organization's exempt status is protected. Second, the organization must have taken steps to safeguard the organization's exempt status for the venture or arrangement.

This Memorandum is intended to provide general guidance for the consideration and adoption of a policy responsive to the Form and related Instructions.¹ (See Form 990, Part VI, Section B, Line 16a.)

The Form 990 Policy Series Group recommends that all nonprofit organizations² ("NP") that might be involved in a joint venture consider formulating a policy to formalize the parameters and process of their evaluation and decision. Although the following elements are discussed in greater detail in Section C below, such a policy should address, for instance:

1. The definition of a joint venture, which can also provide for the exclusion of investment joint ventures.
2. A description of the proposed joint venture which includes:
 - A statement of how the NP's participation in the joint venture advances the organization's mission; and
 - The scope of the relationship between the NP and for-profit organizations ("FP"), particularly as to how financial risks and rewards will be shared by the parties.
3. Standards that:
 - Provide sufficient control over the venture or arrangement sufficient to ensure that the venture furthers the exempt purpose of the NP.
 - Require the venture or arrangement to give priority to exempt purposes over maximizing profits for the other participants.
 - Prohibit the venture or arrangement from engaging in activities that would jeopardize the NP's exemption, such as political intervention or substantial lobbying by a Section 501(c)(3) organization.
 - Require that all contracts entered into with the NP be on terms that are at arm's length to avoid prohibited private benefit.
4. The process for review and approval of participation in the joint venture.

¹ In this Memorandum, references to the Form 990 or Instructions refer to the 2012 versions of those documents.

² Nonprofit organization means an organization exempt from income tax under Internal Revenue Code section 501, subsections (c) or (d) or section 401(a).

B. Rationale for Adoption of a Joint Venture Policy

The Form 990 Policy Series Group recognizes that many NPs do not routinely participate in joint ventures and therefore may not need a policy of the type described in this Memorandum. However, a large number of NPs may, from time to time, evaluate joint venture opportunities. Joint ventures may take the form any of the following, which do not facially appear to be a “joint venture” (these examples are illustrative and not exhaustive):

- Contract, *e.g.*, a joint operating agreement or lease
- Loan
- Limited partnership
- Partnership
- Limited liability company
- Nonprofit or for-profit corporation

Even if the parties do not treat the arrangement between them as a joint venture, the IRS may attempt to overlay the joint venture structure, irrespective of the intent of the participants.

The IRS Form 990 Instructions define a joint venture or arrangement as “any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment, or exempt-purpose activity without regard to (1) whether the organization controls the venture or arrangement, (2) the legal structure of the venture or arrangement, or (3) whether the venture or arrangement is treated as a partnership for federal income tax purposes, or as an association, or corporation for federal income tax purposes.”³

Joint ventures offer a NP the opportunity to advance its tax-exempt purpose beyond its existing resources. Simultaneously, a joint venture relationship can create organizational risk as to any one or more of the following consequences:

- Failure to fulfill tax-exempt purpose
- Private inurement
- Impermissible private benefit
- Unrelated business income
- Loss of income tax-exemption
- Loss of tax-exempt financing

³ The IRS permits a NP to exclude from reporting certain types of joint ventures known as Investment Joint Ventures. The Form 990 Instructions define an Investment Joint Venture as those joint ventures that meet both of the following conditions:

“1. 95% or more of the venture's or arrangement's income for its tax year ending with or within the organization's tax year is described in sections 512(b)(1)-(5) (including unrelated debt-financed income).

“2. The primary purpose of the organization's contribution to, or investment or participation in, the venture or arrangement is the production of income or appreciation of property.”

The purpose of a Joint Venture Policy is to provide a clear statement of the NP's objective as a participant in joint ventures, to identify the organization's requirements as to such participation and to identify the procedure required for the approval of such participation. The desired effect of a Joint Venture Policy is to advance the NP's mission while protecting the NP from unreasonable risk.

If the NP participates in a joint venture, the IRS requires the NP to initially and annually identify whether the NP has a compliant joint venture policy.

Because IRS Form 990 now requires that many joint ventures be reported on Schedule R, it behooves the organization to be prepared to respond.

This policy is also useful as it mirrors the IRS's interest in good governance. In addition to requiring reporting regarding joint ventures and policy on the Form 990, the IRS has also stated its interest in a joint venture policy in its publication entitled, "Governance and Related Topics - 501(c)(3) Organizations"⁴

C. Background of Requirements/Sources for the Policy

1. IRS Form 990 and Instructions

The IRS Form 990 and associated Instructions required NPs to answer two questions: one concerning the NP's participation in a joint-venture and the other concerning a joint venture policy.

First, Part VI, Section B, Line 16a of the 2012 Form 990 asks:

"Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?"

Second, if the response to line 16a is "yes," Part VI, Section B, Line 16b of the 2012 Form 990 asks:

"Did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?"

The Instructions to Part VI, Section B, Line 16 of the Form 990 state:

"Answer "Yes" on line 16a if at any time during its tax year the organization invested in, contributed assets to, or otherwise participated in a joint venture or similar arrangement with one or more taxable persons. For purposes of line 16,

⁴ *Governance and Related Topics - 501(c)(3) Organizations*, Section 4(C), Governance and Management Policies, Investments (IRS, February 4, 2008); Retrieved 04/04/2013, from http://www.irs.gov/pub/irs-tege/governance_practices.pdf.

a joint venture or similar arrangement (or a "venture or arrangement") means any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment, or exempt-purpose activity without regard to (1) whether the organization controls the venture or arrangement, (2) the legal structure of the venture or arrangement, or (3) whether the venture or arrangement is treated as a partnership for federal income tax purposes, or as an association, or corporation for federal income tax purposes

2. Organization and Scope of Section

The balance of this section of the Memorandum is organized in the same order as each of the numbered paragraphs of the Sample Joint Venture Policy which is in Section E below.

- Protection of Tax-exempt Status
- Control
- Priority of Tax-exempt Purpose
- Arm's Length Standard
- Reporting
- Hospital Facilities
- Procedure: Negotiation
- Procedure Approval: Recognition of Income
- Classification of Entities

3. Protection of Tax-Exempt Status

A Joint Venture Policy that addresses organizational standards for the review and approval of joint ventures, particularly as to the impact of the joint venture upon the organization's tax-exempt status, may meet the minimum current statutory and regulatory requirements. Nevertheless, prudent NP management suggests the consideration of additional issues, such as whether joint venture income will be taxed as unrelated business income and whether participation in the joint venture can subject the organization to state and local property taxes.

This Memorandum provides guidance for NPs, whether tax-exempt under Section 501(c)(3) or tax-exempt under other subsections of 501(c). As reflected by the citations which follow, the majority of published guidance and judicial precedent regarding joint ventures has been in reference to IRS 501(c)(3) type organizations. Nevertheless, the reporting responsibility and instructions on Form 990 apply to all NPs. For the non-501(c)(3) NP organization, they should apply the sections that follow in a manner to conform to current advice and practice for its specific type of tax-exempt organization.

A NP must be operated exclusively for its tax-exempt purpose or risk loss of its tax-exempt status. The NP must also consider the effect of a joint venture upon other potential tax liabilities, *e.g.*, to the extent applicable, state income and property taxes.

The following legal authorities are selected federal income tax sources, from the Internal Revenue Code, Treasury Regulations, administrative guidance and judicial precedent which focus on protection of tax-exempt status involving a NP participation in a joint venture.

Section 501(c)(3) provides, in part, for the exemption from federal income tax of corporations organized and operated exclusively for charitable, scientific, or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes specified in Section 501(c)(3). Activities that do not further exempt purposes must be an insubstantial part of the organization's activities. In *Better Business Bureau of Washington, D.C. v. United States*, 326 U.S. 279, 283 (1945), the Supreme Court held that "the presence of a single . . . [non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

As an example, another risk to the tax-exempt status of a Section 501(c)(3) organization and therefore to be avoided would be any prohibited political intervention or substantial lobbying that would be attributable to the NP.

The IRS Form 990 Instructions, Section VI, line 16b notes "Some examples of safeguards [in joint venture policies] include the following: . . .The venture or arrangement not engage in activities that would jeopardize the organization's exemption (such as political intervention or substantial lobbying for a Section 501(c)(3) organization)."

Rev. Rul. 98-15, 1998-1 C.B. 718, provides that for purposes of determining exemption under Section 501(c)(3), the activities of a partnership, including an LLC treated as a partnership for federal tax purposes, are considered to be the activities of the partners. A Section 501(c)(3) organization may form and participate in a partnership and meet the operational test if 1) participation in the partnership furthers a charitable purpose, and 2) the partnership arrangement permits the NP to act exclusively in furtherance of its exempt purpose and only incidentally for the benefit of the for-profit partners.

4. **Control**

As noted in the citations below, the IRS has focused upon control in its determination whether the venture furthers the tax-exempt purpose of the organization. In general, the IRS requires more control if the joint venture is a disposition-type joint venture. In a disposition-type joint venture, the NP transfers all or substantially all of one of its exempt activities to the joint venture. If the transfer is an insubstantial portion of the

NP's assets, the IRS has accepted a 50:50 control relationship provided the NP can assure that the joint venture's activities will be consistent with the NP's tax-exempt purpose.

Ceding control to the for-profit, however, is viewed by the IRS as impermissibly serving private interests. The outcome may result in the loss of tax-exemption if the joint venture is both a substantial part of the NP's activity and the NP cedes control of the joint venture to a for-profit. The following authorities are selected federal income tax sources, from the administrative guidance and judicial precedent which focus on maintenance of control by the NP in its participation in a joint venture.

The IRS, Form 990 Instructions, Section VI, line 16b notes "Some examples of safeguards [in joint venture policies] include the following: . . . Control over the venture or arrangement sufficient to ensure that the venture furthers the tax-exempt purpose of the organization."

Redlands Surgical Services, 113 T.C. 47, 92-93 (1999), *aff'd*, 242 F.3d 904 (9th Cir. 2001), provides that a NP organization may form partnerships, or enter into contracts, with private parties to further its charitable purposes on mutually beneficial terms, "so long as the nonprofit organization does not thereby impermissibly serve private interests." Redlands Surgical Services, a NP, formed a partnership with Redlands-SCA Surgery Centers, Inc., a for-profit organization to purchase 61% of a surgery center. The partnership in turn became the sole general partner in a limited partnership to own and operate the surgery center. The partnership contracted with a for-profit subsidiary of Redlands-SCA Surgery Centers, Inc. to manage the day to day operations of the surgery center.

The Tax Court found that the partnership's documents lacked a stated commitment to a charitable purpose and that the NP lacked control to unilaterally cause the joint venture to respond to community needs as to service, delivery or cost. The Tax Court held that the operational standard is not satisfied merely by establishing "whatever charitable benefits [the partnership] may produce," finding that the NP partner lacked "formal or informal control sufficient to ensure furtherance of charitable purposes." Affirming the Tax Court's denial of tax-exempt status to Redlands Surgical Services, the Ninth Circuit Court of Appeal held that ceding "effective control" of partnership activities impermissibly served private interests. 242 F.3d at 904.

St. David's Health Care System v. United States, 349 F.3d 232, 236-237 (5th Cir. 2003), held that the determination of whether a NP organization that enters into a partnership operates exclusively for exempt purposes is not limited to "whether the partnership provides some (or even an extensive amount of) charitable services." Contributing all of its hospital assets to the partnership, St. David's Health Care System formed a general partnership with Columbia/HCA which contracted with a FP subsidiary of Columbia/HCA to operate the hospital.

The Court, citing *Plumstead Theatre Society, Inc. v. Commissioner*, 74 T.C. 1324, 1334, 1980 WL 4571 (1980) and Rev. Rul. 98-15, opined that the NP partner also must have the "capacity to ensure that the partnership's operations further charitable

purposes.” *Id.* at 243. “[T]he non-profit should lose its tax-exempt status if it cedes control to the for-profit entity.” *Id.* at 239. The Court found that there were material issues of fact and reversed the summary judgment. On remand to the district court, the jury found in favor of St. David’s tax-exemption. The government’s appeal was settled out of court.

In Rev. Rul. 2004-51, the IRS applied the foregoing rules where the activity was insubstantial relative to the NP’s activities. A NP formed a joint venture with a for-profit company to perform an activity which was an insubstantial portion of the NP’s activities. Control was divided 50:50 between the NP and FP. The NP retained control over certain activities to ensure that the joint venture’s activity would be consistent with the NP’s tax-exempt purpose.

The IRS cited the *St. David’s Healthcare* decision as to control, and stated that “The nonprofit partner also must have ‘the capacity to ensure that the partnership’s operations further charitable purposes. [T]he non-profit should lose its tax-exempt status if it cedes control to the for-profit entity.’” (Citations omitted.) In this ruling in favor of the NP, however, the IRS primarily relied upon the insubstantial nature of the activity and ruled that the NP would continue to qualify for exemption and the income from the JV would not be subject to unrelated business income tax.

5. Priority of Tax-exempt Purpose

In the Form 990 Instructions, the IRS states the importance for a joint venture to give priority to its exempt purposes over maximizing profits.^{5,6}

Form 990 Instructions, Section VI, line 16b notes, “Some examples of safeguards [in joint venture policies] include the following: . . . Requirements that the venture or arrangement give priority to the exempt purposes over maximizing profits for the other participants.”

6. Arm’s Length Standard

A joint venture introduces an additional party to the NP’s activities. If compensation to that additional or third party is involved, the compensation arrangement may create potential liability for private inurement and impermissible private benefit.

Treasury Regulation Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement, an organization must “establish that it is not organized or operated for the benefit of private interests”

The IRS Form 990 Instructions, Section VI, line 16b notes, “Some examples of safeguards [in joint venture policies] include the following: . . . All contracts entered into

⁵ See also IRS 1999 EO CPE Text, Examination Case, #3 (1999).

⁶ See also *Redlands Surgical Services*, above.

with the organization be on terms that are at arm's length or more favorable to the organization.”

7. Reporting

As the NP cannot complete its tax filing without the joint venture's information, it is good practice for the NP to require timely and proper information from the joint venture.

Also note that disregarded entities must generally be reported on IRS Form 990.⁷

8. Hospital Facilities

Hospital facilities are required to comply with Section 501(r) and therefore should require the joint venture agreement to include a community needs assessment, financial assistance policy, and limitation of charges and collections practices.

9. Procedure: Negotiation

The policy should provide that the venture or arrangement will be negotiated by management who, at their discretion, will consult with legal counsel.⁸

10. Procedure: Approval: Recognition of Income

Depending upon the relationship of the joint venture activity and NP's tax-exempt purpose, the income to the NP will be tax-exempt or taxed as unrelated business income. In evaluating whether to undertake the joint venture, the NP needs to understand the tax treatment of any income.⁹

The following selected sections and Treasury Regulations are federal income tax sources relating to imposition of the tax on unrelated business income of NPs which participate in joint ventures.

Section 511(a), in part, provides for the imposition of tax on the unrelated business taxable income (as defined in Section 512) of organizations described in Section 501(c)(3).

Section 512(a)(1) defines “unrelated business taxable income” as the gross income derived by any organization from any unrelated trade or business (as defined in

⁷ IRS Form 990, Appendix F. Disregarded Entities and Joint Ventures—Inclusion of Activities and Items.

⁸ Discretion is provided here to accommodate various sizes and types of organizations. Larger organizations or organizations regularly involved in joint ventures negotiations should include legal counsel as a member of the negotiation team.

⁹ The following references described in the text speak to unrelated business income generally. The scope of unrelated business income is different for different types of tax-exempt organizations. For example, NPs described in paragraph (7), (9), (17), or (20) of Section 501(c) should refer to Section 512(a)(3).

Section 513) regularly carried on by it less the deductions allowed, both computed with the modifications provided in Section 512(b).

Section 512(c) provides that, if a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to the organization, in computing its unrelated business taxable income, the organization shall, subject to the exceptions, additions, and limitations contained in Section 512(b), include its share (whether or not distributed) of the gross income of the partnership from the unrelated trade or business and its share of the partnership deductions directly connected with the gross income.

Section 513(a) defines the term “unrelated trade or business” as any trade or business the conduct of which is not substantially related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 501.

Treasury Regulation Section 1.513-1(d)(2) provides that a trade or business is “related” to an organization’s exempt purposes only if the conduct of the business activities has a causal relationship to the achievement of exempt purposes (other than through the production of income). A trade or business is “substantially related” for purposes of Section 513, only if the causal relationship is a substantial one. Thus, to be substantially related, the activity “must contribute importantly to the accomplishment of [exempt] purposes.” Treasury Regulation Section 1.513-1(d)(2). Section 513, therefore, focuses on “the manner in which the exempt organization operates its business” to determine whether the activity contributes importantly to the organization’s charitable or educational function. *United States v. American College of Physicians*, 475 U.S. 834, 849 (1986).

11. Classification of Entities (see Sample Policy)

To ensure the proper classification of entities pursuant to a joint venture policy, the Board of Directors should annually receive from the organization’s Treasurer or Chief Financial Officer a list of entities classified as included or excluded joint ventures.

D. Considerations and Procedures for Implementation of the Policy

1. *Existing Policy*: Determine whether a policy is already in place and, if so, whether it is should be amended or replaced.

2. *Policy Needed*: Discuss with the client the organization’s pattern and practice as to joint ventures as to entering into joint ventures. Discuss whether a policy is needed.

3. *Knowing Adoption*: The Joint Venture Policy should be knowingly adopted by the organization. Prior to adoption, it should be determined where the policy should be placed in the organization’s documentation. Alternatives may include, for example, in the

bylaws, in a board or policy and procedure manual, or as a stand-alone item. The manner in which the policy must or will be adopted – such as by management or the board of directors, by the members, or the three – should also be determined.

4. *Dissemination*: In every case, the policy must be disseminated to all affected constituencies such as, for example, employees, directors, members and volunteers and ancillary documents such as job descriptions and department manual should be amended to accommodate the policy's terms.

5. *Compliance*: Finally, the client should be cautioned that the organization should only adopt policies which it is confident it can follow. It could well be worse to adopt a policy which is not followed than to have no policy at all.

E. **Sample Policy or Policies**¹⁰

[Name of Organization]

Subject: Joint Venture Policy

Effective Date: [insert]

Purpose

Joint ventures represent an opportunity and a risk to [Name] (the Organization). The purpose of this policy is to establish standards for the Organization's participation in joint ventures to advance the organization's mission while preserving its tax-exempt status.

Definitions

Joint Venture

A joint venture or similar arrangement (or a "venture or arrangement") means any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment, or exempt-purpose activity without regard to (1) whether the organization controls the venture or arrangement, (2) the legal structure of the venture or arrangement, or (3) whether the venture or arrangement is treated as a partnership for federal income tax purposes, or as an association, or

¹⁰ Among the Form 990 filing tips provided on the IRS website, one tip addresses policies which are the subject of questions in Part VI of the Form 990:

“Does the IRS intend to provide model or sample policies (e.g., joint venture policy) that organizations could adopt in order to answer yes to the questions in Part VI regarding such policies or practices?”

“The IRS does not plan to provide model or sample policies to be used for this purpose. Whether an organization adopts a policy of the type referred to in Part VI of Form 990 is a decision to be made by each individual organization. If an organization decides to adopt such a policy, it should consider its own particular facts and circumstances, including its size, culture, type and structure, in designing and implementing the policy.”

Form 990 Part VI - Governance - Sample Policies (Tip #8), Question 9 (IRS, April 18, 2013) [http://www.irs.gov/Charities-&-Non-Profits/Form-990-Part-VI---Governance---Sample-Policies-\(Tip-%238\)](http://www.irs.gov/Charities-&-Non-Profits/Form-990-Part-VI---Governance---Sample-Policies-(Tip-%238)).

corporation for federal income tax purposes. Ventures or arrangements that meet both of the following conditions are excluded from this definition:

1. 95% or more of the venture's or arrangement's income for its tax year ending with or within the organization's tax year is described in Sections 512(b)(1)-(5) (including unrelated debt-financed income).

2. The primary purpose of the organization's contribution to, or investment or participation in, the venture or arrangement is the production of income or appreciation of property.

Mission

The mission of the Organization is [insert mission].

Policy

1. Protection of Tax-exempt Status: If management is pursuing or considering a joint venture, management shall negotiate, in its transactions and arrangements with other members of the venture or arrangement, such terms and safeguards as are adequate to ensure that the Organization's state and federal exempt status is protected.

Specifically, the Organization shall require that the venture or arrangement not engage in activities that would jeopardize the Organization's exemption (such as political intervention or substantial lobbying for a Section 501(c)(3) organization).

2. Control: The Organization shall maintain control over the venture or arrangement sufficient to ensure that the venture furthers the exempt purpose of the Organization.

3. Priority of Tax-exempt Purpose: The Organization shall require that the venture or arrangement gives priority to its exempt purposes over maximizing profits for the other participants.

4. Arm's Length Standard: All contracts entered into with the Organization shall be on terms that are at arm's length or more favorable to the Organization.

5. Reporting: The joint venture operating agreement shall require that the Organization receive timely and properly prepared information as is necessary for the Organization to prepare and timely file its annual IRS Form 990.

6. [Hospital Facilities: If the joint venture includes the operation of a hospital facility, provision shall be made for compliance with the requirements of Section 501(r), including but not limited to: community needs assessment, financial assistance policy, limitation on charges and collection practices.]

Procedure

1. Negotiation: The venture or arrangement will be negotiated by management who, at their discretion, will consult with legal counsel.

2. **Approval:** The venture or arrangement will be approved by [insert approving body or insert reference to other approval policy]. The proposal shall include a statement as to why it is important for the Organization to participate in the joint venture in order to advance the Organization's mission and a statement of the scope of the relationship, particularly as to how financial risks and rewards will be shared. The proposal shall also indicate whether income from the joint venture will be subject to treatment as unrelated business income and whether the joint venture's real property will be subject to state and local property taxes.
3. **Classification of Entities:** To ensure the proper classification of entities pursuant to this policy, the Chief Financial Officer shall annually submit to the Board of Directors a list of entities classified as included joint ventures and excluded investment ventures.

Authority

IRS Form 990 and Instructions

History:

Approved: [insert date]