

## Joint Venture Policy

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### POLICY STATEMENT

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#### 1. INTRODUCTION

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The purpose of this Policy is to ensure the 1) proper evaluation of the University of Notre Dame's participation in Joint Ventures under the applicable tax law, and 2) necessary steps are taken to safeguard the University's tax exempt status with regard to Joint Ventures.

#### 2. POLICY STATEMENT

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##### 2.1. Joint Venture Review and Approval

Prior to either entering into a Joint Venture or amending the terms of a Joint Venture, all documents proposed to be executed by or otherwise binding on the University (Joint Venture Documents), together with a brief written summary, shall be submitted to the University's Vice President for Finance, Associate Vice President for Finance and Controller, and General Counsel (or their designees) for review and approval.

##### 2.2. Joint Venture Tax Exemption Requirements

In the negotiation and review of proposed Joint Ventures and Joint Venture Documents, the University must evaluate its participation in such Joint Ventures under applicable Federal tax law and take steps to safeguard the University's exempt status with respect to such Joint Ventures. The University shall negotiate in its Joint Ventures such terms and safeguards adequate to ensure the University's tax exempt status is protected. Such safeguards must be set forth in the Joint Venture Documents (unless an exception is obtained by the University Vice President for Finance or designee) and include statements that:

1. Assure the Joint Venture furthers the tax exempt purposes of the University;
2. Provide that the University has sufficient control over the Joint Venture to ensure the Joint Venture at all times shall be operated and managed in a manner that furthers the tax exempt purposes of the University;
3. Require any duty that the Joint Venture participants, the members of the Joint Venture's governing bodies or the Joint Venture's officers may have to maximize the Joint Venture's profits or to take, or refrain from taking, any other action, is overridden by the duty to faithfully satisfy the exempt purposes of the University without regard to the consequences for maximizing profitability;

4. Assure the Joint Venture will not cause the University to act other than exclusively in furtherance of its tax exempt purposes or adversely affect its tax exempt status;
5. Assure that the Joint Venture does not directly or indirectly engage in any activities that would jeopardize the University's exemption (such as political intervention or substantial lobbying);
6. Provide the University receives ownership interests in the Joint Venture that are proportional and equal in value to the ownership interests to be received by the other Joint Venture participants;
7. Require any debt of the Joint Venture not be guaranteed by the University in a manner that could cause the University to be responsible for more than its proportional share; and
8. Require that sufficient operating controls be implemented by the Joint Venture to assure all contracts and transactions involving the University and the Joint Venture are on an "arms-length" basis (or more favorable to the University).

### **2.3. Amendments**

Any proposed amendments to the Joint Venture Documents or changes in the manner or method of the Joint Venture's governance or operation must not cause the Joint Venture or its operation to fail to fully satisfy the requirements set forth in Section 2.2. of this Policy.

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## **3. SCOPE**

This Policy applies to all members of the University of Notre Dame, including faculty, staff, and students.

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## **4. DEFINITIONS**

### **Joint Venture**

Any joint ownership or contractual arrangement through which there is an agreement for the University of Notre Dame, either directly or indirectly, to jointly undertake a specific business enterprise, investment, or exempt-purpose activity without regard to 1) whether the University controls the venture or arrangement, 2) the legal structure of the venture or arrangement, or 3) whether the venture or arrangement is taxed as a partnership or as an association or corporation for federal income tax purposes.

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 (including unrelated debt-financed income), and 2) the primary purpose of the University's contribution to, or

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investment or participation in, the venture or arrangement is the production of income or appreciation of property.

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<b>Joint Venture Documents</b>	All documents proposed to be executed by or otherwise binding on the University, including but not limited to, the Joint Venture operating agreement or similar document.
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## 5. RESPONSIBILITIES

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<b>Responsible Party</b>	<b>List of Responsibilities</b>
Joint Venture	<ol style="list-style-type: none"><li>1. Each Joint Venture must submit the following items to the University Tax Director after each calendar quarter end:<ol style="list-style-type: none"><li>a) Minutes of all meetings of such Joint Venture held during the quarter; and</li><li>b) Financial statements and statistics of such Joint Venture for the quarter.</li></ol></li><li>2. Each Joint Venture must submit the following items to the University Tax Director within six months after each year end (unless otherwise approved by the Tax Director):<ol style="list-style-type: none"><li>a) Copy of Form 1065 and Schedules K-1</li></ol></li></ol>
Vice President for Finance	<ol style="list-style-type: none"><li>1. Review and approve proposed Joint Ventures.</li><li>2. Ensure that approved and implemented Joint Ventures and their operations adhere to the requirements set forth in Section 2.2. of this Policy.</li></ol>
Associate Vice President for Finance and Controller	<ol style="list-style-type: none"><li>1. Review and approve proposed Joint Ventures.</li></ol>
General Counsel	<ol style="list-style-type: none"><li>1. Review and approve proposed Joint Ventures.</li></ol>
Tax Director	<ol style="list-style-type: none"><li>1. Receive and review for completeness Joint Venture quarterly meeting meetings and financial statements, and yearly Form 1065 and Schedules K-1.</li></ol>

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## 6. PROCEDURES

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### 6.1. Joint Venture Document Retention

A fully executed original of each of the Joint Venture Documents and all other significant documents and agreements relating to the Joint Venture, including, without limitation (as applicable), Articles of Incorporation or Organization, Bylaws,

Operating Agreement, Partnership Agreement, Management Agreement, Service Agreements and Leases, and a fully executed original of all amendments to any of the foregoing, and if available, electronic copies of each of the foregoing shall be maintained by the University Office of the Controller and Office of General Counsel. “Executed originals” may include facsimile or electronic signatures if permitted by the document so executed.

## 7. POLICY ENFORCEMENT

Reporting Violations	Suspected violations of this Policy should be reported to the University Office of the Controller.
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## 8. REFERENCE DOCUMENTS

Policy or Document	Web Address
IRS Form 990, Part VI, Line 16, Joint Venture Policy	<a href="http://www.irs.gov/Forms-&amp;-Pubs">http://www.irs.gov/Forms-&amp;-Pubs</a>

## 9. CONTACTS

Subject	Office or Position	Telephone Number	Office E-mail or URL
Policy Clarification	Office of the Controller	(574) 631-6401	<a href="mailto:control@nd.edu">control@nd.edu</a> <a href="http://controller.nd.edu/">http://controller.nd.edu/</a>
Web Address for this Policy		<a href="http://policy.nd.edu/policy_files/JointVenturePolicy.pdf">http://policy.nd.edu/policy_files/JointVenturePolicy.pdf</a>	