



Xavier University Policies & Procedures Manual

Section 5: Financial Administration

Policy:

5.3 INVESTMENT IN AND JOINT VENTURE POLICY WITH TAXABLE ENTITIES

Scope:
Faculty, Staff and Students

Responsible Department:
CFO

Approved By:
Audit Committee,
Controller, CFO

Last Reviewed Date: 10/12/2011

A. PHILOSOPHY

This policy requires that Xavier University evaluate its participation in joint venture arrangements with taxable entities under federal tax law (a "taxable entity") and take steps to safeguard its tax-exempt status.

B. DEFINITIONS

A joint venture includes, but is not limited to, any joint ownership or contractual arrangement with a taxable entity, such as:

- Forming, investing in or contributing assets to, or becoming an owner or member of, a partnership, limited liability company, limited partnership, limited liability partnership, or similar legal entity; or
- Executing a contract to jointly undertake a specific business enterprise, investment or activity, involving the potential sharing of revenue between the parties.

C. POLICY

The University shall not enter into any joint venture arrangement with a taxable entity without the express written approval of the Board of Trustees;

The University's assets must, at all times, be devoted to charitable purposes within the meaning of Code Section 501(c)(3), and the University may not enter any joint venture that threatens or jeopardizes the University's charitable purposes or assets;

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If the University enters a joint venture with an unrelated organization, then the relationship must be negotiated at arms' length and must reflect terms that are equal to (or more favorable to the University than) fair market value;

Participation in entities or ventures that meet both of the following conditions shall not be treated as "joint ventures" for purposes of this Policy:

- 95% or more of the income is derived from passive income sources as described in Section 512(b)(1)-(5) of the Internal Revenue Code of 1986, as amended ("Code"), (e.g., dividends, interest, royalties, rents, and gains or losses from the sale of investments or inventory), including unrelated debt-financed income; and
- The University's primary purpose for contribution to, or investment or participation in, the entity or venture is the production of income or appreciation of property.

Prior to entering any joint venture, the University shall consider (a) whether the joint venture will generate unrelated business income for the University, within the meaning of Code Section 512(a)(1), and (b) whether the joint venture will result in private use for purposes of the University's outstanding bonds, within the meaning of Code Section 141(b);

- Prior to entering any joint venture, the University shall ensure documentation includes the following terms:
 - The University shall retain sufficient control over the joint venture to ensure that it furthers the tax-exempt purpose of the University,
 - The joint venture must assure that the University's tax-exempt purposes override the profit motives of the other participants, and
 - The joint venture shall not engage in activities that would jeopardize the University's tax-exempt status (e.g., political intervention, substantial lobbying, etc.); and
 - The University's Board of Trustees may waive any requirement of this Policy upon advice from its legal counsel that the waiver will not threaten or jeopardize the University's charitable purposes or assets.

D. PROCEDURES

All joint ventures or similar arrangements within the scope of this policy will be subject to the following approvals as detailed below:

- All contracts must be reviewed and approved by the appropriate Vice President/Provost of the division entering into the contract.
- General Counsel must review and approve the contract.
- Financial Administration must review and approve the financial terms of the contract.
- Risk Management must review and approve the insurance terms of the contract.
- The President or the CFO must approve the contract.
- This policy conforms to the thresholds of conducting business established by the Board of Trustees.

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CONTACTING XAVIER

Please contact the Controllers Department with any questions.

AUTHORITATIVE SOURCE

The authoritative source for this policy, and responsibility for its implementation, rests with the Chief Financial Officer.

APPROVAL AND REVIEW HISTORY

Reviewed and approved by the Controller and Chief Financial Officer.

REVIEW CYCLE

This policy will be periodically reviewed and updated as appropriate.