

# Complex PRI Issues

40<sup>TH</sup> ANNUAL NONPROFIT LAW CONFERENCE

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## Notice

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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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## Program Related Investments Overview

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## Sec. 4944 – Tax on Jeopardizing Investments

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- Section 4944 imposes an excise tax on a foundation that makes a “jeopardizing investment” – that is, an investment that jeopardizes the carrying out of the organization’s charitable purposes
  - Determination is made at the time of the investment, taking into account the entire portfolio
  - Jeopardizing investment is one in which managers did not use ordinary business care and prudence in making investment
  - Additional managers taxes may also apply if a manager participates in the investment, knowing it is a jeopardizing investment, unless such participation is not willful and is due to reasonable cause
  
- Section 4944 defines program-related investments and indicates they are NOT jeopardizing investments

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## Program-Related Investments (PRIs)

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- A PRI is an investment where:
  - The **primary purpose** is to accomplish a charitable purpose; **and**
  - **No significant purpose** is financial profit (“production of income or appreciation of property”); **and**
  - **No purpose** is lobbying or participation in political campaigns
  
- PRIs generally treated as “grant equivalents”
  - treated as grants for the 5% distribution requirement (§4942)
  - exempt from the excess business holdings rules (§4943)
  - not jeopardizing investments (§4944)

(Note: self-dealing rules apply and expenditure responsibility is required if PRI is not to a public charity)

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40<sup>th</sup> Annual Nonprofit Organizations Institute session  
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