

[4830-01-P]



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Department of the Treasury

Internal Revenue Service

26 CFR Part 1

[TD 9889]

RIN 1545–BO4

Investing in Qualified Opportunity Funds; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations; correction.

**SUMMARY:** This document contains corrections to Treasury Decision 9889, which was published in the **Federal Register** on Monday, January 13, 2020. Treasury Decision 9889 contained final regulations under the Internal Revenue Code (Code) that govern the extent to which taxpayers may elect the Federal income tax benefits with respect to certain equity interests in a qualified opportunity fund (QOF).

**DATES:** These corrections are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and applicable on or after January 13, 2020.

**FOR FURTHER INFORMATION CONTACT:** Concerning section 1400Z-2 and these regulations generally, Harith J. Razaa, (202) 317-7006, or Kyle C. Griffin, (202) 317-4718, of the Office of Associate Chief Counsel (Income Tax and Accounting). These numbers are not toll-free numbers.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The final regulations (TD 9889) that are the subject of this correction are under section 1400Z-2 of the Code.

##### **Need for Correction**

As published on January 13, 2020 (85 FR 1866) the final regulations (TD 9889) contain errors that need to be corrected.

### **Correction of Publication**

Accordingly, the final regulations (TD 9889) that are the subject of FR Doc. 2019–27846, appearing on page 1866 in the **Federal Register** of January 13, 2020, are corrected as follows:

1. On page 1897, second and third columns, removing the fourth through the sixth sentences of the last paragraph.
2. On page 1923, first column, the first full paragraph is corrected to read: “As set forth in the final regulations, the 62-month working capital safe harbor provides that, during the maximum 62-month covered period, (1) NQFP in excess of the five-percent NQFP limitation will not cause a trade or business to fail to qualify as a qualified opportunity zone business, and (2) gross income earned from the trade or business will be counted towards satisfying the 50-percent gross income requirement (each of clauses (1) and (2) function in a manner similar to the 31-month working capital safe harbor). In addition, the regulations provide additional flexibility for entities utilizing the working capital safe harbor. First, for start-up entities, the 62-month working capital safe harbor provides that, during the maximum 62-month covered period, if property of an entity that would otherwise be NQFP is treated as being a reasonable amount of working capital under the safe harbor, the entity satisfies the requirements of section 1400Z-2(d)(3)(A)(i) only during the working capital safe harbor period(s) with regard to such property. However, the final regulations make clear that such property is not and will never be qualified opportunity zone business property for any purpose. Second, for any eligible entity utilizing the working capital safe harbor, if tangible property is expected to be qualified opportunity zone business property pursuant to the written plan, such

tangible property is treated as qualified opportunity zone business during the working capital safe harbor test for purposes of section 1400Z-2(d)(3). Under the 62-month working capital safe harbor, intangible property purchased or licensed with working capital covered by the safe harbor, and pursuant to the plan submitted with respect to that safe harbor, will count towards the satisfaction of the 40-percent intangible property use test.”

3. On page 1926, third column, the second sentence of the first full paragraph, the language “In general, the final regulations permit a qualified opportunity zone business to treat tangible property for which working capital covered by the 31-month working capital safe harbor is expended as (i) used in the trade or business of the qualified opportunity zone business, and (ii) qualified opportunity zone business property throughout the period during which such working capital is covered by the safe harbor.” is corrected to read “In general, the 62-month working capital safe harbor under the final regulations provides that, during the maximum 62-month covered period, if property of a start-up entity that would otherwise be NQFP is treated as being a reasonable amount of working capital under the safe harbor, the start-up entity satisfies the requirements of section 1400Z-2(d)(3)(A)(i) only during the working capital safe harbor period(s) with regard to such property. However, the final regulations make clear that such property is not qualified opportunity zone business property for any other purpose. See part V.N.3.c of this Summary of Comments and Explanation of Revisions describing the 62-month working capital safe harbor set forth in §1.1400Z2(d)-1(d)(3)(vi).”.

4. On page 1926, third column, the first through the sixth line from the bottom of the first full paragraph, the language “capital covered by the 31-month working capital safe harbor are not, following the conclusion of the final safe harbor period, treated as tangible property for purposes of applying the 70-percent tangible property standard.” is

corrected to read “capital covered by the 62-month working capital safe harbor are not, following the conclusion of the final safe harbor period, treated as qualified opportunity zone business property for purposes of applying the 70-percent tangible property standard. Because working capital is not tangible property, working capital covered by the 62-month safe harbor cannot be treated as qualified opportunity zone business property under the proposed regulations or the final regulations except as provided in section 1.1400Z2(d)-1(d)(3)(vi)(D).”.

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