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Chamber & Economic Development

December 17, 2018

The Honorable Steven Mnuchin
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Subject: Opportunity Zones businesses straddling census tract lines

Dear Secretary Mnuchin:

Opportunity Zones as included in the Tax Cuts and Jobs Act of 2017 is poised to bring unparalleled investment and growth to those regions that need it most. On November 28, 2018 we submitted a letter to you detailing an issue that developed regarding designations of Opportunity Zones as a result of timing issues between different states submissions to Treasury, namely between Kentucky and Ohio. These issues with timing have left Greenup County, Kentucky having its highest priority tract denied Opportunity Zone designation solely as a function of misplaced timing between States.

As a result this failure to have tract 21089040400 (400) (containing the Wurtland Riverport and a significant expansion at Portable Solutions Group, and EastPark Site B where Braidy Industries is building a $1.6 billion aluminum rolling mill) it has left one of our business entities, whose property crosses a county line, partially outside of the designated Opportunity Zone (tract 21019031001) and potentially placing substantial potential investment by a Qualified Opportunity Zone Fund that our region hopes to secure with Braidy Industries out of reach should they not be considered qualified as an Opportunity Zone Business.

Substantially All Definitions

Treasury's proposed rule of a qualified opportunity zone business is based on the codified statement "***Substantially all of the usage of tangible property by a qualified opportunity zone business in a qualified opportunity zone***" whereas Treasury has defined that figure as "***at least 70 percent of the tangible property owned or leased by the trade or business is qualified opportunity zone business property as defined***".

The definition of substantially all is never specifically codified in the *Tax Cuts and Jobs Act of 2017* which provides the Department of Treasury the flexibility to provide for expanded opportunities for those companies or businesses that may not fit inside specific geographic areas.

Treatment of businesses straddling census tract lines

Though this is a small sample size of business that will fall into this special case, there are and will be cases in which a company or business satisfies all definitions of a *qualified opportunity zone business* apart from geography based on that business or company straddling a census tract line in which a portion of that tangible property falls across a previously arbitrary geographic border. This issue is not a new problem and was addressed in a precursor to opportunity zones, empowerment zones.

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Under 26 U.S. Code § 1397C – "Enterprise zone business defined" section (f) "Treatment of businesses straddling census tract lines" stated if—

> (1) a business entity or proprietorship uses real property located within an empowerment zone,
> (2) the business entity or proprietorship also uses real property located outside the empowerment zone,
> (3) the amount of real property described in paragraph (1) is substantial compared to the amount of real property described in paragraph (2), and
> (4) the real property described in paragraph (2) is contiguous to part or all of the real property described in paragraph (1),
> then all the services performed by employees, all business activities, all tangible property, and all intangible property of the business entity or proprietorship that occur in or is located on the real property described in paragraphs (1) and (2) shall be treated as occurring or situated in an empowerment zone.

Substantially All versus Substantial

In the case where only geography causes a business or company to straddle an Opportunity Zone tract line created through already established census borders, and in line with previous established precedent in 26 U.S. Code § 1397C, we believe that it is more appropriate to utilize rules similar, yet simpler than that of Section (f) and in such a case where a single business or company's real property straddles such a line. As the intent of Congress is to bring investment to regions that Opportunity zone serve, in the case of a business that straddles a census line with the majority of that business lying within, it would be more reasonable for the whole of that business to be considered qualified and ensure investment qualifies, as if the whole of the property resided across that line.

Recommended Amendment to the Proposed Rule

In support of these arguments we propose the following amendment to the proposed rule language:

Section (VI) – SPECIAL RULE FOR REAL PROPERTY A PORTION OF WHICH IS OUTSIDE AN OPPORTUNITY ZONE.

> **"If more than 50 percent of any contiguous piece of real property is located in a qualified opportunity zone and is used in a trade or business of the qualified opportunity fund, all of such contiguous piece of real property shall be treated as used in such qualified opportunity zone."**

Thank you for your consideration in this matter. We hope you recognize this special situation and recognize the need, as was recognized in the establishment of empowerment zones, to support the intent of this legislation and the benefit that this minor adjustment will make to those opportunity zones that have a business or company that falls in this special case.

Sincerely,

President and CEO