



Opportunity Zones
WORKING GROUP™
hosted by Novogradac

November 27, 2019

Ms. Laurie Brimmer
Senior Tax Analyst
Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

**Re: Comments on Draft Income Tax Forms Affected by Opportunity Zones
Legislation**

Dear Ms. Brimmer:

On behalf of the members of the Novogradac Opportunity Zones Working Group (the OZ Working Group), we are responding to the Internal Revenue Service (IRS) Notice Document Citation Number 84 FR 51718, *Proposed Collection; Comment Request for 2019 Forms 1065, 1066, 1120, 1120-C, 1120-F, 1120-H, 1120-ND, 1120-S, 1120-SF, 1120-FSC, 1120-L, 1120-PC, 1120-REIT, 1120-RIC, 1120-POL, and Related Attachments*, dated September 30, 2019 (the Notice).

Our comments, set forth in the appendix to this letter, are limited to draft income tax forms affected by Internal Revenue Code (IRC) §§ 1400Z-1, *Designation* and 1400Z-2, *Special rules for capital gains invested in opportunity zones* and the proposed regulations promulgated thereunder. Our comments are meant to bring taxpayer reporting into conformity with this legislation and regulatory guidance. Note that some of our comments would need to be modified to the extent some of our previously submitted recommended changes to the proposed regulations are adopted.

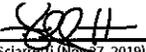
The members of the OZ Working Group are participants in the community development finance field, and include investors, lenders, for-profit and nonprofit developers, community development financial institutions, community development entities, trade organizations and other related professionals. These stakeholders are working together to suggest consensus solutions to technical opportunity zone incentive issues and provide recommendations to make the opportunity zones incentive more efficient in delivering benefits to low-income communities.



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We appreciate your consideration of these comments and welcome an opportunity to discuss these issues further.

Yours very truly,
Novogradac & Company LLP



John Sciarretti (Nov 27, 2019)

By
John S. Sciarretti, Partner

Attachments: Comments on Draft Income Tax Forms Affected by Opportunity Zones Legislation

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Form 8949, Sales and Other Dispositions of Capital Assets – Subsequent Gain Recognition during 2019:

- The instructions to Form 8949 should address the following questions related to the sale or exchange of a qualified opportunity fund (QOF) investment:
 - How to report previously deferred gain on Form 8949, bearing in mind that the gain so included is required to have the same attributes in the taxable year of inclusion as the previously deferred gain that it would have had if tax on the gain had not been deferred. Instructions should provide guidance regarding the following question:
 - Statutory Basis Adjustments: whether statutory basis adjustments for 5, 7 and 10 year holding periods should be reported in column (e) “Cost or other basis” or column (g) “Adjustment”.
 - Whether a deferral of gain can be reported on a timely-filed return if a taxpayer is within the 180-day deferral period but has not yet invested the gain into a QOF. Currently, it appears that the taxpayer would be required to file an extension of time to file their return, and delay filing said return until after making an investment in a QOF.

Form 8996, Qualified Opportunity Fund:

Part I Modifications

- Part I, Line 3 of Form 8996 and the related instructions require QOFs to certify the following :

By checking this box, you certify that by the end of the taxpayer’s first qualified opportunity fund year, the taxpayer’s organizing documents include a statement of the entity’s purpose of investing in qualified opportunity zone property and a description of the trade or business(es) that the QOF is engaged in either directly or through a qualified opportunity zone business.

We request Part I, Line 3 of Form 8996 and related instructions be modified as follows:

- Noting that IRC §1400Z-2(d)(1) requires that a corporation or partnership have a purpose of investing in qualified opportunity zone property, we request that, with respect to the organizing documents language, that the IRS clarify that the purpose language can be contained in any of the following:
 - state formation documents,
 - corporate by-laws,
 - partnership agreements,
 - LLC operating agreements, or
 - other documents formally approved by the entity, such as a corporate mission statement.

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- We request that the IRS remove the requirement for documents to “include a description of the qualified opportunity zone business(es) that the QOF expects to engage in, either directly or indirectly through a first-tier operating entity” as neither the statute nor the proposed regulations require that a QOF’s organizing documents include such a description.
- Part I, Line 4 of Form 8996 and the related instructions imply that the term “first month” as used in U.S Department of Treasury (Treasury) Regulation § 1.1400Z-2(d)-1(a)(1)(iii) means calendar month. Neither the statute nor the proposed regulations define the term “first month”. In the event that the term “first month” means a period commencing on the same numerical day of any calendar month as the day of the calendar month on which the taxable year began and ending with the close of the day preceding the numerically corresponding day of the succeeding calendar month (similar to how the term is defined in Treasury Regulation § 1.1362-6), we request that both the form and instructions be modified to allow the QOF to select a numerical day of any calendar month.

Penalty Calculation Modifications

- We recommend that Part II, line 7 and line 10 and Part IV, Line 1 should address the option to exclude recently contributed property allowed under Proposed Regulation 1.1400Z2(d)-1(b)(4)(ii).
- We recommend that Part II, line 6 and line 9, Part IV, Line 3, Part V, columns (b) and (c) and Part VI column (c) should address the option to include recently sold or disposed of property for which the QOF intends to reinvest the proceeds in qualified opportunity zone property (QOZP) within 12 months of the date of the sale or disposition allowed under Proposed Regulation 1.1400Z2(f)-1(b).
- IRC § 1400Z-2(f)(3) states that no penalty shall be imposed with respect to failing to maintain at least 90 percent of the QOF’s assets as qualified opportunity zone property if such failure is due to reasonable cause. We recommend a section be added to Form 8996 that provides QOFs with the opportunity to disclose whether they believe they have reasonable cause for failing to satisfy the 90 percent asset test and if so, to provide an explanation. This modification will expedite the penalty assessment process.

Part V and VI Modifications

- We recommend that guidance be provided for Part VI for how to apportion the value of the QOF’s stock or partnership interest and the qualified opportunity zone business’ (QOZB) tangible property by qualified opportunity zone (QOZ) tract number.

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- We recommend that Part V and Part VI of Form 8996 be modified to include additional data points that the IRS can use for compliance-related data collection purposes as follows:
 - Address(es) of the QOZB(s) the QOF has invested in.
 - North American Industry Classification System (NAICS) code number for the business using qualified opportunity zone business property (QOZBP) directly owned by a QOF and for each QOZB owned by the QOF.
 - Value of tangible property owned or leased by the QOZB that is QOZBP for both the end of the first 6 month period of the tax year and the last day of the tax year.

We recommend that an additional section be added that asks a variety of compliance related questions, with respect to QOZBs the QOF invests in and with respect to the QOF itself, including the following:

QOZB Compliance Questions:

The following questions should be answered with respect to each QOZB.

Tangible Property Compliance

- Does at least 70 percent of tangible property owned by the QOZB meet all of the following requirements:
 - The tangible property was acquired after December 31, 2017.
 - The tangible property was acquired by purchase as defined in Section 179(d)(2).
 - The original use of the tangible property in the zone commenced with the QOZB, or the QOZB will substantially improve the property.

50 Percent Gross Income Test Compliance

- Was at least 50 percent of the total gross income of the QOZB derived from the active conduct of a trade or business in the QOZ?

40 Percent Intangible Property Test Compliance

- Was at least 40 percent of the intangible property of the QOZB used in the active conduct of a business in the QOZ?

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5 Percent Non-Qualified Financial Property Compliance

- Was less than 5 percent of the aggregate unadjusted bases of the property of the QOZB attributable to nonqualified financial property?
- Is the QOZB using the working capital safe harbor?

Sin Business Compliance

- Did the QOZB operate in a trade or business that consists of a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises?

Leased Property Compliance

- If the QOZB leases property, were the leases entered into after December 31, 2017?
- Were the terms of all leases in accordance with arms-length market terms at the time the leases were entered into?
- Were any leases with a related party? If yes,
 - Did any related party leases require any prepayments of more than 12 months?
 - If the original use of the leased tangible personal property in a QOZ did not begin with the lessee, has or will the lessee become the owner of tangible QOZBP having a value not less than the value of the leased tangible property on the earlier of 30 months from date the lessee receives possession of the property under the lease or the last day of the term of the lease?
- In the case of real property leased by the QOZB, did the QOZB have a plan, intent, or expectation that it would purchase the real property for an amount of consideration less than the fair market value of the real property determined at the time of the purchase without regard to any prior lease payments?

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QOF Compliance Questions:

The following questions should be asked with respect to the QOF.

Tangible Property Compliance

- Does at least 90 percent of the QOF's tangible property (owned) meet all of the following requirements:
 - The tangible property was acquired after December 31, 2017.
 - The tangible property was acquired by purchase as defined in Section 179(d)(2).
 - The original use of the tangible property in the zone commenced with the QOZB, or the QOF will substantially improve the property.

Leased Property Compliance

- If the QOF leases property, were the leases entered into after December 31, 2017?
- Were the terms of all leases in accordance with arms-length market terms at the time the leases were entered into?
- Were any leases with a related party? If yes,
 - Did any related party leases require any prepayments of more than 12 months?
 - If the original use of the leased tangible personal property in a QOZ did not begin with the lessee, has or will the lessee become the owner of tangible QOZBP having a value not less than the value of the leased tangible property on the earlier of 30 months from date the lessee receives possession of the property under the lease or the last day of the term of the lease?
- In the case of real property leased by the QOF, did the QOF have a plan, intent, or expectation that it would purchase the real property for an amount of consideration less than the fair market value of the real property determined at the time of the purchase without regard to any prior lease payments?