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San Bernardino County Employees' Retirement Association

Origination: 8/9/2010
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Last Approved: N/A
Last Revised: 5/2/2024
Next Review: 3 years after approval
Area: Investments
References:
Applicability: SBCERA systemwide

Alternative Investment Structures

POLICY NO. 017

Background

The Board is aware that reviewing tax treatment is a highly fact specific activity, and as a result directs Staff to select the most favorable tax treatment in consultation with tax counsel and advisors. The Board is also aware of unresolved IRS issues dealing with unrelated business income tax and the myriad of legal opinions addressing the subject. Under IRS section 115, income derived from the exercise of an essential governmental function and accruing to a state or any political subdivision thereof is excluded from gross income for federal tax purposes. This policy codifies the Board's July 5, 2012 criteria to use ~~on-shore~~ onshore alternative investment structures if using an ~~off-shore~~ offshore structure will create for SBCERA Adverse Tax Consequences (ATC), examples of which include, but are not limited to 'effectively connected income' (ECI), any upfront withholding tax collected by a ~~counter-party~~ counterparty, or loss of United States treaty protections. In addition, this policy clarifies the Board's tax exemption position.

Policy

The Board directs staff to invest in ~~on-shore~~ onshore alternative investment structures, unless, after a fact specific evaluation was completed, using an ~~off-shore~~ offshore alternative investment structure was tax advantageous for SBCERA.

In addition, SBCERA asserts that it is an essential government function, and is tax-exempt under IRS section 115.

Attachments

No Attachments

Approval Signatures

Step Description	Approver	Date
Chief Counsel Review	Barbara Hannah: Chief Counsel	pending

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Step Description	Approver	Date
Investment Services Review	Donald Pierce: Chief Investment Officer	5/6/2024
Investment Services Review	Eydie Cox: Sr Investment Analyst	5/2/2024

Applicability

SBCERA, SBCERA Internal

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