DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF THE CHIEF COUNSEL

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The Honorable John Curtis
U.S. House of Representatives
Washington, DC 20515

Attention:

Dear Representative Curtis:

I am responding to your inquiry dated July 10, 2018, from your constituent, a county commissioner in your district. Your constituent asked about deadlines for investing in qualified opportunity zones under Section 1400Z-2, and whether certain businesses are eligible to be qualified opportunity zone businesses under Section1400Z-2(d)(3) of the Internal Revenue Code.

In December 2017, Congress passed the Tax Cuts and Jobs Act, Pub. L. No. 115-97, which amended the Code to add Sections 1400Z-1 and 1400Z-2. Section 1400Z-1 provides procedural rules for designating qualified opportunity zones in certain low-income communities and communities contiguous to the low-income communities. Section 1400Z-2 provides the following two incentives for investing in these qualified opportunity zones:

- First, a taxpayer may invest deferred gains in a qualified opportunity fund, and depending on the length of time holding that investment, exclude from tax a percentage of the original gain.
- Second, if a taxpayer holds the investment for at least ten years, they then may increase the basis in that investment to the fair market value at the time of sale or exchange.

The first incentive allows a taxpayer who invests gains from a sale or exchange into a qualified opportunity fund to defer paying taxes on that gain until the earlier of when the taxpayer disposes of its investment, or December 31, 2026. If a taxpayer holds an investment for at least five years, they may exclude ten percent of the original gain. If the taxpayer holds the investment for seven years, they can exclude an additional five percent of the original gain from tax.

The second incentive of Section 1400Z-2 is the stepped-up basis in Section1400Z-2(c). If the taxpayer elects to invest deferred gain into a qualified opportunity fund and holds that investment for at least ten years, the taxpayer may step up the basis of the investment to the fair market value when they sell the investment.

Your constituent asked whether certain businesses qualify as qualified opportunity zone businesses. A qualified opportunity zone business is a trade or business in which the taxpayer owns or leases substantially all the tangible property as qualified opportunity zone business property (Section 1400Z-2(d)(3)).The qualified opportunity zone business must meet the requirements of paragraphs (2), (4) and (8) of Section 1397C(b), and not be of the type described in Section 144(c)(6)(B).

Your constituent also asked about the deadlines for investing in qualified opportunity zones. Under Section 1400Z-1(f), the qualified opportunity zone designation lasts for 10 years. In addition, Section 1400Z-2(b)(1) requires that the taxpayer include deferred gain in the income in the year of sale or disposition of the investment, or December 31, 2026, whichever is earlier.

The IRS and Department of Treasury are diligently working on guidance for taxpayers to implement Section 1400Z-2 and plan to release guidance soon that will more fully address your constituent’s questions.

I hope this information is helpful. If you have any questions, please call or me at .

Sincerely,

Shareen S. Pflanz
Acting Branch Chief, Branch 5
Office of Chief Counsel
Income Tax & Accounting