

The logo for Bourland, Wall & Wenzel, P.C. features the letters 'BWW' in a large, elegant, black serif font. A light blue, stylized ampersand is positioned between the 'W's, with its top loop extending upwards and its bottom loop extending downwards.

Bourland, Wall & Wenzel, P.C.

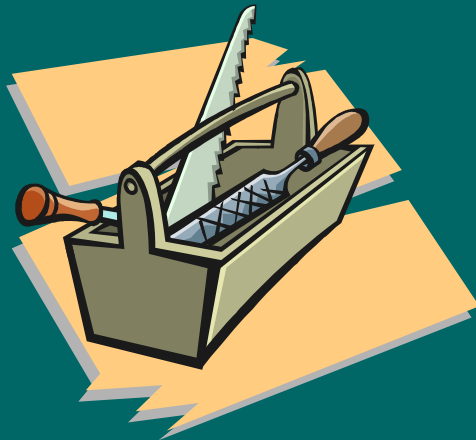
Program Related Investing

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A decorative graphic in the bottom right corner of the slide. It consists of three curved, light blue lines that sweep upwards and to the right. Each line has a small, solid blue circle at its end, resembling a stylized path or a series of data points.

Why PRIs?



- Provide alternative form of financing for charitable programs
- Enables recirculation/reinvestment of capital
- Tool allowing the PF ability to leverage philanthropic dollars

Exception to the Jeopardizing Investments Prohibition

- 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.

Treasury Regulation

53.4944-3

1. The primary purpose of the investment is to accomplish one or more of the purposes described in section 170(c)(2)(B);
2. No significant purpose of the investment is the production of income or the appreciation of property; and
3. No purpose of the investment is to accomplish one or more of the purposes described in section 170(c)(B)(2)(D) [political purposes].

The Primary Purpose Test

1. *Significantly furthers* PF's exempt purposes

- Examine PF's purposes
- Analyze how investment furthers purposes
- Analysis focuses on purposes, not tax status of recipient entity

2. Investment would not have been made *but for* relationship to PF's exempt purposes

- Provide contemporaneous documentation of due diligence

No Significant Investment Purpose Test

- ❓ Would for profit investors make same investment
 - Interest rate
 - Risk level
 - Level of security
 - Time to payout
- ❓ Would investment fit within parameters of PF's investment policy
- 🔑 Key is analyzing at front end of investment (document!)



No Political Purpose Test

- Absolute prohibition on:
 - Attempting to influence legislation (prohibition more strict than standard for PF)
 - Political campaign intervention



PRIs and the Prohibitions

- **Minimum Distribution Requirement:**
 - PRIs are qualifying distributions
 - Not included in asset base while outstanding
 - Recaptured in year repaid
- **Self-Dealing:**
 - Avoid improper “co-investments”
 - Avoid indirect self-dealing as a result of “controlled organization”

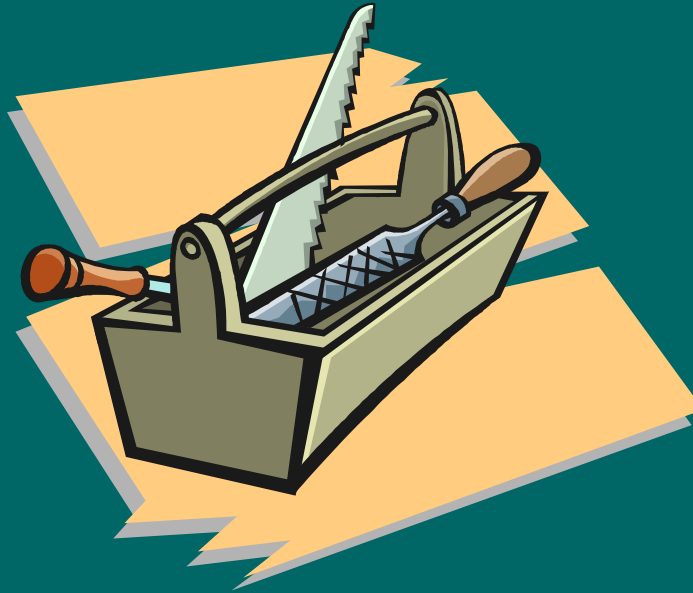
PRIs and the Prohibitions

- **Excess Business Holdings:**
 - Not applicable to PRIs (see 53.4943-10(b))
- **Jeopardizing Investments:**
 - By definition, if an investment is a PRI, it will not be a jeopardizing investment
 - Take care to meet *all* PRI elements

PRIs and the Prohibitions

- **Taxable Expenditures:** Must exercise ER where made to other than public charities*
 - Each investment made subject to written commitment signed on behalf of recipient
 1. Use all funds only for purposes of investment and repay any funds not so used (tweaked for equity investments)
 2. At least 1X/yr submit financial reports of type ordinarily required by commercial investors in like circumstances + statement of compliance with investment's terms
 3. Maintain and hold open to PF books and records adequate to provide info normally required by commercial investors in like circumstances
 4. Not use funds for lobbying/political campaign intervention
 5. If a PF, not make a grant which fails to comply with 4945(d)(3)(4)

Be Familiar with All the Tools at Your Disposal



- Due diligence checklist for PRIs included at Appendix 2 to Paper

Due Diligence Checklist

1. Check PF's governing docs, resolutions, and gift restrictions
2. Obtain/review proposal from applicant (determine if proposed investment is consistent with foundation's exempt purposes); identify programmatic rationale for proposed investment
3. Obtain/review info on proposed recipient and its key principals
4. Explore operational/business structure where necessary
5. Obtain/review year end financials for at least past 3 years including audited financial statements where available
6. Analyze project plan and proposed terms of investment and consider various risks (consider exit strategies)
7. Determine impact of PRI on PF's portfolio
8. Develop term sheet with financial terms including repayment terms and, as applicable, security, recourse, loan position
9. Develop appropriate legal docs with necessary requirements of PRIs (determine need/desire for PLR or a well-reasoned opinion of counsel)
10. Develop agreed-upon measurable programmatic goals and financial indicators for ongoing monitoring (determine need to exercise formal expenditure responsibility)
11. After closing, monitor programmatic goals and financial indicators (where applicable, conduct formal expenditure responsibility)
12. Report PRIs on 990-PF

The information set forth in this outline should not be considered legal advice, because every fact pattern is unique.

The information set forth herein is solely for purposes of discussion and to guide practitioners in their thinking regarding the issues addressed herein.

Non-lawyers are advised to consult an attorney before undertaking any issues addressed herein.

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