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IRS Provides More Deadline Relief for Opportunity Zone Funds and Investors.

Investors looking to roll capital gains into qualified opportunity funds will now have until the end of the year to make those investments in some cases.

The IRS said in Notice 2020-39, 2020-26 IRB 1, released June 4, that taxpayers looking to take advantage of Opportunity Zone benefits and whose deadline to invest was between April 1 and December 31 will have until the end of the year to invest in QOFs.

Investors normally have 180 days from the time they recognize an eligible gain to invest that gain in a QOF. In response to the economic slowdown caused by the coronavirus pandemic, the IRS initially provided broad relief in Notice 2020-23, 2020-18 IRB 742, that allowed investors whose 180-day deadline was set to expire between April 1 and July 15 to have until July 15 to make the investment.

The Opportunity Zone program, created by the Tax Cuts and Jobs Act, allows for the deferral, reduction, and in some cases elimination of capital gains tax by investing in qualified funds or businesses. The final Opportunity Zone regulations (T.D. 9889) include a 31-month working capital safe harbor under which an Opportunity Zone business can hold cash as long as it has a written plan in place.

Under reg. section 1.1400Z2(d)-1(d)(3)(v)(D), a business could get an additional 24 months if it's located within a federally declared disaster area as defined in section 165(i)(5). However, it wasn't clear whether all Opportunity Zone businesses were operating in disaster areas because of the pandemic.

The IRS said that as a result of President Trump's emergency declaration, "all qualified opportunity zone businesses holding working capital assets intended to be covered by the working capital safe harbor before December 31, 2020, receive not more than an additional 24 months to expend the working capital assets of the qualified opportunity zone business," as long as the regulatory requirements are met.

The guidance also extends relief for testing qualified assets of QOFs, along with extending the so-called 12-month reinvestment period for QOFs.

Michael J. Novogradac of Novogradac & Co. LLP said the IRS has addressed the three big issues that the Novogradac Opportunity Zones Working Group had asked it to address, including the 180-day time period to invest and the 30-month substantial improvement test. Some nuanced issues are still open, but several of those were indirectly addressed by the guidance, he added.

TAX ANALYSTS