



December 23, 2020

Office of Associate Chief Counsel (Income Tax and Accounting)
Attention: Erika C. Reigle and Kyle C. Griffin
Internal Revenue Service (IRS)
1111 Constitution Avenue, NW
Washington, D.C. 20224

CC:PA:LPD:PR
(IRS Review of Regulatory Relief)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Opportunity Zones Compliance Relief Requested due to Continuing COVID-19 Impact

Dear Ms. Reigle and Mr. Griffin:

The Novogradac Opportunity Zones Working Group (OZ Working Group) is writing to request further relief from certain provisions under Internal Revenue Code (IRC) Section 1400Z-2 and the regulations thereunder due to ongoing and future business impacts of the current COVID-19 pandemic.

The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) have broad authority under IRC Section 7508A to postpone certain deadlines by reason of Presidentially Declared Disaster. The previously issued IRS Notice 2020-39 extended certain opportunity zones- (OZ-) related deadlines to Dec. 31, 2020. As of the date of this letter, the Presidential Disaster Declarations issues due to the COVID-19 pandemic remain ongoing and are expected to continue into 2021. We believe additional extensions of the relief provided in Notice 2020-39 are within the scope of the agencies' regulatory authority.

The OZ Working Group includes various participants in community development finance: investors, lenders, for-profit and nonprofit developers, community development financial institutions, trade organizations and other related professionals. Our request represents collective input from these stakeholders as to how to make OZ incentive more impactful to low-income communities.

The OZ Working Group appreciates your consideration of issues related to OZ compliance as investors, qualified opportunity fund sponsors, OZ businesses and other organizations struggle with the national impact of COVID-19. We note that the IRS has broad regulatory authority under IRC Section 7508A and robust disaster relief provisions in Rev. Proc. 2018-58. We believe this authority has been triggered by the President's declaration of a national emergency on March 13, 2020, which included his instruction to the Secretary of Treasury to provide relief from tax deadlines under Section 7508A and encouraged requests for a declaration of a major disaster. In response to this declaration, the IRS issued Notice 2020-23 and Notice 2020-39, which extended certain deadlines and provided



other relief to taxpayers affected by COVID-19. As we remain under a state of national emergency, we request that the IRS and Treasury further postpone these deadlines and provide other relief related to the OZ incentive.

Notwithstanding the authority the IRS and the Treasury have with respect to disaster relief, the OZ Working Group is requesting the following additional relief:

- IRS Notice 2020-23 provided relief whereby if the last day of a taxpayer's 180-day investment period within which a taxpayer must make an investment into a qualified opportunity fund (QOF) falls on or after April 1, 2020, and before July 15, 2020, were postponed to July 15, 2020. IRS Notice 2020-39 extended this postponement from July 15, 2020, to Dec. 31, 2020. We are requesting that this postponement be extended to June 30, 2021.
- IRS Notice 2020-39 provided relief for QOFs whose last day of the first six-month period of the taxable year or last day of the taxable year falls within the period beginning on April 1, 2020, and ending on Dec. 31, 2020, by waiving penalties for failure of the QOF's 90% investment standard by establishing that the failure is due to reasonable cause under Section 1400Z-2(f)(3). We are requesting that this relief be extended to any 90% investment standard testing dates occurring through June 30, 2021.
- IRS Notice 2020-39 provided relief for QOFs and qualified OZ businesses by disregarding the period beginning on April 1, 2020, and ending on Dec. 31, 2020, in determining any 30-month substantial improvement period. We are requesting that this disregarded period be extended to June 30, 2021.
- As a result of the federally declared disaster for purposes of IRC Section 165(i)(5)A, all qualified OZ businesses holding working capital assets intended to be covered by the working capital safe harbor before Dec. 31, 2020, receive not more than an additional 24 months to expend the working capital assets of the qualified OZ business, as long as the qualified OZ business otherwise meets the requirements to qualify for the working capital safe harbor. Treasury regulation 1.1400Z2(d)-1(d)(3)(v)(D) provides that a qualified OZ business may receive up to an additional 24 months for a total of 55 months to consume its working capital assets under the working capital safe harbor if the QOZB is located in a qualified opportunity zone within a Federally declared disaster area. We are requesting that the potential additional 24 months to expend working capital assets rule be extended to working capital assets intended to be covered by the working capital safe harbor before June 30, 2021.
- IRS Notice 2020-39 provided relief by extending a QOF's normal 12-month reinvestment period to reinvest the proceeds received by the QOF from the return of capital or the sale or disposition of some or all of the QOF's qualified OZ property to up to an additional 12 months provided that the 12-month period included Jan. 20, 2020, and that the QOF satisfies the requirements of Section 1.1400Z2(f)-1(b)(1) and invests the proceeds in the manner originally intended before Jan. 20, 2020. We are requesting that any QOF's reinvestment period that includes any day that falls within the period beginning Jan. 20, 2020, through Dec. 31, 2020, receives up to an additional 12 months to reinvest and that the period beginning Jan. 20, 2020, through Dec. 31, 2020, is disregarded.
- Provide relief to businesses by confirming that qualified OZ businesses that are forced to rework or dramatically alter their plans for the development of a trade or business and, as a consequence, their written plans and schedules, as a result of the impact of a federally declared disaster, are not considered to fail the working capital safe harbor requirement to use working capital assets in a manner substantially consistent with their written plan and schedule.

As we remain under a state of national emergency, we request that the IRS and Treasury further postpone the above deadlines related to OZs as investors, QOF sponsors, OZ businesses and other organizations struggle to recover from the national impact of COVID-19.

Thank you for your consideration of these requests. Please contact us if you have any comments or questions regarding the matters discussed above.

Very truly yours,

Novogradac & Company LLP



By

Michael J. Novogradac, Managing Partner

Novogradac & Company LLP



By

John S. Sciarretti, Partner

CC: Michael Novey, Office of Tax Policy, Treasury

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