

Social Impact Bonds and Pay for Performance Transactions

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Charity Investment in Pay for Performance

- Program-related investment (primarily charitable)
- Mission-related investment (primarily an investment; must be prudent)
- Different tax rules for private foundations, publicly supported charities, supporting organizations, and donor advised funds



Internal Revenue Code Section 4944

“If a private foundation invests any amount in such a manner as to **jeopardize the carrying out of any of its exempt purposes**, there is hereby imposed on the making of such investment a tax equal to 10 percent of the amount so invested for each year (or part thereof) in the taxable period.”



Internal Revenue Code Section 4944

“Exception for program-related investments: For purposes of this section, investments, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property, shall not be considered as investments which jeopardize the carrying out of exempt purposes.”



Program-Related Investments

- Primary exempt purpose
 - ~ “significantly furthers” exempt activities
 - ~ “but for” test (wouldn’t make investment otherwise)
- No significant investment purpose
- No political purpose



What Is An Exempt Purpose Under Section 501(c)(3)?

- Charitable
- Religious
- Educational
- Scientific
- Literary
- Testing for public safety
- Foster national or international amateur sports competition
- Prevention of cruelty to children or animals



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