

IRS Provides Much-Needed Opportunity Zone Relief

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On June 4, the IRS provided some much-needed relief to opportunity zone investors and qualified opportunity funds (QOFs) in response to the ongoing COVID-19 pandemic. Specifically, the IRS published Notice 2020-39, which extends 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. Notice 2020-23 previously postponed until July 15, 2020 any deadline for the 180-day investment period that would have ended on or after April 1, 2020 and before July 15, 2020. Notice 2020-39 goes farther and extends 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.

90% Investment Standard for QOFs is Relaxed: 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 2020-39 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 December 31, 2020, 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: 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 2020-39 confirms that, as a result of President Trump's March 13, 2020 coronavirus emergency declaration, all

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qualified opportunity zone businesses holding working capital assets that are intended to be covered by the working capital safe harbor before December 31, 2020 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 2020-39, the IRS states that the period beginning on April 1, 2020 and ending on December 31, 2020 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 December 31, 2020, giving QOFs or qualified opportunity zone businesses additional time to make the necessary improvements. .

Extension of 12-Month Reinvestment Period: QOFs who dispose of some or all of their qualified opportunity zone property or received a distribution from such property have 12 months to reinvest to proceeds in a qualified opportunity zone for the purposes of the 90% qualified opportunity zone property investment requirement. If any of the QOF's 12-month reinvestment period includes January 20, 2020, Notice 2020-39 grants that QOF an additional 12 months to reinvest in a qualified opportunity property some or all of the proceeds received by the QOF for purposes of the 90% investment requirement.