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Packed ‘Opportunity Zone’ Hearing Centers on Need for Flexibility

By Lydia O'Neal Feb 14, 2019

- • Rules should allow for sales outside of designated zones, some witnesses say
- • Crowded hearing left dozens of would-be spectators out in the cold

Investors, lobbyists, and tax planners urged the IRS to reshape rules on new tax breaks for impoverished areas to be more beneficial for financiers and workers and residents in those communities.

The calls came during a Feb. 14 hearing on opportunity zones, a popular tax incentive created in the 2017 tax code overhaul. The law now allows investors in low-income regions across the country to defer their capital gains tax bills stemming from those investments until the end of 2026 or until they are sold, and exclude some of the gains if the funds are held for at least five years, under tax code Sections 1400Z-1 and 1400Z-2.

The hearing focused on October proposed rules (REG-115420-18) that some have said favor real estate over other types of businesses, particularly those that derive a significant portion of their income activities outside of where they are located.

Speakers and attendees for the hearing waited in line for as long as 90 minutes before IRS security guards turned many away because there was no space left in the hearing room and overflow room. IRS Associate Chief Counsel (Income Tax & Accounting) Scott Dinwiddie suggested a larger venue for the next opportunity zones hearing, while an audience member joked that perhaps a sports stadium would suffice.

Several speakers urged the Internal Revenue Service to grant more flexibility under the rules. Suggestions included changing the rules to allow investors ways of exiting their investments in designated opportunity zones other than a sale of the related fund; slackening its standard for where the income of the opportunity zone project is derived; and ensuring that the companies that get these tax breaks can be structured to allow for employee ownership.

Broad Appeal

Lobbyists and investors in favor of the initiative tout its potential to spur economic growth in regions that need it. Others warn that the tax incentives will accelerate gentrification, pushing out lower-income residents to the benefit of those hitting the gas pedal.

The hearing was held on the same day that Amazon.com Inc. abandoned plans to build a new corporate campus in New York City after fierce opposition. The Long Island City neighborhood Amazon chose was in an opportunity zone.

One way to help small businesses access the incentives would be to scrap a proposed requirement that 50 percent of the gross income of an opportunity zone business be derived from activities within the designated zone, some speakers said.

Frank Altman, president and CEO of the Community Reinvestment Fund, which helps finance development in low-income areas, described his group’s work to help revive the Detroit mortgage market. The 50 percent test, he said, would make many contractors located in the opportunity zones ineligible if they work throughout the city.

"There's activity going on in the opportunity zone but the overall basis of wealth production in the neighborhoods and economies and businesses is through exports," Altman said. "So don't put a limitation on sales. Sales should be anywhere."

He is far from alone in asking the agency to loosen this restriction: A group of lawmakers, including Sens. Tim Scott (R-S.C.) and Cory Booker (D-N.J.), wrote Treasury Secretary Steven Mnuchin in January expressing their concern that this limit clashed with congressional intent.

Loosen Up

Investors are also looking for the IRS to slacken the rules for exiting qualified opportunity fund investments.

Gina Staudacher, an attorney at Howard & Howard in Royal Oak, Mich. who focuses on corporate tax and accounting, asked the IRS to consider allowing investors to sell the underlying asset in which the fund invests as an alternative to selling their interest in the qualified opportunity fund itself.

"The result of having to sell the interest of the qualified opportunity fund to exit an investment creates unnecessary complexity," Staudacher said.

At least two speakers at the hearing requested that the IRS spread the wealth of opportunity zone investments by permitting the funds to be structured in ways that would allow for employee ownership through stock ownership plans or worker cooperatives.

Doing so would help the businesses most able to "distribute the benefits" of the investment to the workers and families in those areas, said Todd Leverette, a Detroit-based legacy business program manager at the Democracy at Work Institute, which supports worker cooperatives.

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