

Title: IRS Promotes Use of Program-Related Investments

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The seeds of change are taking root in the nation's Capital. This past month, the IRS released proposed regulations that would add nine new examples of investments which qualify as "program-related investments" (PRIs) for private foundations.

Having the ability to make PRIs is advantageous for private foundations, which are required to make "qualifying distributions" each year of at least 5% of their net assets. Although most private foundations satisfy this requirement by making grants, they are also allowed to count PRIs as qualifying distributions and thus have additional opportunities for return on investment – provided that the IRS will recognize their investments as "program-related."

Until now, private foundations looking to make PRIs had to rely on outdated guidance codified roughly forty years ago. Clearly, much has changed since then, and private foundations should be relieved to hear that the IRS is finally coming around.

For the past several years, our firm has lamented about the barriers and uncertainty faced by private foundations seeking to use PRIs to drive positive social change. In his recently published book, [Social Enterprise: Empowering Mission-Driven Entrepreneurs](#) (American Bar Association, 2011) Marc Lane offers practical strategies to enable private foundations to invest in social enterprises. While we have actively supported the efforts of clients—social entrepreneurs, impact investors, and foundations—who organize Low-Profit Limited Liability Companies (L3Cs) to facilitate private foundations' investments in social enterprises, until now the IRS has not evidenced leadership. The release of the proposed regulations is a welcome impetus to the expanded use of PRIs as a way to promote charitable businesses.

The pre-existing guidance focused on the provision of relief to economically disadvantaged persons and improvement of deteriorating urban areas. While certainly important, these few examples are simply not reflective of all the social programs in need of funds today.

The new IRS examples should help promote an understanding of the much broader range of charitable purposes that can be served through PRIs. My hope is that private foundations feel the same way and will use PRIs more often and more strategically as a way to advance science, promote the arts, combat environmental deterioration, and otherwise. The possibilities are endless and the opportunities bountiful. The future is here and the tides of change are turning.

Although the proposed examples will not be effective until the Treasury publishes final regulations, the IRS has stated that taxpayers may rely on them now. I hope this IRS guidance, in conjunction with continuing reports of high-profile private foundations using PRIs (such as the Bill and Melinda Gates Foundation), will continue to spur the use of PRIs to advance social objectives. We encourage private foundations to contact Marc Lane at mlane@MarcJLane.com with any questions about this emerging trend. We remain eager to help you find the right solution in today's ever-changing legal landscape.

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