



The L³C **the for profit with a nonprofit soul**

PRIs and Private Letter Rulings

When I first conceptualized the L³C* it was with the idea of eliminating most private letter rulings from the PRI** equation. When we retained Marcus Owens of Caplin & Drysdale to write the actual legislation we asked him to find a way to insure as best he knew how that the L³C legislation would make private letter rulings unnecessary. He wrote the L³C legislation to dovetail with the federal IRS regulations relevant to Program Related Investments (PRIs) by foundations. Forming an L³C entails agreeing to comply with PRI regulations.

Somehow months after Vermont passed the first L³C law in the nation we have many in the nonprofit sector saying that private letter rulings are still required. Why?

First it is important to point out that there is not now and never has been any requirement in either federal law or IRS regulation that specifies that a foundation must get the approval of the IRS in any way, shape, or form before making a PRI. The IRS code is very clear as to what constitutes an acceptable PRI investment for a foundation. Yet like some urban myth, similar to the one about alligators living in the New York City sewer system, it refuses to die.

It is hard to know how this idea got started 40 years ago when PRIs first entered the code. It might have been due to unfamiliarity, newness, uniqueness of the actual deals, or simplicity of getting private letter rulings. It was probably a little of each. But now private letter rulings cost around \$50,000 or more in legal fees plus an \$8700 fee to the IRS and take 12 to 18 months. Hardly an efficient way to solve social problems.

Another part of the equation is that most PRI deals were "one offs." This probably led attorneys to recommend private letter rulings to insure that the unique characteristics of the deal still fit within the guidelines. Unfortunately because each deal is unique the IRS rightfully refuses to allow private letter rulings to set precedent. However, we used IRS private letter rulings as the basis to create the L³C. In doing so, we wanted the L³C to become a structure and a brand which stands for easy to make, replicable PRIs. Hopefully, as a brand it will make the concepts easy to grasp and thereby frequently used.

The L³C was built on the llc structure in order to provide the flexibility of membership and organization needed to cover a wide variety of social enterprise situations. It also makes it very easy for legislators to grasp since it does not create a new structure but merely amends the definition section of the llc acts in most states. That leaves 15+ years of legislation and litigation that is behind the llc intact behind the L³C. It also made the L³C totally legal throughout the US the moment the law became effective in Vermont since all the states have llc legislation.

We honestly believe if an L³C is used and the IRS regulations are followed there will not be an issue. No one asks permission to drive the posted speed limit why ask the IRS if you can follow their regulations?

Robert Lang, CEO of the Mary Elizabeth & Gordon B. Mannweiler Foundation.

* low profit limited liability company

** Program Related Investment

The Mary Elizabeth & Gordon B. MANNWEILER FOUNDATION INC.

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We leverage our resources to support and expand the breadth, reach, and self sufficiency of the socially beneficial sector and the resources available to achieve socially beneficial results.