



[4830-01-P]

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

[TD 9889]

RIN 1545–BO4

Investing in Qualified Opportunity Funds; Correcting Amendments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to Treasury Decision 9889, which was published in the **Federal Register** on Monday, January 13, 2020. Treasury Decision 9889 contained final regulations under the Internal Revenue Code (the “Code”) that govern the extent to which taxpayers may elect the Federal income tax benefits with respect to certain equity interests in a qualified opportunity fund (QOF).

DATES: These corrections are effective on April 1, 2020, and applicable as of January 13, 2020.

FOR FURTHER INFORMATION CONTACT: Concerning section 1400Z-2 and these regulations generally, Alfred H. Bae, (202) 317-7006, or Kyle C. Griffin, (202) 317-4718, of the Office of Associate Chief Counsel (Income Tax and Accounting); concerning issues related to C corporations and consolidated groups, Jeremy Aron-Dine, (202) 317-6848, or Sarah Hoyt, (202) 317-5024, of the Office of Associate Chief Counsel (Corporate); concerning issues related to gains from financial contracts, REITs, or RICs, Andrea Hoffenson or Pamela Lew, (202) 317-7053, of the Office of Associate Chief Counsel (Financial Institutions and Products); concerning issues related to investments

by foreign persons, Eric Florenz, (202) 317-6941, or Milton Cahn (202) 317-6937, of the Office of Associate Chief Counsel (International); concerning issues related to partnerships, S corporations or trusts, Marla Borkson, Sonia Kothari, or Vishal Amin, at (202) 317-6850, and concerning issues related to estates and gifts, Leslie Finlow or Lorraine Gardner, at (202) 317-6859, of the Office of Associate Chief Counsel (Passthroughs and Special Industries). These numbers are not toll-free numbers.

#### SUPPLEMENTARY INFORMATION:

##### **Background**

The final regulations (TD 9889) that are the subject of this correction are under section 1400Z-2 of the Code.

##### **Need for Correction**

As published on January 13, 2020 (85 FR 1866) contained errors that may prove to be misleading and need to be corrected.

##### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

##### **Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

#### **PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 1.1400Z2-0 is amended:

a. By revising the entry for §1.1400Z2(a)-1(d)(2);

- b. In the entry for §1.1400Z2(b)-1(h) introductory text, by removing the language “S corporations”; and
- c. By revising the entry for §1.1400Z2(d)-1(a)(4).

The revisions read as follows:

**§1.1400Z2-0 Table of Contents.**

\* \* \* \* \*

*§ 1.1400Z2(a)-1 Deferring tax on capital gains by investing in opportunity zones.*

\* \* \* \* \*

(d) \* \* \*

(2) Annual reporting of qualifying investments.

\* \* \* \* \*

*§ 1.1400Z2(d)-1 Qualified opportunity funds and qualified opportunity zone  
businesses.*

(a) \* \* \*

(4) [Reserved]

\* \* \* \* \*

**Par. 3.** Section 1.1400Z2(a)-1 is amended:

- a. In paragraph (b)(3) by adding the language “described in §1.1400Z2(d)-2(d)(4)(ii) that is” after the words “means the test”;
- b. In the last sentence of paragraph (b)(11)(ix)(A)(2), by removing the language “publications” and adding in its place “instructions”;
- c. In paragraph (b)(32), by removing the word “business”;
- d. In the last sentence of paragraph (c)(1)(iii)(A), by removing the word “only” before “apply”; and
- e. By revising paragraphs (d)(2), (g)(2) introductory text, and (g)(2)(i).

The revisions read as follows:

**§1.1400Z2(a)-1 Deferring tax on capital gains by investing in opportunity zones.**

\* \* \* \* \*

(d) \* \* \*

(2) *Annual reporting of qualifying investments.* An eligible taxpayer must report any qualifying investment held at any point during the taxable year in accordance with guidance published in the Internal Revenue Bulletin or in forms and instructions (see §§601.601(d)(2) and 601.602 of this chapter). A failure to make this report for any given taxable year will result in a rebuttable presumption that the taxpayer has had an inclusion event described in §1.1400Z2(b)-1(c) during that year. The presumption described in the previous sentence may be rebutted by the taxpayer making the report described in the first sentence of this paragraph (d)(2) or by the taxpayer establishing to the satisfaction of the

Commissioner that an inclusion event described in §1.1400Z2(b)-1(c) did not occur during that taxable year.

\* \* \* \* \*

(g) \* \* \*

(2) *Prior periods.* With respect to eligible gains that would be recognized (absent the making of a deferral election) during the portion of a taxpayer's first taxable year ending after December 21, 2017, and during taxable years beginning after December 21, 2017, and on or before March 13, 2020, a taxpayer may choose either—

(i) To apply the section 1400Z-2 regulations, if applied in a consistent manner for all such taxable years (reliance by a taxpayer under paragraph (g)(2)(ii) of this section, §1.1400Z2(b)-1(j)(2)(ii), §1.1400Z2(d)-1(e)(2)(ii), §1.1400Z2(d)-2(e)(2)(ii), or §1.1400Z2(f)-1(d)(2)(ii), is disregarded solely for purposes of the consistency requirement under this paragraph (g)(2)(i)); or

\* \* \* \* \*

**Par. 4.** Section 1.1400Z2(b)-1 is amended:

- a. In the last sentence of paragraph (c)(6)(ii)(B), by removing “§1400Z2(c)-1(b)(1)(ii)” and adding in its place “§1.1400Z2(c)-1(b)(1)(ii)”; and
- b. By revising paragraphs (j)(2) introductory text and (j)(2)(i).

The revisions read as follows:

**§1.1400Z2(b)-1 Inclusion of gains that have been deferred under section 1400Z-2(a)**

\* \* \* \* \*

(j) \* \* \*

(2) *Prior periods.* With respect to the portion of a taxpayer's first taxable year ending after December 21, 2017, and for taxable years beginning after December 21, 2017, and on or before March 13, 2020, a taxpayer may choose either—

To apply the section 1400Z-2 regulations, if applied in a consistent manner for all such taxable years (reliance by a taxpayer on paragraph (j)(2)(ii) of this section, §1.1400Z2(a)-1(g)(2)(ii), §1.1400Z2(d)-1(e)(2)(ii), §1.1400Z2(d)-2(e)(2)(ii), or §1.1400Z2(f)-1(d)(2)(ii), is disregarded solely for purposes of the consistency requirement under this paragraph (j)(2)(i)); or

\* \* \* \* \*

**§1.1400Z2(c)-1 [Amended]**

**Par. 5.** Section 1.1400Z2(c)-1 is amended:

- a. In the first sentence of paragraph (b)(2)(ii)(A), by removing the language “one of more partnerships” and adding in its place “one or more partnerships”; and
- b. In the third sentence of paragraph (b)(2)(ii)(B)(1), by removing “§1400Z2(b)-1(c)(6)(iv)(B)” and adding in its place “§1.1400Z2(b)-1(c)(6)(iv)(B)”.

**Par. 6.** Section 1.1400Z2(d)-1 is amended:

- a. In the first sentence of paragraph (b)(2)(i)(C)(2)(ii), by removing the language “not later than” and adding in its place “not earlier than”;
- b. By revising paragraph (b)(4)(ii);
- c. In the first sentence of paragraph (c)(2)(i)(C)(2), by removing the language “is made by” and adding in its place “may be made by”;
- d. In paragraph (d)(3)(v)(D), by removing the language “receive up to” and adding in its place “receive not more than”;
- e. By removing paragraphs (d)(3)(v)(F) and (G);
- f. By revising paragraphs (d)(3)(vi) and (vii);
- g. By redesignating paragraphs (d)(3)(ix) and (x) as (d)(3)(viii) and (ix), respectively; and
- h. By revising paragraphs (d)(6)(i) and (iii), (e)(2) introductory text, and (e)(2)(i).

The revisions read as follows:

**§1.1400Z2(d)-1 Qualified opportunity funds and qualified opportunity zone businesses.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) *Property owned by an eligible entity—(A) Property purchased or constructed.*

The value of each property owned by an eligible entity that is acquired by purchase for fair market value or constructed for fair market value is the eligible entity's unadjusted cost basis of the asset under section 1012 or section 1013. Solely for purposes of this paragraph (b)(4)(ii)(A), the acquisition by a QOF of qualified opportunity zone stock or a qualified opportunity zone partnership interest is treated as a purchase of such interest by the QOF.

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(vi) *Safe harbor for section 1397C requirements other than “sin business” prohibition--(A) Maximum 62-month safe harbor for start-up businesses.*

Property described in paragraphs (d)(3)(vi)(B), (C), and (D) of this section may benefit from one or more 31-month periods, for a total of 62 months, in the form of multiple overlapping or a sequential application of the working capital safe harbor if--

(1) Each application independently satisfies all of the requirements in paragraphs (d)(3)(v)(A) through (C) of this section;

(2) The working capital assets from an expiring 31-month period were expended in accordance with the requirements in paragraphs (d)(3)(v)(A) through (C) of this section;

(3) The subsequent infusions of working capital assets form an integral part of the plan covered by the initial working capital safe harbor period; and

(4) Each overlapping or sequential application of the working capital safe harbor includes a substantial amount of working capital assets (which may include debt instruments described in section 1221(a)(4)).

*(B) Safe harbor for gross income derived from the active conduct of business.*

Solely for purposes of applying the 50-percent test in section 1397C(b)(2) to the definition of a qualified opportunity zone business in section 1400Z-2(d)(3), if any gross income is derived from property that paragraph (d)(3)(v) of this section treats as a reasonable amount of working capital, then that gross income is counted toward satisfaction of the 50-percent test.

*(C) Safe harbor for use of intangible property.* Solely for purposes of applying the use requirement in section 1397C(b)(4) to the definition of a qualified opportunity zone business under section 1400Z-2(d)(3), intangible property purchased or licensed by the trade or business, pursuant to the reasonable written plan with a written schedule for the expenditure of the working capital, satisfies the use requirement during any period in which the business is proceeding in a manner that is substantially consistent with paragraphs (d)(3)(v)(A) through (C) of this section.

*(D) Safe harbor for working capital and property on which working capital is being expended--(1) Working capital.* If paragraph (d)(3)(v) of this section treats property of an entity that would otherwise be nonqualified financial property as being a reasonable amount of working capital because of compliance with the

three requirements of paragraphs (d)(3)(v)(A) through (C) of this section, the entity satisfies the requirements of section 1400Z-2(d)(2)(D)(i) only during the working capital safe harbor period(s) for which the requirements of paragraphs (d)(3)(v)(A) through (C) of this section are satisfied; however such property is not qualified opportunity zone business property for any purpose.

(2) *Tangible property acquired with covered working capital.* If tangible property referred to in paragraph (d)(3)(v)(A) of this section is expected to satisfy the requirements of section 1400Z-2(d)(2)(D)(i) as a result of the planned expenditure of working capital described in paragraph (d)(3)(v)(A), and is purchased, leased, or improved by the trade or business, pursuant to the written plan for the expenditure of the working capital, then the tangible property is treated as qualified opportunity zone business property satisfying the requirements of section 1400Z-2(d)(2)(D)(i), during that and subsequent working capital periods the property is subject to, for purposes of the 70-percent tangible property standard in section 1400Z-2(d)(3).

(vii) *Examples.* The following examples illustrate the rules of paragraphs (d)(3)(v) and (vi) of this section.

(A) *Example 1. General application of working capital safe harbor—(1) Facts.*

QOF F creates a domestic C corporation E to open a fast-food restaurant and acquires almost all of the equity of E in exchange for cash. E has a written plan and a 20-month schedule for the use of this cash to establish the restaurant.

Among the planned uses for the cash are identification of favorable locations in the qualified opportunity zone, leasing a building suitable for such a restaurant,

outfitting the building with appropriate equipment and furniture (both owned and leased), necessary security deposits, obtaining a franchise and local permits, and the hiring and training of kitchen and wait staff. Not-yet-disbursed amounts were held in assets described in section 1397C(e)(1), and these assets were eventually expended in a manner consistent with the plan and schedule.

(2) *Analysis.* E's use of the cash qualifies for the working capital safe harbor described in paragraph (d)(3)(v) of this section.

(B) *Example 2. Multiple applications of working capital safe harbor—(1) Facts.*

QOF G creates a domestic C corporation H to start a new technology company and acquires equity of H in exchange for cash on Date 1. In addition to H's rapid deployment of capital received from other equity investors, H writes a plan with a 30-month schedule for the use of the Date 1 cash. The plan describes use of the cash to research and develop a new technology (Technology), including paying salaries for engineers and other scientists to conduct the research, purchasing, and leasing equipment to be used in research and furnishing office and laboratory space. Approximately 18 months after Date 1, on Date 2, G acquires additional equity in H for cash, and H writes a second plan. This new plan has a 25-month schedule for the development of a new application of existing software (Application), to be marketed to government agencies. Among the planned uses for the cash received on Date 2 are paying development costs, including salaries for software engineers, other employees, and third-party consultants to assist in developing and marketing the new application to the anticipated customers. Not-yet-disbursed amounts that were scheduled for development of the Technology

and the Application were held in assets described in section 1397C(e)(1), and these assets were eventually expended in a manner substantially consistent with the plans and schedules for both the Technology and the Application.

(2) *Analysis.* H's use of both the cash received on Date 1 and the cash received on Date 2 qualifies for the working capital safe harbor described in paragraph (d)(3)(v) of this section.

(C) *Example 3. General application of working capital safe harbor—(1) Facts.* In 2019, Taxpayer H realized \$w million of capital gains and within the 180-day period invested \$w million in QOF T, a qualified opportunity fund. QOF T immediately acquired from partnership P a partnership interest in P, solely in exchange for \$w million of cash. P immediately placed the \$w million in working capital assets, which remained in working capital assets until used. P had written plans to acquire land in a qualified opportunity zone on which it planned to construct a commercial building. Of the \$w million, \$x million was dedicated to the land purchase, \$y million to the construction of the building, and \$z million to ancillary but necessary expenditures for the project. The written plans provided for purchase of the land within a month of receipt of the cash from QOF T and for the remaining \$y and \$z million to be spent within the next 30 months on construction of the building and on the ancillary expenditures. All expenditures were made on schedule, consuming the \$w million. During the taxable years that overlap with the first 31-month period, P had no gross income other than that derived from the amounts held in those working capital assets. Prior to completion of the building, P's only assets were the land it purchased, the

unspent amounts in the working capital assets, and P's work in process as the building was constructed.

(2) *Analysis*—P met the three requirements of the safe harbor provided in paragraphs (d)(3)(v)(A) through (C) of this section. P had a written plan to spend the \$w received from QOF T for the acquisition, construction, and/or substantial improvement of tangible property in a qualified opportunity zone, as defined in section 1400Z-1(a). P had a written schedule consistent with the ordinary start-up for a business for the expenditure of the working capital assets. And, finally, P's working capital assets were actually used in a manner that was substantially consistent with its written plan and the ordinary start-up of a business. First, the \$x million, the \$y million, and the \$z million are treated as reasonable in amount for purposes of sections 1397C(b)(2) and 1400Z-2(d)(3)(A)(ii). Second, because P had no other gross income during the 31 months at issue, 100 percent of P's gross income during that time is treated as derived from an active trade or business in the qualified opportunity zone for purposes of satisfying the 50-percent test of section 1397C(b)(2). Third, for purposes of satisfying the requirement of section 1397C(b)(4), during the period of land acquisition and building construction a substantial portion of P's intangible property is treated as being used in the active conduct of a trade or business in the qualified opportunity zone. Fourth, all of the facts described are consistent with QOF T's interest in P being a qualified opportunity zone partnership interest for purposes of satisfying the 90-percent investment standard in section 1400Z-2(d)(1).

(3) *Analysis if P had purchased an existing building.* The conclusions would also apply if P's plans had been to buy and substantially improve a pre-existing commercial building. In addition, the fact that P's basis in the building has not yet doubled would not cause the building to fail to satisfy section 1400Z-2(d)(2)(D)(i)(III).

(D) *Example 4. Multiple applications of working capital safe harbor to tangible property—*(1) *Facts.* QOF A forms a domestic C corporation B to develop a large mixed-use real estate development that will consist of commercial and residential real property, owning almost all of the equity of B in exchange for cash. To raise additional working capital for the mixed-use real estate development, B also will borrow cash under a new revolving credit agreement with an unrelated lender. B has a master written plan for the completion of the commercial and residential real property over a 55-month period. The plan provides that the commercial real property will be completed over a 30 month schedule and subsequently, the residential real property will be completed over a 25 month schedule. The plan further provides that a portion of the commercial real property is unable to be used in a trade or business after the completion of the commercial real property since that portion of the commercial real property will be unusable during the residential construction phase. Pursuant to B's original master plan for the completion of the real estate development, QOF A acquires additional equity in B for cash after the completion of the commercial development phase, and B commences use of those working capital assets for residential development phase.

(2) *Analysis.* B's use of the cash for the commercial and residential phase qualified for the working capital safe harbor described in paragraph (d)(3)(v) of this section. In addition, all of B's commercial real property developed pursuant to B's original master plan is treated as qualified opportunity zone business property under paragraph (d)(3)(vi)(D) of this section.

\* \* \* \* \*

(6) \* \* \*

(i) For purposes of the *90-percent qualified opportunity zone business holding period* requirements set forth in sections 1400Z-2(d)(2)(B)(i)(III), 1400Z-2(d)(2)(C)(iii), and 1400Z-2(d)(2)(D)(i)(III), if a trade or business causes the QOF to fail the *90-percent investment standard* on a semiannual testing date, the QOF may treat the stock or partnership interest in that trade or business as qualified opportunity zone property for that semiannual testing date provided the trade or business corrects the failure within 6 months of the date on which the stock or partnership interest lost its qualification.

\* \* \* \* \*

(iii) Each QOF is permitted only one correction for a trade or business pursuant to this paragraph (d)(6). If the entity, at the end of the additional six-month cure period, fails to qualify as a qualified opportunity zone business, then the QOF becomes subject to the penalty under section 1400Z-2(f)(1) for each month the entity failed to qualify as a qualified opportunity zone business beginning with the

first month following the last month that the QOF met the *90-percent investment standard*.

(e) \* \* \*

(2) *Prior periods*. With respect to the portion of a taxpayer's first taxable year ending after December 21, 2017, and for taxable years beginning after December 21, 2017, and on or before March 13, 2020, a taxpayer may choose either—

(i) To apply the section 1400Z-2 regulations, if applied in a consistent manner for all such taxable years (reliance by a taxpayer on paragraph (e)(2)(ii) of this section, §1.1400Z2(a)-1(g)(2)(ii), §1.1400Z2(b)-1(j)(2)(ii), §1.1400Z2(d)-2(e)(2)(ii), or §1.1400Z2(f)-1(d)(2)(ii), is disregarded solely for purposes of the consistency requirement under this paragraph (e)(2)(i)); or

\* \* \* \* \*

**Par. 7.** Section 1.1400Z2(d)-2 is amended by revising paragraphs (d)(4)(i) and (ii), (e)(2) introductory text, and (e)(2)(i) to read as follows:

**§1.1400Z2(d)-2 Qualified opportunity zone business property.**

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(i) *Qualified tangible property*. Tangible property used in a trade or business of an eligible entity satisfies the *substantially all* requirement of paragraph (d)(1) of this

section if and only if the tangible property is qualified tangible property. Qualified tangible property is tangible property that satisfies the requirements of paragraph (d)(4)(ii), (iii) (subject to the limitation in paragraph (d)(4)(iv) of this section), or (v) of this section.

(ii) *70-percent use test.* Tangible property held by a trade or business is qualified tangible property to the extent, based on the number of days between two consecutive semiannual testing dates, not less than 70 percent of the total utilization of the tangible property by the trade or business occurs at a location within the geographic borders of a qualified opportunity zone (that is, the 70-percent use test).

\* \* \* \* \*

(e) \* \* \*

(2) *Prior periods.* With respect to the portion of a taxpayer's first taxable year ending after December 21, 2017, and for taxable years beginning after December 21, 2017, and on or before March 13, 2020, a taxpayer may choose either—

(i) To apply the section 1400Z-2 regulations, if applied in a consistent manner for all such taxable years (reliance by a taxpayer on paragraph (e)(2)(ii) of this section, §1.1400Z2(a)-1(g)(2)(ii), §1.1400Z2(b)-1(j)(2)(ii), §1.1400Z2(d)-1(e)(2)(ii), or §1.1400Z2(f)-1(d)(2)(ii), is disregarded solely for purposes of the consistency requirement under this paragraph (e)(2)(i)); or

\* \* \* \* \*

**Par. 9.** Section 1.1400Z2(f)-1 is amended:

- a. In paragraph (b)(2), by removing the language “up to” and adding in its place “not more than”;
- b. By revising paragraph (c)(3)(iii);
- c. In the first sentence of paragraph (c)(3)(v)(B), by adding a comma after “hog and pig farming” and removing the word “is” and adding in its place “comprise”;  
and
- d. By revising paragraphs (d)(2) introductory text and (d)(2)(i).

The revisions read as follows:

**§1.1400Z2(f)-1 Administrative rules- penalties, anti-abuse, etc.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(iii) *Example 3—(A) Facts.* Entity C is a QOF that meets the requirements of section 1400Z-2(d)(1). Entity C owns qualified opportunity zone stock in a domestic corporation described in section 1400Z-2(d)(2)(B) (Corporation C), which operates a qualified opportunity zone business. Entity C also owns Corporation D stock, which is not qualified opportunity zone stock, which stock is

less than 10% of the assets of Entity C. Under section 1400Z-2(e)(2), these stock holdings cause Entity C to be related to both Corporation C and Corporation D. On date 1, under section 1400Z-2(e)(2), Individual S is not a related person with respect to Entity C, Corporation C, or Corporation D. On that date, Individual S sells tangible property to Corporation C (Asset 1) for use in Corporation C's qualified opportunity zone business and sells a second asset to Corporation D (Asset 2). Both items sold were capital assets (as defined in section 1221), and had an adjusted basis of \$0. As a result, Individual S realizes gain of \$100 from the sale to Corporation C and \$75 from the sale to Corporation D. At the time of the sale Individual S has a plan or intent to invest \$175 in Entity C and to make deferral elections under section 1400Z-2(a)(1) with respect to the gain from the two sales. On date 2, for \$175 Individual S acquired an eligible interest in Entity C, an acquisition that causes Individual S to become a related person with respect to Entity C within the meaning of section 1400Z-2(e)(2). *Analysis.* Under paragraph (c)(1) of this section, Individual S's \$175 gain is not an eligible gain and cannot be the subject a deferral election under section 1400Z-2(a)(1). The gain fails to satisfy §1.1400Z2a-1(b)(11)(i)(C) because of Individual S's plan to acquire sufficient equity in Entity C to become related to Corporations C and D. Moreover, for the same reason, the tangible property that Corporation C purchased from Individual S fails to satisfy the requirement that a purchase of qualified opportunity zone business property must be from an unrelated person. See sections 1400Z-2(d)(2)(D)(i)(I) and 179(d)(2)(A).

(B) *Circular movement of consideration.* The facts are the same as in paragraph (c)(3)(iii)(A) of this section (this Example 3), except that Entity C contributes the \$100 and \$75 (received from Individual S) to Corporations C and D, respectively, as part of a plan that includes each transaction described in paragraph (c)(3)(iii)(A) (collectively, the transaction series). Under the step transaction doctrine and circular cash flow principles, this circular movement of consideration is disregarded for Federal income tax purposes, including for purposes of section 1400Z-2 and the section 1400Z-2 regulations. Therefore, the transaction series is treated for Federal income tax purposes as a contribution by Individual S of Assets 1 and 2 to Entity C in exchange for an eligible interest in Entity C, followed by a contribution by Entity C of Assets 1 and 2 to Corporations C and D, respectively. This result also would obtain if Individual S were not related to Entity C immediately following Individual S's acquisition of its eligible interest from Entity C. See Rev. Rul. 83-142, 1983-2 C.B. 68; Rev. Rul. 78-397, 1978-2 C.B. 150.

\* \* \* \* \*

(d) \* \* \*

(2) *Prior periods.* With respect to the portion of a taxpayer's first taxable year ending after December 21, 2017, that began on March 13, 2020, a taxpayer may choose either—

(i) To apply the section 1400Z-2 regulations, if applied in a consistent manner for all such taxable years (reliance by a taxpayer on paragraph (d)(2)(ii) of this

section, §1.1400Z2(a)-1(g)(2)(ii), §1.1400Z2(b)-1(j)(2)(ii), §1.1400Z2(d)-1(e)(2)(ii), or §1.1400Z2(d)-2(e)(2)(ii), is disregarded for purposes of the consistency requirement under this paragraph (d)(2)(i)); or

\* \* \* \* \*

**Par. 10.** Section 1.1502-14Z is amended:

- a. In paragraph (b)(1)(iv)(A), by removing the language “the QOF SAG” and adding in its place “a QOF SAG”;
- b. In the first sentence of paragraph (b)(1)(iv)(B), by removing the language “the QOF SAG” and adding in its place “a QOF SAG” and removing the language “such QOF SAG” and adding in its place “a single QOF SAG”;
- c. In paragraph (b)(1)(iv)(C), by removing the language “the QOF SAG” and adding in its place “a QOF SAG” and removing the language “such QOF SAG” and adding in its place “that QOF SAG”;
- d. In the first sentence of paragraph (b)(1)(v), by removing the language “; instead, the rules in this paragraph (b)(1)(v) apply” and adding in its place “. Instead, those investment standard rules apply”;
- e. In the first sentence of paragraph (c)(2)(i), by removing the language “the investment” and adding in its place “an investment”;
- f. In the fourth sentence of paragraph (c)(3) introductory text, by removing the language “§1.1400Z2(b)-1(b)” and adding in its place “§1.1400Z2(a)-1(a)(1)”;

- g. By revising the first sentence of paragraph (f)(2)(i);
- h. In the first sentence of paragraph (f)(2)(ii)(A), by removing the language “certain pre-existing QOF subs as QOF partnerships” and adding in its place “a pre-existing QOF sub as a QOF partnership”;
- i. In the first sentence of paragraph (f)(2)(ii)(D)(3)(i), by removing the language “same as paragraph” and adding in its place “same as in paragraph”;
- j. In paragraph (f)(2)(iii)(A), by removing the language “the pre-existing” and adding in its place “a pre-existing”;
- k. In the last sentence of paragraph (g)(3)(ii), by removing the language “includable amount” and adding in its place “amount includable”;
- l. In the last sentence of paragraph (h)(3)(iii)(A), by removing the closing bracket at the end;
- m. In the last sentence of paragraph (j)(1)(i), by removing the language “that results in” and adding in its place “that result in”;
- n. In the fourth sentence of paragraph (j)(3)(ii)(A), by removing the language “taken into under” and adding in its place “taken into account under”; and
- o. By revising paragraph (k)(2) introductory text.

The revisions read as follows:

**§1.1502-14Z Application of opportunity zone rules to members of a consolidated group.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(i) \* \* \* For each pre-existing QOF sub of a consolidated group, the consolidated group may make one of the alternative, irrevocable elections provided in paragraphs (f)(2)(ii) through (iv) of this section. \* \* \*

\* \* \* \* \*

(k) \* \* \*

(2) *Prior periods.* With respect to the portion of a consolidated group's first taxable year ending after December 21, 2017, and for taxable years beginning after December 21, 2017, and on or before March 13, 2020, a consolidated group may choose either—

\* \* \* \* \*

**Par. 11.** Section 1.1504-3 is amended:

- a. In the paragraph (b) subject heading, by removing “affiliation” and adding in its place “consolidation”;
- b. In the first sentence of paragraph (b)(1), by removing “the issuer” and adding in its place “any corporation”;
- c. In the last sentence of paragraph (d)(1)(ii), by removing “-1.1502-100” and adding in its place “1.1502-100”; and
- d. By revising paragraph (e)(2) introductory text.

The revision reads as follows:

**§1.1504-3 Treatment of stock in a QOF C corporation for purposes of consolidation.**

\* \* \* \* \*

(e) \* \* \*

(2) *Prior periods.* With respect to the portion of a consolidated group's first taxable year ending after December 21, 2017, and for taxable years beginning after December 21, 2017, and on or before March 13, 2020, a consolidated group may choose either—

\* \* \* \* \*

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