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# Unpacking The Final Opportunity Zone Regulations: Part 2

By **Tucker Thoni** (January 27, 2020, 5:29 PM EST)

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The qualified opportunity zone tax regime was enacted as part of the Tax Cuts and Jobs Act in December of 2017.[1] The U.S. Department of the Treasury and the Internal proposed two sets of regulations in October of 2018 and May of 2019.

The final regulations were promulgated in December 2019, to be effective 60 days after publication in the Federal Register. However, the final regulations generally permit taxpayers to rely on either the proposed regulations or the final regulations for tax years that predate the effective date of the final regulations.[2]

This is the final part of a two-part article highlighting important differences between the proposed regulations and the final regulations, including new provisions that have been added to the final regulations, that could affect investment under the new qualified opportunity zone tax regime. **Part one** discussed a general trend in the final regulations of the Treasury and the IRS maximizing, to the extent permissible by Section 1400Z-2, the sources and quantity of capital gain eligible for deferral by investment into a qualified opportunity fund, or QOF.

Part two discusses taxpayer-friendly changes made in the final regulations that appear to demonstrate that the Department of Treasury and the IRS are supportive of the opportunity zone tax regime.[3]

Some of the changes merely clarify certain unintended consequences resulting from the proposed regulations. The final regulations also include a number of safe harbors and rules aimed at (1) simplifying the qualification of certain types of tangible property as qualified opportunity zone business, or QOZB, property, or zone property[4] and (2) keeping tangible property qualified as zone business property and entities qualified as QOZBs.[5]

**Clarity Regarding Treatment of Inventory Under Asset Tests**

Pursuant to Section 1400Z-2(d)(2)(D)(i)(III) of the Internal Revenue Code, in order for tangible property to qualify as zone property, during substantially all of the QOZB's or QOF’s holding period for the tangible property, substantially all of the use of the property must be within an opportunity zone.

The proposed and final regulations include a safe harbor for inventory in transit outside an opportunity zone to remain qualified as zone property.[6] To provide certainty regarding the inventory-in-transit safe harbor[7], the final regulations instruct that neither (1) the distance traveled in the course of the transit, nor (2) the fact that the inventory is briefly warehoused while in transit, shall affect the application of the safe harbor.[8]

The proposed regulations requested comments[9] from taxpayers concerning whether inventory, including raw materials, should be excluded from both the numerator and denominator of the fraction used to determine compliance with the asset tests imposed on QOFs and QOZBs.[10]

For purposes of the asset tests, the final regulations provide that a QOF or QOZB may choose to (1) include inventory in both the numerator and the denominator, or (2) exclude inventory from both the numerator and the denominator, provided that, once a QOF or QOZB makes a choice, it must apply that choice consistently throughout the taxable year.[11]

It appears that QOFs and QOZBs can include inventory in the numerator and dominator in a tax year notwithstanding that inventory was excluded in a prior or subsequent of prior year, and vice versa.

The additional protections provided to the inventory in transit safe harbor should encourage participation in the opportunity zone tax regime for retail, manufacturing, distribution and other inventory intensive businesses that move inventory over many miles using various distribution channels (including temporary warehousing), as the proposed regulations appear to require a more direct connection between the QOF or QOZB and the vendor or customer located outside the opportunity zone.[12] The ability to remove inventory from either asset-test calculation furnishes a solution for inventory intensive businesses that do not operate under the safe harbor.

**Moveable Tangible Property Under 70% Use and Asset Tests**

Pursuant to Section 1400Z-2(d)(2)(D)(i)(III), during substantially all of the QOF or QOZB’s holding period for zone property, substantially all of the use of the property must be within an opportunity zone. The proposed and final regulations provide that substantially all of the use requirement is satisfied by a 70% threshold — the 70% use test.[13]

The final regulations instruct how to calculate the 70% use test in the context of personal property being used both inside and outside an opportunity zone.[14] The 70% use requirement is determined based on the amount of time between the two semiannual testing dates that the use of the tangible property is (1) located within the geographic borders of an opportunity zone, and (2) utilized in the entity’s trade or business within an opportunity zone.[15]

QOFs and QOZBs determine compliance with 70% use test on an asset-by-asset basis by calculating the aggregate number of days the tangible property is used within any opportunity zone, including multiple opportunity zones.[16]

The final regulations include special rules for mobile tangible property — e.g., delivery vehicles, construction equipment, service trucks and other mobile tangible property — “[t]o provide standards that more effectively respond to the day-to-day customary operation of trades or businesses.[17]”

For example, the final regulations provide a safe harbor for tangible property utilized in rendering services both inside and outside of an opportunity zone, which deems up to 20% of a QOF or QOZB’s tangible property to be zone property if (1) the QOF or QOZB has an office[18] located within an opportunity zone, and (2) the tangible property is operated by employees of the QOF or QOZB who regularly use the opportunity zone office in the course of carrying out their duties, and are managed directly, actively, and substantially on a day-to-day basis by one or more employees at the opportunity zone office. The safe harbor does not apply if the tangible property is operated for profit exclusively outside an opportunity zone for more than 14 consecutive days.[19]

The final regulations provide a similar safe harbor for mobile tangible property leased by QOF or QOZB within an opportunity zone to a lessee that utilizes the tangible property at a location outside of an opportunity zone.[20] The safe harbor deems the mobile property to be zone property, so long as (1) in the normal, usual or customary course of business, the property is parked or stored at a location within an opportunity zone when the tangible property is not on lease to a customer, and (2) the property is not subject to a lease for more than 30 consecutive days (including extensions).[21]

The 70% use test is an ongoing obligation imposed on zone property that has the potential to result in penalties for unwary taxpayers. The final regulations' introduction of safe harbors and the ability to aggregate use from multiple opportunity zones will help QOFs or QOZBs maintain the zone-property qualification for tangible property used both inside and outside opportunity zones.

**90% Holding Period Tests**

There is a 90% holding period requirement imposed on (1) a QOF's ownership of interests in a QOZB,[22] and (2) both a QOF and QOZB's ownership of zone property. This requirement is measured by the 90% holding period tests.[23]

Under the final regulations, the determination of whether the applicable 90% holding period test is satisfied is made on a semiannual basis, based on the cumulative amount of time the QOF or QOZB has held the tangible property.[24] The semiannual test for the 90% holding period tests meshes well with the QOF's semiannual asset test, but it was problematic when applied to the QOZB asset test which occurs at the end of the QOZB's tax year.

There is a safe harbor, in the final regulations, for the 90% holding period test applicable to QOZB interests held by QOFs that permits QOFs to measure their holding period as beginning on the effective date of the QOF’s self-certification and ending on the last day of the QOZB’s most recent taxable year that ended on or before the QOF’s semiannual testing date.[25]

Comparatively, the safe harbor is not applicable to the 90% holding period test for zone property, which is only satisfied if the 70% use test[26] is met for at least 90% of the period during which the QOF or QOZB has held the tangible property.[27]

The final regulations provide a six-month cure period for QOFs that would otherwise be subject to asset test penalty under Section 1400Z-2(f)(1), due to a QOZB interest failing the 90% holding period test.[28] For purposes of determining compliance with the 90% holding period test, the QOF can treat an entity as a QOZB, so long as the QOF qualifies the entity as a QOZB within 6 months of the failed 90% holding period test date.[29]

If the holding period requirement failure occurs on the last semiannual testing day of the taxable year, then the six-month cure period is only available if the QOF extends the time to file its tax return. [30] A QOF can only utilize the six-month cure period once for a QOZB.[31]

The 90% holding period test is an ongoing obligation imposed on zone property and QOZB interests that has the potential to result in penalties for unwary taxpayers. There is some complexity added by the final regulations testing the holding periods for zone property verses QOZB interests differently, but this complexity appears to be necessary due to the different obligations imposed on zone property and QOZB interests under the statute.[32] The cure period is an equitable, taxpayer-friendly provision that provides QOFs an opportunity to correct technical foot-faults of the 90% holding period test for QOZB interests.

**Shorter Vacancy Period Required for Original Use**

The proposed regulations provide that if property was vacant for five uninterrupted years, it can be placed in service as original use without having to comply with the substantial improvement requirement. [33]

The final regulations adopt a shorter vacancy time-frame that differs depending on whether the property became vacant before or after the designation of the applicable opportunity zone.[34] If the tangible property became vacant before designation of the applicable opportunity zone, the final regulations require one year of vacancy in order for the property to be qualify as original use property.[35]

If the property became vacant after designation of the applicable opportunity zone, the final regulations direct that the property must be vacant for three years in order to place it in service as original use property.[36]

The final regulations clarify the definition of vacant for purposes of the opportunity zone tax regime.[37] Real property, including land and buildings, is considered vacant if the property is significantly unused.[38] A building or land is significantly unused if more than 80% of the building or land, as measured by the square footage of usable space, is not being used.[39]

The changes regarding vacant property help to further the purposes behind the opportunity zone regime — i.e., to encourage the investment of new capital in one or more opportunity zones and to increase the economic growth of such opportunity zones — by incentivizing the development and use of vacant property with an easier path to being qualified as zone property by not requiring it to be substantially improved.[40] Indeed, placing vacant property back into productive use within an opportunity zone should cause some degree of economic growth.

**Brownfields as Original Use**

The final regulations provide that all brownfield sites,[41] including land and structures on the site, will be treated as satisfying the original use requirement,[42] so long as the QOF or QOZB make, within a reasonable time, investments to ensure that all property comprising the brownfield site meets basic safety standards for both human health and the environment.[43]

Allowing brownfield sites to generally qualify as original use property furthers the purposes behind the opportunity zone regime — i.e., to encourage the investment of new capital in one or more opportunity zones and to increase the economic growth of such opportunity zones — by incentivizing the development and use of environmentally distressed properties within opportunity zones with an easier path to being qualified as zone property by not requiring it to be substantially improved.[44]

**Property Involuntary Transferred to Government**

The final regulations provide that a QOF or QOZB that purchases real property from a local government, that the local government holds as the result of an involuntary transfer (including through abandonment, bankruptcy, foreclosure or receivership), may treat the real property received in the purchase (including the land and structures thereon) as satisfying the original use requirement.[45]

This provision follows a general trend in the final regulations of simplifying the qualification of certain types of tangible property as qualified opportunity zone business property.

**Method of Calculating Substantial Improvement Requirement**

In order for tangible property to constitute zone property, among other requirements, the original use of the tangible property within the opportunity zone must commence with the QOF or QOZB, or the property must be substantially improved.[46] Substantial improvement requires the QOF or QOZB to make improvements, which double the entity's basis in the property (excluding basis attributable to land) within 30 months.[47]

The proposed regulations requested comments regarding the relative strengths and weaknesses of determining substantial improvement based on an asset-by-asset approach, as compared to asset aggregation or similar approach. Based on the relative strengths and weaknesses of the comments received, the Treasury Department and IRS have concluded that permitting asset aggregation to a limited extent is appropriate for substantial improvement determinations.[48]

The final regulations allow taxpayers to choose an asset aggregation approach for determining whether tangible property has been substantially improved.[49] Pursuant to the asset aggregation approach, QOFs and QOZBs can count basis attributable to original use zone property as additions to basis for purposes of the substantial improvement calculation[50] if the assets (1) are used in the same trade or business in the same or a contiguous opportunity zone for which the nonoriginal use zone property is used, and (2) improve the functionality of the non-original use zone property.[51] Even when a QOF or QOZB chooses the aggregate approach, any real property that would not qualify as original use must be improved more than an insubstantial amount.[52]

In certain limited circumstances, the final regulations permit buildings located within opportunity zones or a series of contiguous opportunity zones to be aggregated and treated as a single property for purposes of the substantial improvement requirement.[53] When applicable, two or more buildings are treated as a single property, the amount of basis required to be added to those buildings will be the sum of the bases of each building comprising the single property and additions to the basis of each building comprising the single property are aggregated for the substantial improvement requirement.[54]

The asset aggregation approach to the substantial improvement test included in the final regulations is a positive development for the opportunity zone regime that should result in it being feasible to qualify more tangible property as zone property. Indeed, under an asset-by-asset approach, taxpayers frequently determined that it was not economically feasible to substantially improve tangible property with an opportunity zone, which limited the potential for economic growth and investment in opportunity zones.

**Safe Harbor for Tangible Property Being Substantially Improved**

There is a safe harbor in the final regulations that deems tangible property to satisfy the substantial improvement requirement during the time that the QOF or QOZB is in the process of substantially improving the tangible property but has not yet placed the property into service or otherwise used the property in its trade or business.[55] The safe harbor only applies if there is a reasonable expectation that the improved tangible property will be used in the trade or business of a QOF or QOZB within the 30-month substantial improvement period.[56]

This safe harbor was a practical solution that was necessary to make the substantial improvement rules work with the rest of the opportunity zone regime.

**Acquisitions, Consolidations and Mergers of QOFs and QOZBs**

The proposed and final regulations generally provide that the acquisition of a QOF corporation's assets in a qualifying Section 381(a)(2) transaction is not an inclusion event if the acquiring corporation is certified as a QOF immediately after the transaction and satisfies the QOF asset test on the first semiannual testing date thereafter.[57]

The proposed and final regulations also provide that acquiring a shareholder's stock in a QOF in a Section 381(a)(2) transaction is not an inclusion event except to the extent that the shareholder retains a qualifying investment not transferred to the acquiring QOF corporation.[58]

The proposed and final regulations provide that a merger or consolidation of a QOF partnership with another QOF partnership in a transaction to which Section 708(b)(2)(A) applies is not an inclusion event, to the extent that the resulting partnership is a QOF immediately after the merger or consolidation.[59]

Similarly, the proposed and final regulations provide that a merger or consolidation of a partnership that is a partner in a QOF with another partnership, in a transaction to which Section 708(b)(2)(A) applies, is not an inclusion event to the extent Section 721(a) applies to the merger or consolidating transaction.[60]

For any acquisition, merger or consolidation described above pursuant to Sections 381(a)(2) or 708(b)(2)(A), the target entity's holding period is tacked onto the acquiring entity's holding period for purposes of the opportunity zone rules.[61]

Moreover, zone property transferred pursuant to a transaction governed by Sections 381(a)(2) or 708(b)(2)(A) does not lose its status as zone property solely as a result of such transaction.[62]

The final regulations go further and open the door for acquisitions, mergers and consolidations of QOZBs by preserving zone property attributes of the target QOZB for the surviving QOZB. Stock or partnership interests will not fail to qualify as eligible QOZB interests even though the QOF did not receive the stock or partnership interests from the entity solely in exchange for cash,[63] so long as the stock or partnership interest was received solely in exchange for QOF stock or partnership interests, respectively, in a transaction described in Sections 381(a)(2) or 708(b)(2)(A), respectively.[64]

The determination of whether tangible property, received by a QOZB in a transaction described in Sections 381(a)(2) or 708(b)(2)(A), constitutes zone property (including, for example, whether the tangible property satisfies either the original use or substantial improvement requirements), is made as if the acquiring (or resulting) QOZB held the property during the period in which the target (or merged) QOZB held the property.[65] Accordingly, tangible property should not lose its status as zone property solely on account of an acquisition, merger, or consolidation governed by Sections 381(a)(2) or 708(b)(2)(A).

The ability to have mergers, acquisitions and consolidations of QOZB should promote participation in the opportunity zone regime by allowing QOFs to take advantage of operational and financial synergies of their QOZB businesses within opportunity zones through tax-free mergers, acquisitions or consolidations with other QOZBs without having to worry about the tax consequences that accompany an inclusion event under the opportunity zone regime. There does not appear to be a persuasive policy justification for the proposed regulations permitting inclusion event-free mergers, acquisitions or consolidations of QOFs but not QOZBs.

**Guidance Regarding the Use of Intangible Property Requirement**

Section 1400Z-2(d)(3) provides that a QOZB must satisfy the intangible property use requirement set forth in Section 1397C(b)(4). Section 1400Z-2(d)(3)'s incorporation of Section 1397C(b)(4) requires that a substantial portion of the intangible property of a QOZB be used in the active conduct of a trade of business within an opportunity zone measured at the end of the entity's taxable year.[66] The proposed and final regulations define a substantial portion as 40%.[67]

The final regulations provide guidance on the location and use of intangible property for purposes of determining compliance with the intangible property use test. Intangible property of a QOZB is used in the active conduct of a trade or business in an opportunity zone if the following two requirements are satisfied: (1) the use of the intangible property must be normal, usual, or customary in the conduct of the QOZB's trade or business, and (2) the intangible property must be used in the opportunity zone in the performance of an activity of the trade or business within an opportunity zone that contributes to the generation of gross income for the QOZB.[68]

**New Limited 62-Month Safe Harbor**

The final regulations permit a QOZB to utilize an additional 31-month safe harbor period, for a total of up to 62-months, with respect to tangible property already subject to a working capital safe harbor.[69]

Upon a subsequent infusion of substantial working capital assets, a QOZB can both (1) extend the original 31-month safe harbor period for the initial infusion of working capital assets, and (2) receive safe-harbor coverage for the subsequent infusion of substantial working capital assets, so long as the following two conditions are met: (a) the subsequent infusion of working capital is independently covered by an additional valid working capital safe harbor, and (b) the working capital written plan for the subsequent infusion of working capital must form an integral part of the working capital safe harbor plan that covered the initial infusion of working capital assets.[70]

The final regulations make clear that, regardless of the number of subsequent infusions of substantial working capital assets, a safe harbor (or series of overlapping or sequential safe harbors) with respect to tangible property cannot extend beyond the 62-month period beginning on the date of the first infusion of working capital assets covered by the safe harbor.[71]

For example, a subsequent infusion of substantial working capital assets received 50 months after the date of the initial infusion of working capital assets under the safe harbor will be covered by the 62-month working capital safe harbor for only 12 months.

The final regulations instruct that tangible property covered by the 62-month working capital safe harbor plan is not considered zone property for purposes of the special rule in Section 1400Z-2(d)(3)(B).

This 62-month safe harbor appears to pave the way for larger development projects within an opportunity zone that may take longer to complete than the 31-months provided by the working capital safe harbor. The longer 62-month runway could result in taxpayers undertaking larger development projects within opportunity zones.

**Additional Time for Tangible Property in Disaster Zones**

With respect to tangible property located within an opportunity zone that is also designated as a federally-declared disaster area,[72] the final regulations provide that a QOZB may receive an additional 24-months of working capital safe harbor, provided that (1) the project otherwise meets the requirements of the 31-month working capital safe harbor,[73] and (2) the project is delayed due to the disaster.[74]

Similarly, the final regulations provide that the 12-month window for QOFs that receive proceeds from the return of capital or sale of zone property to reinvest the proceeds in other zone property[75] is extended for an additional 12 months if the plan to reinvest the proceeds is delayed due to a federally-declared disaster area(s),[76] so long as (1) the QOF reinvests the proceeds in the manner originally intended before the disaster, and (2) the QOF's reinvestment plan is delayed due to the disaster. [77]

**Real Property Straddling Opportunity Zones**

A QOF or QOZB that owns real property located outside an opportunity zone can treat such property as if it were located within the opportunity zone, if the following conditions are met: (1) the entity uses the portion of the real property located inside the opportunity zone in carrying out its trade or business, (2) the entity uses the portion of the real property located outside the opportunity zone in carrying out its trade or business, (3) the amount of property located in the opportunity zone is substantial when compared to the amount of real property located outside the opportunity zone, and (4) the property located within the opportunity zone is contiguous, at least in part, to the property located outside the opportunity zone.[78]

The final regulations clarify that when determining whether real property within an opportunity zone is substantial in comparison to real property outside an opportunity zone, taxpayers can rely on either the square footage test or the unadjusted cost test.[79]

Under the square footage test, the real property located within the opportunity zone is considered substantial if, at the time of acquisition, the amount of real property located within the opportunity zone is greater, based on square footage, than the amount of real property located outside the opportunity zone.[80]

Under the unadjusted cost test, the real property located within the opportunity zone is considered substantial if, at the time of acquisition, the unadjusted cost of the real property located within the opportunity zone is greater than the unadjusted cost of the real property located outside the opportunity zone.[81]

The final regulations also clarify the definition of contiguous for purposes of the opportunity zone regime.[82] In general, two or more properties are contiguous if they share common boundaries or would share common boundaries but for the imposition of a road, street, railroad, stream or similar property. However, properties that merely share a common corner are not contiguous.[83]

The final regulations also clarify that the real property straddling provisions apply to the 90% holding period test and 70% use test.[84]

The adoption of both the unadjusted cost and square footage tests to determine if real property straddling an opportunity zone is deemed to be within the opportunity zone provides flexibility for taxpayers planning developments partially within and partially outside of an opportunity zone.

**Sin Business Restriction Extended to Leasing**

Section 1400Z-2(d)(3)(A)(iii) restricts QOZBs from being in the trade or business of so-called sin businesses, [85] which include any (1) private or commercial golf course, (2) country club, (3) massage parlor, (4) hot tub facility, (5) suntan facility, (6) racetrack or other facility used for gambling, or (7) store, the principal business of which is the sale of alcoholic beverages for consumption off premises. Neither the statute nor the proposed regulations prohibit (a) a QOF from conducting a sin business, or (b) a QOF or a QOZB from leasing real property to a sin business.

To ensure that the purpose of the statute — prohibiting QOZBs from operating or carrying out sin businesses is effectuated — the final regulations prohibit a QOZB from leasing more than 5% of its property to a sin business. However, the final regulations do not contain a similar restriction on a QOF's ability to carry on a sin business as a trade or business or lease real property to a sin business.

**Tangible Property That Ceases To Be Zone Property**

Section 1400Z-2(d)(3)(B) provides a special rule that permits a QOZB to treat tangible property that ceases to be zone property as still constituting zone property for the lesser of (1) five years after the date on which the tangible property ceased to qualify, or (2) the date on which the tangible property is no longer held by the QOZB.

The Department of Treasury and the IRS interpret "ceases to be [zone property]" as indicating that the tangible property must have been zone property for a period of time.[86]

The final regulations require that tangible property must be zone property for at least two years before the special rule in Section 1400Z-2(d)(3)(B) is available.[87] Any time during which the tangible property was subject to a working capital safe harbor or a substantial improvement safe harbor tolls the running of the two years required by the final regulations.[88]

Section 1400Z-2(d)(3)(B) is a very taxpayer-friendly statutory provision that protects lower-tiered entities from losing their QOZB status because tangible property held by such entity loses its zone property status. The provisions addressing Section 1400Z-2(d)(3)(B) in the final regulations are limiting of the statutory protections, but appear on balance to be practical and fair.

It would make little sense if tangible property could lose its zone property status immediately after qualification without consequence, and so the final regulations require a two year waiting period before Section 1400Z-2(d)(3)(B) can be utilized. Moreover, it would be bootstrapping to count, for purposes of the two-year zone property requirement, any time in which the tangible property was deemed to qualify as zone property due to a safe harbor.

**Clarification of Statutory Purposes for Anti-Abuse Rule**

The proposed and final regulations must be applied in a manner consistent with the purposes of Section 1400Z-2. To this end, if a significant purpose of a transaction is to achieve a tax result that is inconsistent with the purposes of Section 1400Z-2, then the Internal Revenue Service can recast the transaction to achieve consistency with the statutory purposes.[89]

The determination of whether a tax result is inconsistent with the purposes of section 1400Z-2 requires a facts and circumstances analysis.[90]

In response to taxpayer comments, the final regulations provide what the Treasury and the IRS have determined constitute the purposes of the opportunity zone tax regime — i.e., provide specified tax benefits to owners of QOFs to encourage the making of longer-term investments, through QOFs and QOZBs, of new capital in one or more opportunity zones and to increase the economic growth of such opportunity zones.[91]

The anti-abuse rules provide a sword for the IRS to attack aggressive taxpayer tactics, which is troubling for trades or businesses that do not fit neatly within the rules imposed by the opportunity zone regime; however, the final regulations soften the anti-abuse provision, to a degree, by expressing the purposes of the opportunity zone regime and providing examples of when the IRS could utilize the anti-abuse rule to drop its proverbial hammer on taxpayers.

The anti-abuse provisions have broad application that pervades all aspects of the opportunity zone rules, so taxpayers should consult with their tax advisors and counsels regarding all aspects of their QOF investment to ensure consistency with the purposes of the opportunity zone regime.

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[1] Tax Cuts and Jobs Act.

[2] Treas. Reg. §§ 1.1400Z2(a)-1(g); 1.1400Z2(b)-1(j); 1.1400Z2(d)-1(e); 1.1400Z2(d)-2(e); 1.1400Z2(f)-1(d). But see Treas. Reg. § 1.1400Z2(c)-1(f) (permitted only the final regulations).

[3] The Department of Treasury and the IRS are not always on the same page with Congress regarding tax policy issues — see for example the ongoing battle regarding Conservation Easements — so the congruence between the legislative branch and executive agencies is a good sign for the viability of the opportunity zone regime.

[4] See infra sections Shorter Vacancy Period for Original Use, Brownfields as Original Use, Property Involuntary Transferred to Government, Method of Calculating Substantial Improvement Requirement, Safe Harbor for Tangible Property Being Substantially Improved, New 62-Month Safe Harbor, Additional Time for Tangible Property in Disaster Zones, and Real Property Straddling Opportunity Zones.

[5] See infra sections Clarity on Treatment of Inventory, Moveable Tangible Property under 70% Use and Asset Tests, and 90% Holding Period Tests.

[6] Prop. Treas. Reg. § § 1.1400Z2(d)-1(c)(4)(iii).

[7] Preamble to the final regulations at 160.

[8] Treas. Reg. § 1.1400Z2(d)-2(d)(4)(viii)(B).

[9] Prop. Treas. Reg. § 1.1400Z2(d)-1(c)(4)(iii).

[10] Treas. Reg. §§ 1.1400Z2(a)-1(b)(4); 1.1400Z2(d)-1(d)(1)-(2).

[11] Treas. Reg. § 1.1400Z2(d)-1(b)(2)(iii).

[12] See Treas. Reg. § 1.400Z2(d)-1(c)(4)(iii).

[13] Prop. Treas. Reg. § 1.1400Z2(d)-1(c)(6).

[14] Treas. Reg. § 1.1400Z2(d)-2(d)(4)(iii).

[15] Treas. Reg. § 1.1400Z2(d)-2(d)(4)(ii).

[16] Treas. Reg. § 1.1400Z2(d)-2(d)(4)(vi).

[17] Preamble to final regulations at 166.

[18] Or another fixed location with an opportunity zone.

[19] Treas. Reg. § 1.1400Z2(d)-2(d)(4)(iii).

[20] Treas. Reg. § 1.1400Z2(d)-2(d)(4)(v).

[21] Id.

[22] IRC § 1400Z-2(d)(2)(B), (C).

[23] IRC § 1400Z-2(d)(2)(D).

[24] Treas. Reg. § 1.1400Z(d)-2(d)(3).

[25] IRC § 1400Z-2(d)(2)(B), (C). Treas. Reg. § 1.1400Z(d)-1(b)(2)(i)(C), (c)(2)(i)(C)(2), (3)(i)(C)(2).

[26] Treas. Reg. § 1.1400Z(d)-2(d)(4).

[27] Treas. Reg. § 1.1400Z(d)-2(d)(3).

[28] Treas. Reg. § 1.1400Z(d)-1(d)(6)(i).

[29] Id.

[30] Treas. Reg. § 1.1400Z(d)-1(d)(6)(ii).

[31] Treas. Reg. § 1.1400Z(d)-1(d)(6)(iii).

[32] Compare IRC§ 1400Z-2(d)(2)(B)(i)(III), (C)(iii) ("during substantially all of the qualified opportunity fund's holding period for such stock [or partnership interest], such corporation [or partnership] qualified as a qualified opportunity zone business") and IRC§ 1400Z-2(d)(2)(D)(i)(III) ("during substantially all of the qualified opportunity fund's holding period for such property, substantially all of the use of such property was in a qualified opportunity zone.").

[33] Prop. Treas. Reg. § 1.400Z(d)-1(c)(4)(i)(6), (c)(7).

[34] Treas. Reg. § 1.1400Z(d)-2(b)(3)(i)(B).

[35] Id.

[36] Id.

[37] Treas. Reg. § 1.1400Z(d)-2(b)(3)(iii).

[38] Id.

[39] Id.

[40] Without complying with the substantial improvement obligations imposed by IRC § 1400Z-2(d)(2)(D)(i)(II), (ii).

[41] Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

[42] IRC § 1400Z-2(d)(2)(D)(i)(II).

[43] Treas. Reg. § 1.1400Z(d)-2(b)(3)(iv); IRC § 1400Z-2(d)(2)(D)(iv).

[44] Without complying with the substantial improvement obligations imposed by IRC § 1400Z-2(d)(2)(D)(i)(II), (ii).

[45] Treas. Reg. § 1.1400Z(d)-2(b)(3)(v); IRC § 1400Z-2(d)(2)(D)(i)(II).

[46] Treas. Reg. § 1.1400Z(d)-2(b)(3), (4).

[47] Treas. Reg. § 1.1400Z(d)-2(b)(4).

[48] Preamble to final regulations at 189.

[49] Treas. Reg. § 1.1400Z(d)-2(b)(4)(iii).

[50] IRC § 1400Z-2(d)(2)(D)(i)(II), (ii).

[51] Treas. Reg. § 1.1400Z(d)-2(b)(4)(iii)(A).

[52] Treas. Reg. § 1.1400Z(d)-2(b)(4)(iii)(B).

[53] Treas. Reg. § 1.1400Z(d)-2(b)(4)(v)(A); IRC § 1400Z-2(d)(2)(D)(ii).

[54] Id.

[55] Treas. Reg. § 1.1400Z(d)-2(b)(4)(ii).

[56] Id.

[57] Treas. Reg. § 1.1400Z2(b)-1(c)(10)(i).

[58] Treas. Reg. § 1.1400Z2(b)-1(c)(10)(ii).

[59] Treas. Reg. § 1.1400Z2(b)-1(c)(6)(ii)(C)(2).

[60] Treas. Reg. § 1.1400Z2(b)-1(c)(6)(ii)(C)(1).

[61] Treas. Reg. § 1.1400Z2(b)-1(d)(1)(ii)(C), (G).

[62] Treas. Reg. § 1.1400Z2(b)-1(d)(2).

[63] Treas. Reg. § 1.1400Z2(d)-1(c)(2)(i)(A), (3)(i)(A).

[64] Treas. Reg. § 1.1400Z2(d)-1(c)(2)(iii)(B), (3)(ii)(B).

[65] Treas. Reg. § 1.1400Z2(d)-1(c)(2)(iii)(B), (3)(ii)(B).

[66] Treas. Reg. § 1.1400Z2(d)-1(d)(3)(ii)(A).

[67] Id.

[68] Treas. Reg. § 1.1400Z2(d)-1(d)(3)(ii)(B).

[69] Treas. Reg. § 1.1400Z2(d)-2(d)(3)(v).

[70] Treas. Reg. § 1.1400Z2(d)-1(d)(3)(v)(F), (G)(2), (3).

[71] Treas. Reg. § 1.1400Z2(d)-1(d)(3)(v)(F).

[72] IRC § 165(i)(5)(A).

[73] Treas. Reg. § 1.1400Z2(d)-1(d)(3)(v).

[74] Preamble to final regulations at 244.

[75] Treas. Reg. § 1.1400Z2(f)-1(b)(1).

[76] IRC § 165(i)(5)(A).

[77] Treas. Reg. § 1.1400Z2(f)-1(b)(2).

[78] Treas. Reg. § 1.1400Z2(d)-1(d)(3)(ix)(A)-(D).

[79] Treas. Reg. § 1.1400Z2(d)-1(d)(3)(ix)(E).

[80] Treas. Reg. § 1.1400Z2(d)-1(d)(3)(ix)(E)(1).

[81] Treas. Reg. § 1.1400Z2(d)-1(d)(3)(ix)(E)(2).

[82] Treas. Reg. § 1.1400Z2(d)-1(d)(3)(ix)(F).

[83] Id.

[84] Treas. Reg. § 1.1400Z2(d)-2(d)(4)(vii).

[85] IRC § 144(c)(6)(B) (commonly referred to as a “sin business”).

[86] Preamble to final regulations at 261.

[87] Treas. Reg. § 1.1400Z2(d)-1(d)(5).

[88] Id.

[89] Treas. Reg. § 1.1400Z2(f)-1(c)(1).

[90] Id.

[91] Id.

[92] Treas. Reg. § 1.1400Z2(f)-1(c)(3).