BT BENNETT THRASHER LLP

November 29, 2018

CC:PA:LDP:PR (REG-115420-18)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Comments to Proposed Regulations under Section 1400Z-2

Dear Sir or Madam:

This letter provides comments to the Proposed Regulations under Section 1400Z-2 that were published on October 10/29/2018 (the "proposed regulations"). As we will explicate further below, we believe that the proposed regulations miss an opportunity to extend their benefit to preexisting owners of undeveloped land within opportunity zones. These taxpayers are put at a significant disadvantage in qualifying for tax benefits under the proposed regulations as compared to taxpayers who would purchase that same land after December 31, 2017. We see no policy reason why this dichotomy should exist. We recommend that the final regulations exempt land from the "acquired … by purchase after December 31, 2017" requirement of section 1400Z-2(d)(2)(D)(i)(I) or alternatively exclude land from the 90% asset test of section 1400Z-2(d)(1).

As a matter of background, section 1400Z-2, in conjunction with section 1400Z-1, seeks to encourage economic growth and investment in the designated qualified opportunity zones by providing Federal income tax benefits to taxpayers who invest in businesses located within these zones. Furthermore, section 1400Z-2(e)(4) empowers the Secretary to

"prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section…"

Section 1400Z-2(d)(2)(D) defines what is qualified opportunity zone business property and requires that such property be acquired by purchase after December 31, 2017. We believe that this requirement should not apply to taxpayers' preexisting holdings of land. This unfairly and unnecessarily works to exclude preexisting owners of land from benefiting from the opportunity zones. The purpose of these sections is to promote new investment in tangible property and improvements within the opportunity zones. However, land, by its very nature, is permanent. It can be neither created nor destroyed. The amount of land within an opportunity zone is fixed by the zone's boundary. The proposed regulations should not treat a preexisting landowner differently from a taxpayer who purchases land within an opportunity zone after December 31, 2017. For a preexisting owner of land within an opportunity zone, because his ownership of the land would not be acquired by purchase after December 31, 2017, that taxpayer would have to substantially improve his land by an amount equal to 9 times his land cost for his fund to meet the 90% asset test of section 1400Z-2(d)(1). Conversely, a taxpayer who purchases the same land after December 31, 2017 would only need to "substantially improve" the land for it to qualify as qualified opportunity zone business property. Under proposed regulation section 1.1400Z-2(d)-1(d)(4)(ii) and Rev. Rul. 2018-29, substantial improvements are measured without regard to land basis. The taxpayer needs only to invest an amount equal to the non-land property basis for it to qualify as substantially improved. Thus, for a property that is all or mostly undeveloped land, a new taxpayer would only need to invest a fraction of the amounts that a preexisting landowner would need to for both their investments to qualify as a qualified opportunity funds under the proposed regulations. This difference in tax treatment for similarly situated taxpayers is uncalled for. It needlessly promotes the churning of property within the opportunity zone, as preexisting landowners are pressured to sell out to new buyers who can more easily qualify for the opportunity zone benefits.

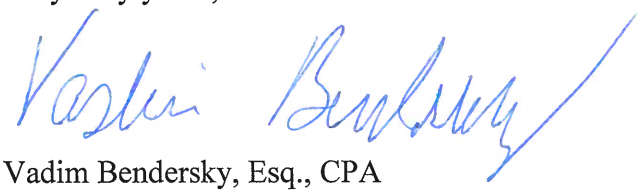
But it is the preexisting landowner that is more likely to have the best development plans for their property. That taxpayer would have more experience with that property. They would also have superior local knowledge of what kind of development would most benefit their community. And they may already have development plans ready that were years in the making. We believe that this dichotomy of tax treatment between new and preexisting landowners was not intended by either the law or the proposed regulations nor is there any policy justification for it.

The proposed regulations in section 1.1400Z-2(d)-1(d)(4)(ii) and in Rev. Rul. 2018-29 already recognize that given the permanence of land, land cost basis should be excluded from the calculation of substantial improvements. This addition to the proposed regulations was not present in the original law but was necessary to further the intent and purpose of the law. Such additions are expressly authorized in the law by section 1400Z-2(e)(4). Likewise, we believe a similar regulation provision to 1.1400Z-2(d)-1(d)(4)(ii) is necessary to avoid the detriment imposed on preexisting landowners. Land cost basis should likewise be excluded from the 90% qualified opportunity zone property test of section 1400Z-2(d)(1). Alternatively, the final regulations could simply deem all land within an opportunity zone to be qualified opportunity zone property. These proposals will result in more property qualifying as opportunity zone property and will promote greater investment within the opportunity zones. It will also put preexisting landowners on equal tax footing with new land buyers.

In conclusion, the proposed regulations as currently written, contain an unintentional unfairness that penalizes preexisting landowners. Our proposal furthers the purpose and intent of the section 1400Z-2 of promoting new investment in opportunity zone while simultaneously avoiding the imposition of an unfair tax detriment to preexisting property owners within opportunity zones.

Thank you for the opportunity to submit these comments.

Very truly yours,



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