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IRS Provides New Markets Tax Credit and Opportunity Zone Relief

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The IRS has issued relief for qualified opportunity funds (QOFs) participating in the opportunity zones program and for community development entities (CDEs) and qualified active low-income community businesses (QALICBs) participating in the new markets tax credit (NMTC) program.

New Markets Tax Credit Relief

On June 12, 2020, the IRS issued NMTC relief under IRS Notice 2020-49 to CDEs and QALICBs for certain time-sensitive acts required to be performed between April 1, 2020, and December 31, 2020.

CDEs originally required to invest cash received from a qualified equity investment (QEI) in a qualified low-income community investment (QLICI) or to redeploy capital in a QLICI between April 1, 2020, and December 31, 2020, will meet the NMTC requirements if done by December 31, 2020.

QALICBs originally required to expend the proceeds of an equity investment or loan by a CDE for the construction of real property between April 1, 2020, and December 31, 2020, will meet the NMTC requirement if the proceeds are expended by December 31, 2020.

Opportunity Zones Relief

On June 4, 2020, the IRS issued IRS Notice 2020-39 to provide relief for certain time-sensitive actions for QOFs.

If a taxpayer's 180th day to invest in a QOF would have fallen on or after April 1, 2020, and before December 31, 2020, the taxpayer may still invest its eligible gains into a QOF until December 31, 2020. This notice extends the 180-day investment deadline that was already postponed through July 15, 2020, via IRS Notice 2020-23. Further, the period starting on April 1, 2020, and ending December 31, 2020, is suspended when determining the 30-month substantial improvement period for QOFs and qualified opportunity zone businesses.

For semiannual testing dates from April 1, 2020, through December 31, 2020, a QOF's failure to hold less than 90% of its assets in qualified opportunity zone property is deemed to be due to reasonable cause under Internal Revenue Code Section 1400Z-2(f)(3) and such failure will not prevent (a) an entity from qualifying as a QOF and (b) an investment in a QOF from being a qualifying investment. Likewise, the QOF will not be liable for the penalty under Section 1400Z-2(f) for such failure during this period.

IRS Notice 2020-39 also allows all qualified opportunity zone businesses an additional 24 months to satisfy the 31-month working capital safe harbor under the Treasury Regulations. Further, if a QOF's reinvestment is delayed due to a federally declared disaster, the QOF is granted an additional 12 months to reinvest the proceeds it received from the sale or other disposition of qualified opportunity zone property or from a return of capital in qualified opportunity zone stock or partnership interests.

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