



EIG Opportunity Zones Coalition - Technical Assistance Working Group Call

Conference Call Agenda

Friday, January 31, 2020

2:00 - 3:00 pm ET

Dial-in: 646-558-8656; Meeting ID: 513 094 265

or <https://zoom.us/j/513094265>

Coalition Portal: <https://eig.org/opportunityzones/coalition>; Password: EIGOZcoalition

- **Submitted Topics and Questions on Final OZ Regulations**

1. Circular Flow of Cash
 - a. Does the deemed contribution of property by QOF to QOZB disqualify the QOF's investment in the QOZB because the QOF did not acquire such investment solely in exchange for cash?
 - b. Can the sale be respected if the seller is a different taxpayer than the QOF/QOZB investor? For example:
 - i. Partnership P is a partnership between Partner A and Partner B.
 - ii. Partnership P sells property to QOZB.
 - iii. Partner A invests in QOF.
 - c. How does the circular flow of cash issue apply if only a portion of the sales proceeds are invested in the QOF/QOZB?
2. Aggregation Rules for Substantial Improvement Test
 - a. What does the following mean: "...the purchased property will not be treated as original use property..."? Does this mean that if you want to count original use property in determining whether or not non-original use property has been substantially improved that the original use property is not QOZBP?
 - b. How is this provision applied in the example on page 494?
 - i. Is the \$1.5 million of personal property plus the restaurant equipment not QOZBP? If it is not QOZBP, then it appears that the QOF would fail the 90% test.
 - ii. Are such costs added to the basis of the hotel and counted as QOZBP because the hotel was substantially improved after applying the aggregation rule? If so, is it relevant that the improvement costs were equal to (not greater than) the basis of the property at the beginning of the 30-month period?
 - c. The building group aggregation rule states that "...purchased property that would otherwise qualify as qualified opportunity zone business property may be taken into account in determining whether additions to the basis of a single property described in paragraph (b)(4)(v)(B) or (C)



satisfy the substantial improvement requirement under section 1400Z-2(d)(2)(D)(ii). In that provision, does the word “otherwise” mean that such costs will not be QOZBP if they are used to satisfy the substantial improvement requirement (assuming the general aggregation rule is interpreted similarly)?

3. Property Undergoing Substantial Improvement
 - a. Regarding the provision in the final regulations that allows property undergoing the substantial improvement process to satisfy the original use test even before it is placed in service:
 - i. Can QOZB’s use the reasonable expectation test to treat property that is undergoing the substantial improvement process but has not yet been placed in service as satisfying the original use test or is such provision only applicable to QOFs? If it only applies to QOFs, does a QOZB that is undergoing a substantial improvement need to have working capital in order to treat property undergoing a substantial improvement as QOZBP based upon the expectation that it will satisfy the QOZBP tests? If so, does that mean that a QOZBP that does not have working capital cannot treat property that is undergoing a substantial improvement as QOZBP until such property is placed in service and/or substantially improved?
 - b. How do we determine when the substantial improvement process starts? Does it start when the 31-month working capital period starts or is it based upon when physical work begins? The provision on page 488 that defines when manufacture, construction, or production is considered to begin appears to limit its use to Treasury Regulation Section 1400Z2(d)-2(b)(1)(iii), which is a subcomponent of the QOZBP purchase requirement not the original use requirement.
4. Revised Definitions of Qualifying Tangible Property
 - a. Previously, I had heard that only 49% (70% * 70%) of a QOZB’s tangible assets need to be in a zone. I read clarified rules around the 70% “in use in the Zone” test to now mean that, at least at some point in the property’s life, it needs to be “inside the zone.” If I am building a broadband network, does this mean that if only 50% of assets are in an OZ, I will not be qualified (given that those assets outside the Zone will never spend a single moment in the Zone)?
5. Revised Working Capital Safe Harbor Application
 - a. With the new 31/62 month safe harbor rules, and changing of regulatory language, what happens to a QOZB that *starts off* with bad property (e.g., land acquired before 2017) and then builds a building on that land in order to create a qualified project? Will this no longer work? At what point does a business become a QOZB (particularly where it starts off with some “bad asset”), and what does that mean for when a QOF can invest in that QOZB?



6. Original Use Property Across Zones
 - a. Is the rule now that a business can move from *an OZ to another OZ* and have all its property count as original use property? (See regs, which cue original use property on property depreciated in **the** zone, not **a** zone).
7. Sale with a Non-FMV Repurchase
 - a. The regulations seem to now prevent a purchase of real property where there is an intent to re-sell to the seller at something other than FMV at some future date. How does this work with public-private partnerships, which typically use this structure (where there is a set buy/sell in Year 10, typically for a fixed amount)? Does the same standard apply to leasing rules - e.g., could I lease property from a public entity, build improvements, and then have a fixed “lease termination payment” in Year 10...?
8. 90 Percent Asset Test Calculation
 - a. How does a QOF calculate the 90% asset test for a testing period before a QOZB’s first year end? For example, if a QOF receives an investment on 3/1/19 and invests in a QOZB on 3/1/19, how does the QOF factor the investment in the QOZB into their 6/30/19 asset test considering that the QOZB’s first year end (12/31/19) will be after the QOF’s first testing date (6/30/19)? Should the QOF determine QOZB status on 12/31/19 and apply it to the 6/30/19 test as if it were applying the 6-month cure provision? If so, does that count as the QOF’s only available 6-month cure period? Also, if the QOZBP had a year end before the QOF made its investment, can such previous year-end be disregarded in applying the QOF’s 90% test? If such previous year-end is required to be considered, the ending date of the holding period could be before the beginning date of the holding period.
9. Valuation Methodology for 90 Percent Asset Test Compliance
 - a. A QOF may need semi-annual valuations of its investments in each of its QOZB’s to demonstrate compliance with its 90% test if it owns any ineligible property (including cash) and it is using the alternative valuation method by choice or requirement (i.e., the QOF does not have an applicable financial statement). What valuation methodology applies? For example, do lack of marketability and lack of control discounts need to be considered or can the liquidation approach to value be applied? Can a QOF that made investments in a QOZB before 2021 adopt the proposed regulations and instead use unadjusted basis to apply its 90% test? If so, would the QOF need to follow the final regulations starting in 2021?
10. Materials and Supplies as QOZ Business Property
 - a. The final regulations clarify that the materials and supplies used to manufacture, construct, or produce QOZBP must be QOZBP. What if some of the materials or supplies are acquired from a related party or were acquired before January 1, 2018? Is there a de minimis amount of



such materials/suppliers? Is a proportionate amount of the manufacturing/construction/production costs treated as ineligible tangible property to the extent some of the materials/supplies are ineligible? Are all manufacturing/construction/production costs treated as ineligible tangible property if any materials/supplies are ineligible?

11. Inventory as QOZ Business Property

- a. The final regulations state that “Inventory (including raw materials) of a trade or business produced by an eligible entity after December 31, 2017 is deemed to satisfy the requirements set forth in paragraphs (b)(1) and (b)(2)(i) of this section.” This statement appears to treat all inventory produced after December 31, 2017 as QOZBP since section (b)(1) is the purchase requirement and (b)(2)(1) is the original use requirement. Is that true even if the raw materials are acquired from a related party that would not otherwise satisfy the purchase requirement?

12. Carried Interest

- a. How does one structure a profits interest / “carried interest,” both for a fund manager and for a developer, under the new regulations?

- **Open Discussion**

- **Next Steps**

- Next Coalition Call: Thursday, February 6, 2:00 - 3:00 pm ET