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December 18, 2018

Office of Associate Chief Counsel (Income Tax and Accounting)
Attention: Erika C. Reigle and Kyle C. Griffin
Internal Revenue Service (I.R.S.)
1111 Constitution Avenue, NW
Washington, D.C. 20224

CC:PA:LPD:PR (REG-115420-18)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Via Federal eRulemaking Portal

Re: Public Submission concerning the concept of possible statutory amendments to enhance the effectiveness and further the underlying economic development policy of the Opportunity Zone Program

Dear Ms. Reigle and Mr. Griffin,

This letter is a Public Submission that represents a perspective which attempts to clearly understand the intent of the underlying economic development policy behind the Opportunity Zone Program (the "Program") and then suggests possible statutory or mechanical adjustments to further and enhance that same policy. While not squarely within the requested parameters of the types of comments sought by the Internal Revenue Service ("Service") relating to the Proposed Regulations published in October 2018, this Public Submission however simply intends to broaden the discussion during the Public Hearing period and beyond about a couple ways to consider adjusting this significant and powerful new economic development tool so as to have considerably more positive impact and increase its overall effectiveness in the distressed communities through the ensuing investment the Program incentivizes.

1. *Explain Permitted Uses of 10% of QOF outside "Investment Standard" / "90%-Asset Test"*

The first comment is really just a request for the Service to please clarify the intended purpose and provide a hypothetical example that explains the requirement for Qualified Opportunity Funds (QOFs) to invest and maintain 90% of its assets within an Opportunity Zone (otherwise sometimes referred to as the "investment standard" or "90%-asset test"). In other words, what are the intended or permissible uses of the *other* 10% which is excepted from the 90% requirement for investments

to be within Opportunity Zones. More specifically, are QOFs permitted to invest up to 10% of its assets in real estate development projects or operating businesses *outside* Opportunity Zones but still treat those assets outside of the zones in a manner consistent with the requisite 5, 7 and 10 Year-Hold periods in order to receive the same tax treatment as the other 90% of the QOF?

2. *Amend Statute to Increase % of LICs eligible per State to become Opportunity Zones and Create Mechanism to Allow State CEOs and Treasury to "Substitute" Previously Designated Zones*

Due to the widely-held view that there was a somewhat accelerated and unnecessarily hasty Consideration Period (90-days) and the ultimate nomination and certification process between state CEOs and Treasury (all together six months - January 2018 through June 2018) following the enactment of the 2017 Tax Cut and Jobs Act, we respectfully request that the Service, the Treasury Department ("Treasury"), the Office of the President ("Administration") and Congress consider an amendment to the enabling statute. The purpose of this amendment would be to newly permit the inclusion of other census tracts as Opportunity Zones (in a proposed conceptual framework and based upon merits described below) that heretofore were otherwise (mistakenly) omitted from original designation as Opportunity Zones in the somewhat truncated and insufficiently advertised Consideration Period.

This objective of implementing a new statutory or regulatory mechanism that permits state CEOs and Treasury to essentially reconsider certain census tracts and thereby determine again whether they are still the most appropriate or the most beneficial designations for a given state (at the discretion of the state CEO) is intended to, at the end of the day, allow new and deserving census tracts to be newly certified as Opportunity Zones so as to further the underlying economic development policy that informed the creation of the program in the first place.

Therefore, in order to stimulate greater economic impact in underserved communities throughout the country, the Administration and Congress could consider implementing each of the two following concepts for "mechanical" adjustments to the statute.

(1) **Increase the %** of eligible low-income communities (LICs) per state above the current 25% total to 27% or 30% of LICs and simply extend the deadline for state CEOs and the Secretary to finalize / certify each state's respective Opportunity Zones.

Perhaps this new deadline date could be 180 days from December 31, 2018 OR it could correspond with the deadline for taxpayers to invest in a Qualified Opportunity Fund ("QOF") in order to realize the 15% deferral option of December 31, 2019. Because under the December 31, 2019 scenario, each QOF still then has to perform its own due diligence and determine prudent and viable investment options. As such and in this hypothetical scenario, a just newly certified Opportunity Zone could contain an Opportunity Zone Business that could easily then be the recipient of investment proceeds from a recent (or final) capital call from a newly formed QOF as late as the end of calendar year 2019.

(2) **Substitution** - Introduce the added flexibility for state CEOs and Treasury to substitute previously designated and certified Opportunity Zone census tracts with other qualifying

census tracts per the discretion of the states' CEOs (but still not to exceed the 25%, or any percentage 25% might be increased to, maximum eligible LICs) under the premise that:

a. **Suitability** - certain other census tracts have a higher degree of "suitability" (or "deserve-ability" test) through objectively possessing:
    i. considerably higher measures of economic distress comparatively (e.g. higher poverty rate alone, or higher unemployment alone, or as compared through all of the current distressed community criteria), and / or
    ii. businesses or projects with the probability to either (or both):
        1. generate materially more new jobs; and / or
        2. be shovel-ready much sooner;

    than compared to a business or project in a previously designated census tract (both ii.1. and ii.2. together, the "Higher Jobs Impact Project", "Job Creation" or "Shovel-Ready" Test)

b. **"Likelihood" Test** – upon review and consideration by a state's CEO, the CEO determines that there are certain previously approved census tracts *that possess no or little viability to be a successful Opportunity Zone* (due to predominant land uses or economic activity – e.g. oil & gas refineries or other industrial uses not being conducive for new investment as intended by the program due either to formidable environmental site issues or substantial historical investment in property, plant and heavy equipment) and thus unlikely to receive investment from a QOF. As such the CEO would be then be able and willing to replace (or substitute) said non-viable census tract (which can be referred to as an "Orphan Zone") with a new census tract that contains a viable project(s). Of course, without viable projects to receive investment the entire purpose of the legislation, the policy and the program are lost. The continued inclusion of Orphan Zones would squander and frustrate the rare opportunity this legislation has created to direct much needed job creation to distressed communities in a timeframe that values and prioritizes shovel-ready or near shovel-ready projects.

Thank you for your consideration of the two comments above as they are intended really to just stimulate policy discussion and enhance the efficiency and effectiveness of the Opportunity Zone Program. If anyone from the Internal Revenue Service or Treasury Department has any questions concerning the proposed conceptual framework for a possible amendment described above or the intended outcomes resulting therefrom, please do not hesitate to contact me at (610) 492-7603.

Sincerely,

Adam B. Rotwitt
Vice President

CC: Heather Boyd, District Director, Congresswoman Mary Gay Scanlon (PA-7)
Honorable Tom Wolf, Governor of Pennsylvania

Pennsylvania State Representative Brian Kirkland (159th Legislative District)
Pennsylvania State Senator Tom Killion (PA Senate District-9)
Patrick J. Eiding, President, Philadelphia AFL-CIO
Pat Toomey, United States Senator (PA)
Tom Casey, United States Senator (PA)