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Nonprofit Association Requests Guidance on Program-Related Investments.

Robert Collier of the Council of Michigan Foundations, in response to a request for items to be placed on the IRS 2013-2014 priority guidance plan (Notice 2013-22), has asked for guidance on program-related investments.

April 30, 2013

Internal Revenue Service

Attn: CC:PA:LPD:PR (Notice 2013-22)

Room 5203

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

Re: 2013-2014 Guidance Priority List

Sir/Madam:

This letter is in response to Notice 2013-22 and the Department of Treasury and the Internal Revenue Service's invitation for public comment on recommendations for items that should be included on the 2013-2014 Guidance Priority List. We appreciate the opportunity to provide input to formulate a guidance plan that focuses on guidance items that are important to taxpayers and tax administration.

As a Section 501(c)(3) membership association encompassing more than 350 grantmaking organizations, The Council of Michigan Foundations ("CMF") strongly urges the Department and Service to include in its Guidance Priority List guidance relating to program-related investments ("PRI" or "PRIs"). PRIs are an important, yet underutilized vehicle by which grantmakers may accomplish their charitable purposes. PRIs are underutilized, however, due to minimal guidance regarding qualifying investments and lack of a timely process for approving PRIs.

In 2012, the IRS issued proposed amendments to 26 C.F.R. § 53.4944-3 concerning PRIs. We expressed our comments to the amendments in a letter dated July 16, 2012, a copy of which is attached. We request that the Department and Service consider our letter and recommended course of action for improving the guidance relating to PRIs as part of the 2013-2014 Guidance Priority List.

Additionally, we recommend that further guidance be provided with respect to jeopardizing investments under Section 4944 of the Internal Revenue Code (the "Code"), and offer one other suggestion to allow private foundations to share rulings related to PRIs.

First, we request that the Service issue guidance that a mission-related investment (“MRI”) made primarily for charitable purposes is not a jeopardizing investment under Section 4944 of the Code. A “mission-related investment” is a commonly used term among grantmakers and refers to an investment made by a charitable organization to further one or more social objectives. Often, mission-related investments are made primarily for charitable purposes, and as such, are similar to PRIs in that the primary purpose of the investment is to accomplish one or more of the purposes described in Section 170(c)(2)(B). However, MRIs differ from program related investment in that the decision to make the investment is treated primarily as an investment decision rather than a programmatic decision by the foundation. Also, an MRI, whether or not made primarily for charitable reasons, is not treated as a qualifying distribution under Section 4942 of the Code.

Section 4944 of the Code and the regulations thereunder impose taxes on investments made by private foundations which jeopardize charitable purposes. 26 C.F.R. § 53.4944-1 contains care and prudence standards for making a determination as to whether an investment is a jeopardizing one. Guidance is requested to clarify that a mission-related investment made primarily for charitable purposes, or more broadly, any investment, the primary purpose of which is to accomplish one or more of the purposes described in Section 170(c)(2)(B), is not a jeopardizing investment under Section 4944 of the Code.

Finally, as described in the attached letter, we previously requested that the Service amend the regulations to allow rulings relating to PRIs to be relied upon by other parties. While we still urge the Service to give consideration to this suggestion, we offer one other recommendation regarding reliance on PRI rulings.

As you know, currently the Code and revenue procedures indicate that a taxpayer may not rely on a letter ruling issued to another taxpayer or use another taxpayer’s written determination as precedent. At least with respect to PRIs, this prohibition on reliance is especially frustrating. Often with economic development projects where a project cannot be financed on traditional commercial terms, multiple foundations may make substantially identical PRIs in the same project. We ask that the Service consider a procedure which would allow a ruling or determination issued to one foundation to be shared among, and relied upon by, foundations investing in the same project so long as the investments are made on substantially similar terms.

For example, assume XYZ Foundation applies for a private letter ruling that its investment in an urban investment fund will qualify as a PRI. The fund will make loans to growth-oriented businesses in target urban core areas. The target businesses face obstacles to traditional financing by being above the credit risk threshold for commercial bank loans and below the size and return threshold for other mezzanine financing. The fund’s principal purpose in making the loans is charitable, and more specifically, is intended to promote economic development, relieve the underprivileged, eliminate prejudice and discrimination and combat community deterioration. The loans significantly further the accomplishment of XYZ Foundation’s exempt activities and would not have been made but for such relationship between the loans and XYZ Foundation’s exempt activities. The urban investment fund is organized as a limited partnership and governed by a limited partnership agreement. Each private foundation investor will execute the limited partnership agreement of the fund and participate in the investment on substantially identical terms.

Assume that the Service makes a determination that XYZ Foundation’s investment in the urban investment fund constitutes a PRI. We request that this ruling be shared and relied upon by other private foundations that invest in the urban investment fund pursuant to the limited partnership agreement. Alternatively, each private foundation may make a loan to the urban investment fund utilizing template loan documents. Assuming that the Service makes a determination that XYZ Foundation’s loan to the urban investment fund constitutes a PRI, we request that this ruling be

shared and relied upon by other private foundations that loan to the urban investment fund utilizing the template loan documents.

On behalf of CMF, and our 350 member foundations, we thank you for the opportunity to provide recommendations for guidance on PRIs for inclusion on the 2013-2014 Guidance Priority List. We welcome future dialogue regarding our comments and suggested guidance for PRIs. If we can be of additional assistance, please let me know.

Sincerely,

Robert Collier

President and CEO

Council of Michigan Foundations

Grand Haven, MI

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