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December 28, 2018

VIA [www.regulations.gov](http://www.regulations.gov)  
CC:PA:LPD:PR (REG-115420-18)  
Courier's Desk  
Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224

**RE: Response to Solicitation for Written Public Comment  
Proposed Regulations Promulgated Pursuant to 26 U.S.C. sec. 1400Z-2  
Definition of "Original Use"**

To Whom It May Concern:

This written comment is provided in response to 83 F.R. 54279 (Oct. 29, 2018) in which the Department of Treasury and the Internal Revenue Service are seeking public comment on all aspects of the definition of "original use" which is presently not defined in the proposed regulations that provide guidance under 26 U.S.C. sec. 1400Z-2 relating to gains that may be deferred as a result of a taxpayer's investment in a Qualified Opportunity Fund (QOF). It is imperative that underutilization of property must erase the property's history of prior use to further encourage this unique funding mechanism as a way to direct private investment for the revitalization of properties in the Qualified Opportunity Zones (QOZ). This is especially true in New Jersey for properties in a QOZ that overlap with an "area in need of redevelopment" or an "area in need of rehabilitation" as defined and designated in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. ("LRHL").

By way of background, this firm serves as special redevelopment counsel for several public entities in New Jersey in which there is an overlap of a QOZ with properties that have been designated as areas in need of redevelopment and/or as areas in need of rehabilitation pursuant to the LRHL. These entities include the City of Newark; the Township of Neptune; the Perth Amboy Redevelopment Agency; and the Township of Carneys Point. The LRHL is a comprehensive New Jersey statute that empowers and

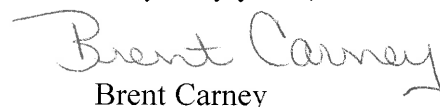
assists local governments in their efforts to arrest and reverse “conditions of deterioration in housing, commercial and industrial installations, public services and facilities and other physical components and supports of community life, and improper, or lack of proper, development which result from forces which are amenable to correction and amelioration by concerted effort of responsible public bodies, and without this public effort are not likely to be corrected or ameliorated by private effort.” N.J.S.A. 40A:12A-2(a). Additionally, the LRHL promotes “the advancement of community interests through programs of redevelopment, rehabilitation and incentives to the expansion and improvement of commercial, industrial, residential and civic facilities.” N.J.S.A. 40A:12A-2(b).

Importantly, redevelopment often includes and requires the demolition of existing buildings and clearing of property within areas designated in need of redevelopment pursuant to the LRHL in order to revitalize the area with the construction of new residential and commercial uses. Presently, the Department of Treasury’s proposed regulations and 26 U.S.C. sec. 1400Z-2 divide the use of QOF into either: (1) substantially improving an existing building(s) within thirty (30) months from the date of the acquisition of the property in a QOZ; or (2) construction from the ground-up if it is considered “original use” of the property. Additionally, while the definition of “substantially improves” requires the expenditure of capital from the QOF to at least equal the basis of an existing building within the tight timeframe of thirty (30) months from the date of acquisition of real property, there does not appear to be such a time constraint for construction from the ground-up, if it is considered original use.

Therefore, in order to define “original use” so that it can become a catalyst to further spur revitalization, it is imperative that the definition of “original use” include a period of abandonment or under-utilization of property to erase the property’s history of prior use in the QOZ. Stated differently, redevelopment does not always continue the original or prior use of the property when a building is demolished and replaced with new construction from the ground-up, but rather new uses are constructed to replace buildings in order to revitalize the area. In New Jersey where often “areas in need of redevelopment” or “in need of rehabilitation” designated in accordance with the LRHL overlap with properties in the QOZ, providing such a definition of “original use” would encourage the use of QOF for those properties. Finally, unlike the tight timeframe of thirty (30) months as utilized in the definition of “substantially improve” we encourage the continued omission of a time period from the definition of “original use” so that comprehensive redevelopment can occur within a QOZ with the benefit of funding from the QOF.

Please contact me if I can provide or be of further assistance in this matter.

Very truly yours,

  
Brent Carney