

Editor's Note: This Article is also an excerpt from a larger, comprehensive Article discussing various law and policy considerations for Non-profit/For-profit Joint Ventures involving online distance learning. A link to the Full length Article will be included after the Citations Section, upon its completion. Deep gratitude must be extended to Professor Michael I. Sanders at Georgetown University for his assistance and insight.

Expanding Access to Higher Education:

Law and Policy Considerations for Non-profit/For-profit Joint Ventures Involving Online Distance Learning Initiatives:

A: Introduction:

Online Distance Learning is a relatively recent educational phenomenon involving an academic approach that had been budding for decades. The roots of these stem from “correspondence courses,” the distance learning initiatives that formed throughout Europe and the United States following the [Industrial Revolution](#).ⁱ These courses flourished with postal services advancements and the corresponding, increased ability to maintain academic interaction from a distance. These early distance learning programs had limited reach though, both in terms of the number of students that could be included and with respect to the diversity of the students that were able to enroll.

Eventually, radio technology, electronic media, and live radio and television became available as additional conduits for [expanded educational access](#).ⁱⁱ The result was that even those without means, and/or those without access to formal educational resources could watch or listen to classes [wherever they were located](#).ⁱⁱⁱ This concept prospered with large-scale usage of digital

media, personal computers and the world-wide-web (downloadable courses, software and textbooks, etc.) ultimately [expanding the reach and scope of distance learning exponentially](#).^{iv} Reaching new heights, and serving to further fill the void with respect to the need for more interactive exchange between teacher and student (and by and between the students themselves), online distance learning (and MOOC's) came to the forefront in the early part of this century. The idea reverberated throughout the academic world, especially with institutions [already associated with online learning](#).^v

However, inasmuch as the United States and world economies have suffered large-scale cutting of charitable contributions, both individually, and institutionally, coupled with a decline in government-funding of charitable organizations, many are concerned that the potential expansion in online distance learning at tax-exempt universities [might come at a slower pace](#).^{vi} One notable solution to cutbacks in charitable contributions is joint ventures between tax-exempt non-profit universities and for-profit, business interests.

Indeed, apart from the economic benefit associated with joint ventures between tax-exempt universities and for-profit business interests, additional reasons to enter into such arrangements include the opportunity to work with an esteemed university or a major business [\(reputation and resources, respectively\)](#).^{vii} Additionally, joint ventures can enable the college to [“tap into \[new\] academic programs without ceding control over the academic core of the programs](#)^{viii} and further [otherwise elusive philanthropic goals](#).^{ix}

B: Background:

Consequently, with such enormous potential benefit to both parties and with the incidence of these joint ventures on the rise, it is important to recognize that there is

comparatively little guidance in terms of applicable tax revenue rulings and other guidelines. Thus, caution must be exercised in implementing these joint ventures. An ill-formed joint venture could serve to jeopardize the tax-exempt status of the tax-exempt university or subject it to unnecessary unrelated business income tax among other liability and internal policy issues.

Joint ventures between tax-exempt non-profits and for-profit business interests were, initially, largely opposed by the Internal Revenue Service. Over time, the position of the Service “evolved” to recognize the purpose, validity and, implicitly, the benefits of joint ventures and there are now several Revenue Rulings that address joint ventures. Indeed, within the last ten years, the Internal Revenue Service has issued several Rulings that addressed various joint venture issues in the subject context; specifically, Revenue Ruling 2004-51 was issued which Ruling reviewed a joint venture in the form of a limited liability company which was established by a tax-exempt university and a for-profit corporation for the purpose of expanding the tax-exempt university's teacher training seminars [to off-campus locations via interactive video technology](#).^x

The tax-exempt university and the corporation each owned a 50 percent share of the LLC, return of capital was proportional to the partner's respective interests and each entity appointed three individuals to the LLC's six-member board of [directors](#).^{xi} While the tax-exempt university had “exclusive authority to approve curriculum, training materials, teachers/instructors/personnel, and the standards for successful completion of the educational programs,” the LLC retained authority over all aspects of the seminars, including, but not limited to, program locations, distribution of course materials and [advertising](#).^{xii}

The IRS determined that the educational programs were consistent with the tax-exempt university's exempt purposes, simply expanding the scope of the tax-exempt university's current educational activities and were not a trade or business unrelated to the university's tax-exempt purposes and [function](#).^{xiii} This was primarily due to the fact that although the corporation arranged and conducted the training seminars and controlled aspects related to the video link locale, personnel and resources, the tax-exempt university nonetheless retained “exclusive authority” over the educational aspects of the program. Additionally, the educational content was the same as the seminars on [campus](#).^{xiv} As such, regulating and maintaining the educational content remains critically important and must be established prior to the joint venture.

Additional concerns can arise if the Course involves publication(s) which tangents off in directions not consistent with, or only marginally furthering, the tax-exempt's purpose (or political-content driven directions). In such situations, just as in situations similar to the above, regulating and maintaining the educational content remains critically important and must be established prior to entering into such an arrangement. A second, broader concern with respect to these joint ventures is the potential for the educational joint venture to pose liability and social policy concerns for the tax-exempt university based on differing standards between the two, in regards to privacy rights of the students (and violations of universities policy) if the for-profit were to have control over communications, cloud-communications and otherwise. Indeed, online courses that are geared to the general non-matriculating public often do not involve the

same standards when it comes to privacy issues compared to those of a tax-exempt university with enrolled students.

Many private for-profit non-credit institutions reserve the right to view all emails and correspondence, cloud computing documents, etc. at any time (or require consent to same), whereas, in many universities, including tax-exempt universities, college officials have the right to view student emails or other electronic files only under certain conditions. Also, many are ordinarily required to “notify students about their privacy rights, have policies stating how online activity is monitored, and inform students about how records will be [used](#).”^{xv} As such, whether or not a threat to existing tax-exempt status, updating, modifying and/or implementing new policies should only be done in conformity with existing policies. Additionally, the tax-exempt should maintain control of this component of the venture, as well.

Lastly, Joint Ventures between For-Profit Business Interests and Tax-Exempt Universities are increasingly taking place within an international setting, as with those in Turkey, Russia and Great Britain. Often, the host country’s laws themselves give rise to conflict, as do radically different policies between the tax-exempt non-profit university and the international for-profit business. In these cases as well, potential differing policies should be reviewed and conformed, if needed, and the tax-exempt should maintain critical control.

i <http://mooconewsandreviews.com/a-short-history-of-moocs-and-distance-learning/>

ii *Id.*

iii *Id.*

iv *Id.*

v <http://chronicle.com/article/Open-Teaching-When-the/124170>

vi <http://www.changinghighereducation.com/2010/02/for-profit-nonprofit-interface.html>

<http://www.motherjones.com/politics/2014/09/ebola-world-health-organization-budget>

vii <http://www.changinghighereducation.com/2010/02/for-profit-nonprofit-interface.html>

viii *Id.*

ix *Id.*

x <http://www.unclefed.com/Tax-Bulls/1998/rr98-15.pdf>

xi *Id.*

xii *Id.*

xiii *Id.*

xiv *Id.*

xv Foster, A.L. (2001, May 11). *The Struggle to Preserve Privacy*. *The Chronicle of Higher Education*, A37