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IRS Grants Pandemic Deadline Relief On Opportunity Funds

By **David van den Berg**

Law360 (June 4, 2020, 8:10 PM EDT) -- The novel coronavirus pandemic has prompted the Internal Revenue Service to grant automatic deadline relief to qualified opportunity funds and investors, including an extension of the 180-day investment period for some investors to Dec. 31 in a notice released Thursday.

Taxpayers for whom the last day of the period in which investments must be made in qualified opportunity funds, or QOFs, to satisfy the 180-day requirement falls on or after April 1 automatically get the extension to Dec. 31, according to Notice 2020-39. Taxpayers don't have to contact the IRS or send letters or other documents to get the relief, the notice said.

However, they must make a valid deferral election and file needed forms with a timely filed federal income tax return or amended return for the taxable year in which the gain would be recognized if Internal Revenue Code Section 1400Z-2(a)(1) didn't apply to defer recognition of the gain, according to Thursday's notice.

The opportunity zone program, established by the 2017 Tax Cuts and Jobs Act, is meant to bring monetary investments into lower-income communities to help spur economic development in them. Opportunity zones allow investors to reinvest capital gains within a 180-day window into designated low-income areas in return for certain tax benefits that grow the longer the money is invested in a QOF through Dec. 31, 2026.

Final regulations on opportunity zones came out in December that allowed for two methods of investing in the program. Under a one-tiered structure, a QOF directly holds qualified zone property. Investors in one-tiered structures must invest gains into a QOF within 180 days of the sale or exchange that gave rise to the gain, under the final rules. If investors have already successfully invested in a QOF, it must generally hold 90% of its assets in qualified property, as measured every six months, or face penalty, the rules said.

For QOFs whose last day of the first six-month period of the taxable year or last day of the taxable year falls between April 1 and Dec. 31, any failure by the QOF to satisfy the 90% investment standard is due to reasonable cause under IRC Section 1400Z-2(f)(3), the IRS said in Thursday's notice. Those failures will also be disregarded for purposes of determining whether the QOF or any otherwise qualifying investments in it satisfy requirements of IRC Section 1400Z-2 and its regulations for any taxable year of the QOF, the notice said.

The relief is automatic, but QOFs must accurately complete all lines on Form 8996, Qualified Opportunity Fund, filed for each taxable year except that the QOF should indicate "zero" where penalties are supposed to be recorded, the IRS said Thursday. The form must be filed with the QOF's timely filed federal income tax return, according to the notice.

Richard LaFalce, partner at Morgan Lewis & Bockius LLP, said the notice should give opportunity zone investors the certainty they need to move forward.

"While the COVID 19 pandemic may cause investors and sponsors to reevaluate their plans for opportunity zone investments, any delay should not be driven by concerns regarding the ability to satisfy the OZ tax rules during the pandemic," LaFalce told Law360.

The breaks the IRS provided in Thursday's notice follow Sen. Tim Scott's renewing his push for giving investors three additional months to put capital gains into qualified opportunity funds to encourage participation in the program during a Tuesday webcast hosted by Politico. In early May, Scott, R-S.C., also asked the IRS and the U.S. Department of the Treasury to ease the program's requirement that QOFs have to invest at least 90% of assets in qualified opportunity zone property, at least through the end of the year.

The IRS didn't immediately respond to a request for comment.

--Additional reporting by Amy Lee Rosen, Joshua Rosenberg and Stephen Cooper. Editing by Neil Cohen.

Update: This story has been updated with LaFalce's comments.