



North Carolina Law Life

PRI Regulations: a Step in the Right Direction for L3C Opportunities

By: Donna Ray Berkelhammer. Monday, June 18th, 2012

The L3C entity has been recognized in North Carolina for almost **two years** in an effort to stimulate **social enterprise**, but its use has been hamstrung because some federal tax implications have been highly speculative. Until recently.

The L3C or **low-profit limited liability company** was designed to bridge the gap between for-profit entities with a mission of **maximizing the profits** of the owners, and **non-profit** corporations, which have significant tax **filings** and restrictions that can **mire** a social enterprise business. The L3C allows owners of a private company to have both a business purpose and a social or environmental purpose.

The L3C statute uses language directly from federal tax law, which was intended to create a “safe harbor” for certain private foundations to invest their funds into L3C social enterprises that have similar purposes. Unfortunately, the **Internal Revenue Code** (i.e., the tax laws) did not specifically address whether L3Cs would be a “safe harbor” and the uncertainty has prevented investment.

Private foundations have to distribute at least 5% of their net assets each year to comply with federal tax law. The easiest way to do this is through grants, but in theory, these foundations could make “qualified distributions” to private companies as loans or equity investments. The federal regulations about “program-related investments” (PRI) are about 40 years old, while the L3C concept is brand new. Thus, the uncertainty surrounding whether an investment or loan to an L3C with a related mission would be permitted by the **IRS** without jeopardizing the private foundation’s tax status.

For a few more weeks, the **Treasury Department** is seeking public comment on **proposed regulations** that expand the examples of investments which qualify as program-related investments for private foundations.

Although this is moving at a snail’s pace, as does all federal regulatory work, it is a huge step in the right direction.

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