Mendrygal Law PLLC

Complex PRI Issues

40TH 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.

Program Related Investments Overview

Sec. 4944 – Tax on Jeopardizing Investments

– 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)

– 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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Title search: Complex PRI Issues

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2023 Nonprofit Organizations eConference

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