

Energy & Mineral Law Foundation

JOINT VENTURE POLICY

This Joint Venture Policy of the Energy & Mineral Law Foundation (“EMLF”) requires that the EMLF evaluate its participation in joint venture arrangements under Federal tax law and take steps to safeguard the EMLF’s exempt status with respect to such arrangements. It applies to any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment, or exempt-purpose activity as further defined in this policy.

1. Joint ventures or similar arrangements with taxable entities. For purposes of this policy, a joint venture or similar arrangement (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 EMLF 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 the tax purposes of the EMLF, a venture or arrangement is disregarded if it meets both of the following conditions:

- (a) 95% or more of the venture’s or arrangement’s income for its tax year ending within the EMLF’s tax year is excluded from unrelated business income taxation [including but not limited to: (i) dividends, interest, and annuities; (ii) royalties; (iii) rent from real property and incidental related personal property except to the extent of debt-financing; and (iv) gains or losses from the sale of property]; and
- (b) the primary purpose of the EMLF’s contribution to, or investment or participation in, the venture or arrangement is the production of income or appreciation of property.

2. Safeguards to ensure exempt status protection. The EMLF will: (a) negotiate in its transactions and arrangements with other members of the venture or arrangement such terms and safeguards adequate to ensure that the EMLF’s exempt status is protected; and (b) take steps to safeguard the EMLF’s exempt status with respect to the venture or arrangement. Some examples of safeguards include:

- (i) control over the venture or arrangement sufficient to ensure that it furthers the exempt purpose of the EMLF;
- (ii) requirements that the venture or arrangement gives priority to exempt purposes over maximizing profits for the other participants;
- (iii) that the venture or arrangement not engage in activities that would jeopardize the EMLF’s exemption;
- (iv) that all contracts entered into with the EMLF be on terms that are arm’s length or more favorable to the EMLF; and
- (v) the frequency of ventures or arrangements entered with other participants that are taxable entities.

This policy was approved at the Annual Meeting of the Board of Trustees of the Energy & Mineral Law Foundation on May 15, 2011 in Farmington, Pennsylvania.