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November 30, 2018

VIA OVERNIGHT DELIVERY

CC:PA:LPD:PR (REG-115420-18)
Room 5203
Internal Revenue Service
PO Box 7604, Ben Franklin Station
Washington, DC 20044

Re: Request for Clarification Regarding Whether Capital Gains Generated by a Member of a Consolidated Return Group can be Treated as Generated by Other Members of Consolidated Return Group for Purposes of Investment in a Qualified Opportunity Zone

To Whom It May Concern:

In connection with a comment on the proposed Treasury Regulations relating to Section 1400Z-2 of the Internal Revenue Code relating to the deferral of gains through a taxpayer's investment in a qualified opportunity fund, please find a request for comment prepared by Kutak Rock LLP.

Please don't hesitate to contact me at (402) 231-8731 if you need anything further.

Sincerely,



Robert D. Coon

Enclosure

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Re: Request for Clarification Regarding Whether Capital Gains Generated by a Member of a Consolidated Return Group can be Treated as Generated by Other Members of Consolidated Return Group for Purposes of Investment in a Qualified Opportunity Zone.

To Whom It May Concern:

We are grateful for this opportunity to submit a comment on the proposed Treasury Regulations relating to Section 1400Z-2 of the Internal Revenue Code relating to the deferral of gains through a taxpayer's investment in a qualified opportunity fund ("QOF") (the "Regulations"). As a firm, we represent a number of investors, syndicators, lenders and financial institutions who are affiliates of consolidated return groups. We write this comment to request further clarity as to how the Regulations will apply to consolidated return groups when taxpayer who is a member of a consolidated-return filing group invest in a QOF.

The Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054, 2184 (2017) amended the Internal Revenue Code to add Section 1400Z-2 (the "QO Statute") designating qualified opportunity zones ("QOZ"), and allowing taxpayers who invest in such QOZs to defer certain capital gains to the extent that such gains are invested in a qualified opportunity fund ("QOF"). As stated in the Regulations, the purpose of Section 1400Z-2 is to generate investment and increased economic activity in certain communities by extending tax benefits to QOFs who invest in such communities.

Section 1501, et. seq. of the Internal Revenue Code and the implementing Treasury Regulations (the "Consolidated Return Rules") permit members of an affiliated group of entities connected through common ownership to file a consolidated tax return. The primary effect of filing a consolidated tax return is to aggregate the tax attributes generated by disparate members of an affiliated group as if such attributes were instead generated by a single entity. This includes netting all capital gains and losses generated by all members of the consolidated return group.

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The QO Statute permits the deferral of gains for taxpayers who invest in a QOF. The statute does not provide additional information for who will qualify as a taxpayer for these purposes. In recognition of this ambiguity, the Regulations include certain special rules applicable to partnerships and other such entities that intend to clarify whether beneficial owners of pass-through entities can qualify for the tax benefits provided by the QO Statute by investing their capital gains through such entities. The Treasury Regulations provide that these owners can invest in QOFs, and receive the benefits of investing in a QOZ. In connection with these rules, the IRS specifically requests whether further clarification as to whether more detailed rules are required in this regard. To our knowledge, the IRS has not addressed how investments made by a member of a consolidated return-filing group

As a result of the foregoing, we believe the capital gains generated by a member of a consolidated return group should be treated as generated by the consolidated return group for purposes of QO Statute. This would be consistent with the intention of the Consolidated Return Rules to treat the capital gains generated by each member of the consolidated return as though such gains were generated by a single entity. This would substantially increase the amount of capital gains eligible for investment in QOFs, as a consolidated return group would be able to centralize the entity or entities investing in such QOFs. Finally, this result is consistent with how pass-through entities are treated for purposes of the Regulations, which treats the capital gains generated by the beneficial owners of such entities as though the capital gains were generated by the entity making the direct investment in a QOF.

We appreciate this opportunity to provide our comments. Please contact Robert D. Coon, Partner, at (402) 231-8731, if you have any questions or you would like to discuss any of the foregoing in greater detail.

Kindest regards,


Robert D. Coon