



**SALT RIVER
PIMA-MARICOPA INDIAN COMMUNITY**

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December 21, 2018

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

Re: Comments to the Proposed Regulations re Opportunity Zone Incentive (published in the Federal Register on October 29, 2018)

Dear Sir or Madam:

On behalf of the Salt River Pima-Maricopa Indian Community ("SRPMIC") I write to comment on certain aspects of the proposed regulations that were published in the October 29, 2018 Federal Register (83 FR No. 209, pages 54279 - 54296) (the "Proposed Regulations") providing guidance relating to the Opportunity Zone provisions under Sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code of 1986, as amended.

The SRPMIC is requesting certain changes as it relates to ground leases so that such leases are treated favorably within the Opportunity Zone provisions. Such changes will help facilitate the development of state and municipal-owned lands, and lands held in trust by the United States for the benefit of Indian tribes.

As with most publicly-owned land, Federal Indian Trust Land cannot be transferred through a sale. In order for third-party development to occur on such land, long-term ground leases are typically used. These ground leases are proving to be problematic because a leasehold interest is not treated as a qualifying asset (i.e. Qualified Opportunity Zone Business Property) under the Opportunity Zone provisions.

The Opportunity Zone provisions only allow for an Opportunity Fund and an Opportunity Zone Business to hold a small percentage of non-qualifying assets. The problem is further amplified because the Proposed Regulations use valuation methods that appear to be unfavorable to ground leases.

The following briefly describes the problem with respect to the Proposed Regulations for ground leases:

- An Opportunity Fund must hold at least 90 percent of its assets (the “90% Assets Test”) in Qualified Opportunity Zone Property, which includes Qualified Opportunity Zone Business Property.
- With respect to an Opportunity Zone Business, at least 70 percent of the tangible property owned or leased by the trade or business (the “70% Tangible Property Test”) must be Qualified Opportunity Zone Business Property.
- Qualified Opportunity Zone Business Property must be “acquired by purchase”.
- The term “acquired by purchase” does not appear to include a leasehold interest such as a ground lease.
- Most publicly-owned land cannot be purchased and therefore such land is typically leased for development purposes.
- Since a leasehold interest involving a ground lease is not considered Qualified Opportunity Zone Business Property, which is a qualifying asset, the value of such leasehold interest cannot exceed 10 percent of a Qualified Opportunity Fund’s total assets or 30 percent of the tangible property assets of a Qualified Opportunity Zone Business.
- The Proposed Regulations incorporated a method for measuring asset values by using the value of the asset recorded on the “applicable financial statement” for the Qualified Opportunity Fund or the Qualified Opportunity Zone Business.
- Further, the Proposed Regulations also incorporated another method for measuring asset values when the “applicable financial statement” method is not applicable by using the “cost of the asset”.
- Recent changes to GAAP accounting require the recognition of leasehold interests at the present value of the prospective lease payments over the term of the lease, often between 50 and 99 years.
- Under the “applicable financial statement” method, the extensive term of these leasehold interests likely results in a non-qualifying asset value of greater than 10 percent of the Qualified Opportunity Fund’s total assets and possibly exceeding more than 30 percent of the tangible property assets of the Qualified Opportunity Zone Business, subsequently causing the Qualified Opportunity Fund to fail the 90% Assets Test and possibly causing the Qualified Opportunity Zone Business to fail the 70% Tangible Property Test as well.
- The value of a leasehold interest involving a long-term ground lease is unclear with respect to using the “cost of the asset” method.

It is important for the final regulations to provide certainty for transactions using long-term ground leases. An alternative that can provide such certainty would be to provide Qualified Opportunity Funds and Qualified Opportunity Zone Businesses with the ability to choose to use income tax basis for determining asset values with respect to the 90% Assets Test and the 70% Tangible Property Test. An operating lease typically has no income tax basis. Accordingly, by using income tax basis to determine the value of an asset, a leasehold interest for an operating lease will have zero value for purposes of the 90% Assets Test and the 70% Tangible Property Test. Having a non-qualifying asset with zero value should not be problematic.

It is important to note that the preamble to the Proposed Regulations requested comments on the suitability of the two valuation methods and whether another method such as adjusted tax basis would be better for purposes of assurance and administration. Also, using income tax basis would

be administratively convenient since the Opportunity Zone provisions already use income tax basis for determining the Nonqualifying Financial Property limitation set forth in Code Section 1400Z-2(d)(3)(A)(ii) (referencing Code Section 1397C(b)(8)).

As you may be aware, in the State of Arizona, there are significant Opportunity Zone designations that are on tribal lands. Many tribal nations have worked diligently with State authorities to obtain an Opportunity Zone designation but need certainty in the regulations to bring investments to tribal lands. That is why the National Congress of American Indians, representing over 500 tribal nations, adopted resolution (18-056) urging the Department of Treasury to modify the regulations to ensure they can be effectively implemented on tribal lands. We also want to re-emphasize that this is an issue that is not just limited to tribal lands but also pertains to state and municipal-owned land where ground leasing will be used for development purposes.

We are hopeful you share these concerns and will clarify the final regulations to unlock the full benefit of the Opportunity Zone incentive on tribal lands and on state and municipal-owned land. If you have any questions please do not hesitate to contact Mr. Gary Bohnee, gary.bohnee@srpmic-nsn.gov, 480-362-2737.

Sincerely,



Martin Lee Harvier
President

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