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New Guidance from the IRS on Program-Related Investments

Yesterday, the Internal Revenue Service released [proposed regulations](#) providing new guidance to private foundations regarding program-related investments. The regulations offer nine new examples illustrating a wide range of investments that can qualify as PRIs.

These nine new examples illustrate certain general principles, such as the following:

- ▶ Charitable purposes that may be accomplished through a PRI are broad and include purposes such as combating environmental deterioration, promoting the arts, and advancing science.
- ▶ Many different kinds of investments may qualify as PRIs, including loans to individuals, tax-exempt organizations (e.g., a 501(c)(4) social welfare organization), guaranties, and equity investments in for-profit organizations.
- ▶ A credit enhancement arrangement also may qualify as a PRI.
- ▶ Funding activities in foreign countries, such as assisting poor farmers or responding to a natural disaster in a developing country, can further the accomplishment of charitable purposes and qualify as a PRI.
- ▶ A potentially high rate of return does not automatically prevent an investment from qualifying as program-related.

These examples reflect the types of investments that the IRS previously has recognized qualify as PRIs in private letter rulings issued to specific foundations. Having these examples in the tax regulations, as opposed to scattered non-precedential private rulings, should provide more comfort that these types of investments are viewed by the IRS as legitimate.

In addition, the new examples provide a sense of what certain foundations have been doing in the field and how PRIs have evolved, as the examples are based on real-world activity. My partner Rob Wexler co-chaired a PRI task force on behalf of the American Bar Association Section of Taxation that submitted proposed PRI examples to the IRS in March 2010, on which these proposed regulations are largely based.

Comments on the new regulations can be submitted to the IRS until July 18, 2012. We will consider submitting comments, depending on the responses that we receive from clients and friends.

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