

IRS Extends Much-Needed Opportunity Zone Relief

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Yesterday, the IRS issued Notice 2021-10, which extends the June 4, 2020 relief that the IRS previously granted to opportunity zone investors and qualified opportunity funds (QOFs) in response to the ongoing COVID-19 pandemic. Specifically, the IRS extended many of the deadlines found in the opportunity zone provisions of Section 1400Z-2 of the Internal Revenue Code.

The Notice contains the following matters of note:

- Additional Extension of 180-day Investment Requirement

To qualify for tax deferral, a taxpayer who sells property for an eligible capital gain has 180 days to invest in a QOF in order to defer that gain. Prior relief extended until December 31, 2020, the deadline for making a QOF investment for any 180-day investment period which would have ended on or after April 1, 2020, and before December 31, 2020.

Notice 2021-10 now extends until March 31, 2021 the deadline for making a QOF investment for any 180-day investment period which would have ended on or after April 1, 2020, and before March 31, 2021.

- Relaxation of 90% Investment Standard for QOFs

QOFs are required to hold at least 90% of its assets in qualified opportunity zone property as measured on: (i) the last day of the first 6-month period of the taxable year of the QOF, and (ii) the last day of the taxable year of the QOF. Failure to meet this standard results in a monthly penalty to the QOF for each month it fails to meet the standard.

Notice 2021-10 relaxes this standard temporarily. If a QOF fails to meet the 90% requirement on any of the semi-annual testing dates between April 1, 2020, and June 30, 2021, the failure will be due to reasonable cause and the entity will not be prevented from qualifying as a QOF and will not be subject to the statutory penalties imposed under Section 1400z-2(f).

- Extension of 31-month Working Capital Safe Harbor

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QOFs generally cannot hold significant cash on hand. QOFs can invest cash in qualified opportunity zone businesses, which are permitted to hold cash for a period of 31 months if they satisfy the requirements of the working capital safe harbor. The regulations automatically extend this safe harbor by an additional 24 months if the opportunity zone is located in a federally declared disaster area.

Notice 2021-10 confirms that, as a result of President Trump's March 13, 2020, coronavirus emergency declaration, all qualified opportunity zone businesses holding working capital assets that are intended to be covered by the working capital safe harbor before June 30, 2021, qualify for the additional 24-month safe harbor period as long as the other requirements of the working capital safe harbor are otherwise met.

- Extension of 30-month Substantial Improvement Requirement

QOFs or qualified opportunity zone businesses that acquire existing tangible property must substantially improve that property within 30 months of acquisition. In Notice 2021-10, the IRS states that the period beginning on April 1, 2020, and ending on March 31, 2021, will be disregarded with respect to the 30-month substantial improvement periods.

In other words, all 30-month periods will be tolled during the period beginning on April 1, 2020, and ending on March 31, 2021, giving QOFs or qualified opportunity zone businesses additional time to make the necessary improvements.