



## CABINET FOR ECONOMIC DEVELOPMENT

**Matthew G. Bevin**  
Governor

Old Capitol Annex  
300 West Broadway  
Frankfort, Kentucky 40601  
ThinkKentucky.com

**Terry R. Gill, Jr.**  
Secretary

**Vivek K. Sarin**  
Executive Officer

December 19, 2018

Office of Associate Chief Counsel (Income Tax and Accounting)  
Attention: Erika C. Reigle and Kyle C. Griffin  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

C:PA:LPD:PR (REG-115420-18)  
Room 5203  
Internal Revenue Service  
PO Box 7604  
Ben Franklin Station  
Washington, DC 20044

*Via Federal eRulemaking Portal*

**RE: Comments on REG-115420-18: Investing in Qualified Opportunity Funds  
(Guidance Under §1400Z-2)**

Ms. Reigle and Mr. Griffin:

The Kentucky Cabinet for Economic Development appreciates the opportunity to comment on REG-115420-18: Investing in Qualified Opportunity Funds (Guidance Under §1400Z-2) and appreciates your consideration of our feedback. The comments of the Kentucky Cabinet for Economic Development arise from discussions with current businesses, potential businesses, developers, investors, and economic development professionals throughout the Commonwealth of Kentucky. These comments are not exhaustive, but instead highlight what we have determined to be the most serious hurdle to the ability of communities, businesses, and investors in Kentucky to utilize opportunity zone incentives for the intended purposes of community revitalization and improvement.

In the Commonwealth of Kentucky, we have a number of significant economic development projects that are either in the proposed or early stages of development. These projects are located in underserved and distressed areas of the Commonwealth and, if completed, will be transformative for their regions and the Commonwealth as a whole. These are the exact types of

projects that are perfect for opportunity fund investment and the stimulus such investment will bring. However, several of these projects, as well as a number of existing Kentucky businesses, cannot currently utilize the opportunity zone incentives because, despite being located in the targeted distressed areas, they are located on the border of census tracts, with a portion of their business being in an opportunity zone and a portion being outside of an opportunity zone.

Currently, there is nothing in the opportunity zones statute or regulations that allows a property that straddles eligible and ineligible census tracts to be considered all qualified opportunity zone property. This is in stark contrast to other place based incentive provisions of the Internal Revenue Code. Under the Enterprise Zone and District of Columbia Enterprise Zone Legislation, for instance, property straddling eligible and ineligible census tracts can qualify as eligible property. The opportunity zones statute does incorporate other provisions from the Enterprise Zone statute, but this important provision was omitted.

The legislative intent of the opportunity zones statute, and subsequent comments and actions by both the legislative and executive branches, make it clear that the intention of the granted incentives is to revitalize distressed communities. This purpose can be best achieved by allowing investments in all businesses and properties within an opportunity zone even if those businesses and properties also spill into adjoining census tracts that were not designated as opportunity zones. Maintaining a rule that a specific percentage of a business's assets must be in an opportunity zone for that business to qualify as an opportunity zone business is logical for businesses with multiple locations. However, that logic fails and the intent of the statute is contravened when applied to deny the granted incentives to a business that is located in an opportunity zone and can revitalize or is revitalizing the distressed community of the opportunity zone based on an arbitrary determination of how much of that business is on one side of a census line versus the other.

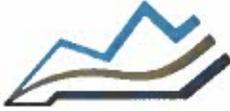
The Kentucky Cabinet for Economic Development suggests and requests that the opportunity zone regulations be amended to allow that, where a businesses is located on contiguous real property where a portion of the real property is located within an opportunity zone and a portion of the real property is located outside an opportunity zone, the entirety of the real property will be considered opportunity zone property and all services, all businesses activities, and all tangible and intangible property of the business entity or proprietorship that occur in or are located on the real property will be treated as occurring or situated in the opportunity zone.

Thank you for your time and attention.

Sincerely,

A handwritten signature in blue ink, appearing to read "Terry R. Gill".

Terry R. Gill  
Secretary  
Kentucky Cabinet for Economic Development



**Kentucky Chamber**  
*Uniting Business. Advancing Kentucky.*

**Dave Adkisson**  
*President & CEO*

December 21, 2018

Office of Associate Chief Counsel (Income Tax and Accounting)  
Attention: Erika C. Reigle and Kyle C. Griffin  
Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, DC 20224

Ms. Reigle and Mr. Griffin,

I am writing on behalf of the business community of Kentucky in support of Secretary Terry Gill of the Kentucky Economic Development Cabinet and his letter regarding economic development projects that straddle two census tracts, with a portion of a project lying physically in an opportunity zone and another portion being outside the zone. We agree that such projects (businesses) should be deemed eligible to utilize the incentives offered by the opportunity zone.

We wholeheartedly concur with this proposal for a commonsense clarification of the opportunity zone regulations. This could have favorable ramifications for distressed areas of Kentucky.

Thank you for considering our position.

Sincerely,

Dave Adkisson  
President & CEO  
Kentucky Chamber of Commerce

December 19, 2018

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**RE: Comments on REG-115420-18: Investing in Qualified Opportunity Funds  
(Guidance Under §1400Z-2)**

Ms. Reigle and Mr. Griffin:

The Kentucky Association for Economic Development (KAED) appreciates the opportunity to comment on REG-115420-18: Investing in Qualified Opportunity Funds (Guidance Under §1400Z-2) and appreciates your consideration of our feedback. The comments of the Kentucky Association for Economic Development echo those of the Kentucky Cabinet for Economic Development, with which these comments are submitted.

The Kentucky Association for Economic Development consists of more than 600 members that represent 355 unique companies. KAED's membership represents diverse professionals across the Commonwealth who share a common interest in building and growing Kentucky. The organization is governed by a 13 member Board of Directors and managed by full time professional staff. KAED works with the Kentucky Cabinet for Economic Development and other state organizations that support economic development.

As was stated in the comments submitted by the Kentucky Cabinet for Economic Development, there are several existing and proposed projects in Kentucky that cannot currently utilize the opportunity zone incentives because, despite being located in the targeted distressed areas, they

are located on the border of census tracts, with a portion of their business being in an opportunity zone and a portion being outside of an opportunity zone.

The legislative intent of the opportunity zones statute, and subsequent comments and actions by both the legislative and executive branches, make it clear that the intention of the granted incentives is to revitalize distressed communities. This purpose can be best achieved by allowing investments in all businesses and properties within an opportunity zone even if those businesses and properties also spill into adjoining census tracts that were not designated as opportunity zones.

The Kentucky Association for Economic Development suggests and requests that the opportunity zone regulations be amended to allow that, where a businesses is located on contiguous real property where a portion of the real property is located within an opportunity zone and a portion of the real property is located outside an opportunity zone, the entirety of the real property will be considered opportunity zone property and all services, all businesses activities, and all tangible and intangible property of the business entity or proprietorship that occur in or are located on the real property will be treated as occurring or situated in the opportunity zone.

Thank you for your time and attention.

Sincerely,

A handwritten signature in cursive script, appearing to read "Matthew Tackett". The signature is written in dark ink and is positioned above the typed name and title.

Matthew Tackett  
President & CEO  
Kentucky Association for Economic Development