



July 30, 2020

Office of Associate Chief Counsel
 Attention: Kathryn Zuba
 Procedure and Administration CC:PA:B7
 1111 Constitution Avenue, NW, Washington, DC 20224.

Notice.Comments@irs.counsel.treas.gov

Re: Recommendation to Update Revenue Procedure 2018-58 for Time Sensitive Acts Related to Opportunity Zones

Dear Ms. Zuba:

The Novogradac Opportunity Zones Working Group (“OZ Working Group”) is writing to recommend that certain time sensitive acts required under the Internal Revenue Code (Code) section 1400Z-2 and the regulations thereunder be included in the list of time sensitive acts, the performance of which may be postponed under sections 7508 and 7508A of the Code as provided for in Revenue Procedure 2018-58.

The OZ Working Group includes investors, syndicators, lenders, community development entities (CDEs), community development financial institutions (CDFIs), for-profit and nonprofit developers, consultants, law firms, and other community development professionals who work together to suggest consensus solutions to technical OZ incentive issues and provide recommendations to make the OZ incentive more efficient in delivering benefits to low-income communities.

The OZ Working Group recommends that the following time sensitive acts be included in the list of postponed acts provided for in Revenue Procedures 2018-58:

Statute or Regulation	Act Postponed
1. Sec. 1400Z-2(a)(1)(A) and Treas. Reg. Sec. 1.1400Z2(a)-1(b)(7), (c)(2)(iii), (c)(8) and (c)(9)	<p>180-day period. In the case of gain from the sale to, or exchange with, an unrelated person of any property held by the taxpayer, at the election of the taxpayer -gross income for the taxable year shall not include so much of such gain as does not exceed the aggregate amount invested by the taxpayer in a qualified opportunity fund during the 180-day period beginning on the date of such sale or exchange.</p> <p>The 180-day period for a RIC or REIT capital gain dividend begins on the last day of the shareholder's taxable year in which the capital gain dividend would otherwise be recognized by</p>



	<p>the shareholder or by election a shareholder of a RIC or REIT may choose to treat the 180-day period with respect to a capital gain dividend that the shareholder receives from the RIC or REIT as beginning on the date of the dividend distribution.</p> <p>If a partner’s distributive share includes an eligible gain, Treas. Reg. Sec. 1.1400Z2(a)-1(c)(2)(iii) provides the 180-day period with respect to the partner’s eligible gains in the partner’s distributive share generally begins on the last day of the partnership taxable year in which the partner’s distributive share of the partnership’s eligible gain is taken into account, or may elect to treat the partner’s own 180-day period with respect to the partner’s distributive share of that gain as being--</p> <p>(1) The same as the partnership’s 180-day period; or</p> <p>(2) The 180-day period beginning on the due date for the partnership’s tax return, without extensions, for the taxable year in which the partnership realized the gain. Similar rules apply to other pass-through entities.</p>
<p>2. Sec. 1400Z-2(d)(1) and Treas. Reg. Sec. 1.1400Z2(d)-1(b)(2)(i)(B)</p>	<p>90-percent investment standard. A qualified opportunity fund must hold at least 90 percent of its assets in qualified opportunity zone property, determined by the average of the percentage of qualified opportunity zone property held in the fund as measured — (1) on the last day of the first 6-month period of the taxable year of the fund, and (2) on the last day of the taxable year of the fund.</p> <p>Under Treas. Reg. Sec. 1.1400Z2(d)-1(b)(2)(i)(B), a qualified opportunity fund may choose to determine compliance with the 90-percent investment standard by excluding from both the numerator and denominator of the test any property that (1) was received by the QOF partnership as a contribution or by the QOF corporation solely in exchange for stock of the corporation; (2) The contribution or exchange occurred not more than 6 months before the test from which it is being excluded; and (3) Between the date of the fifth business day after the contribution or exchange and the date of the</p>

	<p>semiannual test, the amount was held continuously in cash, cash equivalents, or debt instruments with a term of 18 months or less.</p>
<p>3. Sec. 1400Z-2(d)(2)(D)(ii) and Treas. Reg. Sec. 1.1400Z2(d)-2(b)(4)</p>	<p>Substantial Improvement. Property shall be treated as substantially improved by the qualified opportunity fund or a qualified opportunity zone business only if, during any 30-month period beginning after the date of acquisition of such property, additions to basis with respect to such property in the hands of the qualified opportunity fund exceed an amount equal to the adjusted basis of such property at the beginning of such 30-month period in the hands of the qualified opportunity fund or qualified opportunity zone business.</p>
<p>4. Treas. Reg. Sec. 1.1400Z2(d)-1(d)(6)(i)</p>	<p>Cure period for qualified opportunity zone businesses. 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.</p>
<p>5. Reg. Sec. 1.1400Z2(d)-1(d)(3)(v)</p>	<p>Safe harbor for reasonable amount of working capital. Working capital assets are treated as reasonable in amount for purposes of sections 1397C(b)(2) if the amounts are (A) designated in writing for the development of a trade or business in a qualified opportunity zone including when appropriate the acquisition, construction, and/or substantial improvement of tangible property in such a zone; (B) there is a written schedule consistent with the ordinary start-up of a trade or business for the expenditure of the working capital assets. Under the schedule, the working capital assets must be spent within 31 months of the receipt by the business of the assets and (C)</p>

	<p>the working capital assets are actually used in a manner that is substantially consistent with the writing and written schedule.</p> <p>If the qualified opportunity zone business is located in a qualified opportunity zone within a federally declared disaster (as defined in section 165(i)(5)(A)), the qualified opportunity zone business may receive not more than an additional 24 months to consume its working capital assets.</p>
6. Reg. §1.1400Z2(f)-1(b)	<p>Time period for a QOF to reinvest certain proceeds. If a QOF receives proceeds from the return of capital or the sale or disposition of some or all of its qualified opportunity zone property, and if the QOF reinvests some or all of the proceeds in qualified opportunity zone property by the last day of the 12-month period beginning on the date of the distribution, sale, or disposition, then the proceeds, to the extent that they are so reinvested, are treated as qualified opportunity zone property for purposes of the 90-percent investment standard in section 1400Z-2(d)(1).</p> <p>If the QOF's plan to reinvest some or all of the proceeds is delayed due to a federally declared disaster (as defined in section 165(i)(5)(A)), the QOF may receive not more than an additional 12 months to reinvest such proceeds, provided that the QOF invests such proceeds in the manner originally intended before the disaster.</p>

Thank you for your consideration of our recommendations. 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