

Resources

Notice 2020-39: IRS Provides Relief to Qualified Opportunity Funds and Investors Related to COVID-19 Pandemic

June 8, 2020

On April 7, 2020, the Novogradac Opportunity Zones Working Group (the “Novogradac Group”) wrote to the Commissioner of the Internal Revenue Service (the “Commissioner”) and the Assistant Secretary for Tax Policy of the Department of the Treasury to recommend relief from certain provisions under section 1400Z-2 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (collectively, the “QOF Provisions”) due to ongoing and future business impacts of the current COVID-19 pandemic.

On May 4, 2020, South Carolina Senator Tim Scott sent a letter to both the Secretary of the Treasury and the Commissioner requesting that recommendations consistent with those made by the Novogradac Group be considered in order to provide immediate relief for certain unavoidable lapses of the QOF Provisions.

On June 4, 2020, the Internal Revenue Service released Notice 2020-39 modifying earlier Notice 2020-23 and adopting, in large measure, the recommendations made by the Novogradac Group and Senator Scott. The Notice provides relief for Qualified Opportunity Funds (“QOFs”) and their investors in response to the ongoing COVID-19 pandemic. The Internal Revenue Service also updated its Qualified Opportunity Zone Frequently Asked Questions.

Notice 2020-39 provides the following relief for both QOFs and investors:

- If the last day of the 180-day investment period within which a taxpayer must make an investment in a QOF in order to satisfy the 180-day investment requirement falls on or after April 1, 2020, and before December 31, 2020, the investor now has until December 31, 2020, to make the required investment into a QOF. The extended date for making the required investment is automatic, although a taxpayer must still make a valid deferral election in accordance with the instructions to Form 8949, complete Form 8997, and file the completed Form 8949 and Form 8997 with a timely filed Federal income tax return (including extensions) or amended Federal income tax return for the taxable year in which the gain would be recognized if the QOF Provisions did not apply to defer recognition of the gain (collectively, the “Compliance Requirements”).
- In the case of a QOF whose (i) last day of the first six-month period of the taxable year or (ii) last day of the taxable year falls within the period beginning on April 1, 2020, and ending on December 31, 2020, any failure by a QOF to satisfy the 90% investment standard for that taxable year of the QOF is deemed –
 1. due to reasonable cause under section 1400Z-2(f)(3) of the Code; and
 2. disregarded for purposes of determining whether the QOF or any otherwise qualifying investments in that QOF satisfy the Compliance Requirements for any taxable year of the QOF.

As in the case of the 180-day investment extension, the foregoing relief is automatic as long as the Compliance Requirements are otherwise satisfied.

- For purposes of the substantial improvement requirement with respect to property held by a QOF or Qualified Opportunity Zone Business, the 30-month substantial improvement period is tolled during the period beginning on April 1, 2020, and ending on December 31, 2020.
- A 24-month extension of the working capital safe harbor is now applicable to all Qualified Opportunity Zone Businesses holding working capital assets intended to be covered by the working capital safe harbor before December 31, 2020.

- QOFs that receive distributions of QOF stock or partnership interests as a return of capital or realize proceeds from a sale of that stock, partnership interest or qualified opportunity zone property generally have 12 months in which to reinvest those amounts without penalty. Now, if a QOF's 12-month reinvestment period includes January 20, 2020, that QOF has an additional 12 months to make the required reinvestment.

Both the Novogradac Group and Senator Scott made additional recommendations not included in Notice 2020-39. These recommendations include relief related to a failure to satisfy the Compliance Requirements due to compliance with social distancing and government orders, *e.g.*, employees operating remotely. We hope that the Internal Revenue Service will give these other important recommendations due consideration in the near future.

If you have any questions, please contact Richard Lieberman (Rlieberman@dykema.com or 312-627-2250), Scott Kocienski (Skocienski@dykema.com or 248-203-0868), Asel Lindsey (ALindsey@dykema.com or 210-554-5298), Nardeen Dalli (NDalli@dykema.com or 248-203-0793), or your local Dykema relationship attorney.

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