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Opportunity Zone Deadlines Extended By Covid-19 Disaster Declarations.

INTRODUCTION

The COVID-19 pandemic has led Governors of many states to request that their states be declared federal disaster areas. As of this writing, President Trump has declared numerous states to be federal disaster areas, including New York, Washington, California, New Jersey, Iowa, Florida, Texas, North Carolina and Louisiana. It is likely that more, and perhaps even all, states will be declared disaster areas.

These declarations will extend two important deadlines in the rules relating to investments in qualified opportunity zones. First, the 31-month deadline for spending cash or other financial assets held by a qualified opportunity zone business under a working capital safe harbor plan can be extended by as much as 24 additional months. Second, where an opportunity fund receives capital or proceeds from the sale of qualified property, it has 12 months to reinvest the funds before they will be counted in the fund's 90% asset test. The fund can get an additional 12 months to reinvest the funds if the fund's ability to reinvest is delayed by a federally declared disaster.

EXPLANATION OF THE PROVISION

Working Capital Safe Harbor. Generally, a qualified opportunity zone business may hold cash and short term debt if it is subject to a plan that calls for the expenditure of the funds within 31 months. Final Treasury Regulation Section 1.1400Z2(d)-1(d)(3)(v)(D) provides that the 31 months can be extended for an additional 24 months if the working capital plan relates to a project within a qualified opportunity zone which is part of a Federally declared disaster area, so long as the business otherwise meets the requirements for the working capital safe harbor.

Reinvestments by an Opportunity Fund. Second, a qualified opportunity fund must hold 90% of its assets in qualified opportunity zone property. Cash, debt instruments and securities are not qualified property. If a qualified opportunity fund receives cash from the sale of qualified opportunity zone property or gets a return of capital from a qualified opportunity zone business, the opportunity fund generally has 12 months to reinvest the funds before those funds will count in a 90% test. However, the Final Opportunity Zone Regulations provide that if an opportunity fund is delayed in reinvesting the funds by a federal disaster, it can receive an additional 12 months to reinvest the funds, provided that it eventually reinvests as originally intended. For example, if an opportunity fund is unable to invest in certain property because the property is located in a federally declared disaster area, the opportunity fund must invest the proceeds in similar property located in that QOZ

POLSINELLLI PRACTICE TIP

These extended deadlines do not extend to the period investors have to invest qualified capital gains in an opportunity fund, or the time an opportunity fund has to invest its funds. Polsinelli therefore recommends that qualified gains be invested in an opportunity fund to defer the gain, and then to a qualified opportunity zone business within necessary time frames. By doing so, an opportunity zone investor can maximize the time it has to invest the funds in good opportunity zone projects. With respect to the reinvestment of capital received by an opportunity fund, Polsinelli recommends documenting any plans for the reinvestment of the funds so that it can establish that it has complied with the rule if necessary. Polsinelli also notes penalties which may be asserted in connection with opportunity zone investments can generally be avoided upon a showing of “reasonable cause.” The COVID-19 clause may well provide a general reasonable cause defense to many penalties. Finally, at some point Treasury (or Congress) may well issue some form of blanket extension on all of the deadlines as the crisis continues.

Polsinelli

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