



SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

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September 7, 2018

The Honorable David J. Kautter
Acting Commissioner of the Internal Revenue Service and
Assistant Secretary of the Treasury for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Opportunity Zones Regulation Comments - Amended

Dear Acting Commissioner Kautter:

This letter is to submit amended comments on behalf of the Salt River Pima-Maricopa Indian Community (SRPMIC or Community), a federally recognized Indian tribal government located within the State of Arizona. By way of background, the Community has been selected as an Opportunity Zone as part of that State of Arizona's Governor Doug Ducey's submission to the United States Department of the Treasury on March 21, 2018 and resulting approval on April 9, 2018. The SRPMIC is located in census tract number 04013941300 and partially in tract number 04013420206. The Community originally submitted comments to the Opportunity Zone proposed regulation on June 11, 2018.

Our Community strongly supports the Opportunity Zones. It is investment opportunities such as these that jump start economic development in lower income and distressed communities. We believe that the Opportunity Zones could greatly benefit our Indian community and its surrounding area, and it has the potential to take our successful economic development efforts to the next level by offering tax benefits to potential investors. There are over 275 Native American Reservations/Communities within approved Opportunity Zone areas. We believe that our feedback is important to ensure that the benefit from the legislation is implemented as intended to benefit underserved and distressed communities.

As you know, Federal Indian trust land is land held in trust by the United States government through the Department of the Interior for the benefit of tribal governments and individuals Indians. Because Indian trust land is not fee land, economic development occurs through the Federal leasing process governed by 25 CFR

Part 162. Therefore, large investments on Indian trust land occur through the encumbrance of long-term commercial “leasehold interests”. In the Community, these leasehold interests often have the term of 65 to 99 years.

Because the leasing of federal trust land is a major component for the development of Native American land with third party developers, any implication where a Ground Lease (that is a lease for federal income tax purposes) would run afoul of the 90% Requirement or the “substantially all” portion of the Tangible Property Test could cause a chilling effect on the ability to use the financing described in Code Sections 1400Z-1 and 1400Z-2 with respect to Native American transactions.

The Community is proposing the following solutions that would allow the Salt River Pima-Maricopa Indian Community and other tribal communities to benefit and implement investment opportunities intended under the Opportunity Zone legislation:

Solution 1: Modify the Definition of Opportunity Zone Business Property.

The U.S. Department of Treasury and/or the Internal Revenue Service to issue guidance interpreting the term acquisition by purchase under the definition of Opportunity Zone Business Property to include an acquisition of the tangible property by means of a lease that is considered to be a lease for federal income tax purposes.

Solution 2: Use Income Tax Basis for Measuring.

If it is determined that the definition of Opportunity Zone Business Property cannot be modified by the administrative action described above, then a possible solution would be to use income tax basis as a way to measure the 90% Requirement and the “substantially all” portion of the Tangible Property Test.

By using income tax basis for measuring the 90% Requirement and the “substantially all” portion of the Tangible Property Test, a lease for federal income tax purposes does not appear to count against either the 90% Requirement or the “substantially all” portion of the Tangible Property Test. This is because, under Code Section 1012, a taxpayer generally does not have an income tax basis with respect to a lease for federal income tax purposes. We note that in certain situations such as the payment of an acquisition premium for an assignment of a lease from a lessee or where advanced rent is paid, a lessee could have income tax basis in an asset (i.e. being the lease itself) that is possibly an intangible for purposes of Code Section 1400Z-2. However, the parties involved in these types of transactions should be able to structure their transactions in a manner to avoid any difficulties with respect to possibly having income tax basis in an intangible asset.

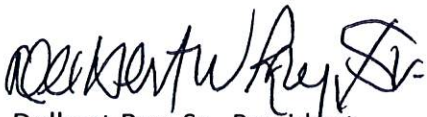
It also appears that the use of income tax basis for measuring the 90% Requirement and the “substantially all” portion of the Tangible Property Test could be administratively more convenient than using fair market value for such purposes. Using fair market value may require the need to obtain regular appraisals. Such appraisals add time and

expenses to any transaction due to the need for separate appraisals for both the Ground Lease component and for the improvements made upon the underlying land that is subject to the Ground Lease.

Once again, the Community fully supports the goals and purposes of the Opportunity Zones. We believe implementation of this important part of the Tax Cuts and Jobs Act legislation could provide meaningful and lasting economic stimulus in our Community.

On behalf of the Salt River Pima-Maricopa Indian Community, thank you in advance for consideration of our proposed additional language. If you have questions regarding our comments, please contact Gary Bohnee, Special Assistant on Congressional and Legislative Affairs at gary.bohnee@srpmic-nsn.gov or (480) 362-2737.

Sincerely,



Delbert Ray, Sr., President
Salt River Pima-Maricopa Indian Community

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SRPMIC Council
SRPMIC Executive Administration
SRPMIC Treasury
SRPMIC Community Development Department
Mr. Michael Novey, Associate Tax Legislative Counsel, U.S. Department of the Treasury