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Internal Revenue Code Section 1.1400Z2(a)-1(b)(7)(iv)(A), Example 1

Deferring tax on capital gains by investing in opportunity zones

(a)Deferring tax on capital gains.

(1)Overview. Under section 1400Z-2(a) of the Internal Revenue Code (Code) and the section 1400Z-2 regulations (as defined in paragraph (b)(41) of this section), an eligible taxpayer may elect to defer recognition of some or all of one or more eligible gains that otherwise would be recognized by the eligible taxpayer in the taxable year to the extent that the eligible taxpayer timely acquires a qualifying investment in a qualified opportunity fund (QOF) within the meaning of section 1400Z-2(d)(1) and §1.1400Z2(d)-1. Paragraph (a)(2) of this section describes how a taxpayer elects to defer gain. Paragraph (b) of this section defines terms used in the section 1400Z-2 regulations. Paragraph (c) of this section provides operational rules for applying section 1400Z-2 and the section 1400Z-2 regulations, including special rules regarding the election to defer gain under section 1400Z-2(a) and this section when an eligible taxpayer that is a partnership, S corporation, trust, or decedent's estate recognizes an eligible gain in a taxable year. Paragraph (d) of this section provides the manner in which a deferral election under section 1400Z-2(a) must be made. Paragraph (e) of this section provides the treatment of section 1400Z-2 for purposes of § 1.897-6T. Paragraph (f) of this section provides rules for mixed-funds investments. Paragraph (g) of this section provides dates of applicability. See §§1.1502-14Z and 1.1504-3 for special rules applicable to consolidated groups that invest in QOFs.

(2)Procedure for deferring gain. A taxpayer defers gain, in whole or in part, by making an election on its Federal income tax return for the taxable year in which the gain would be included if not deferred. The election must be made in the manner prescribed by the Internal Revenue Service in guidance published in the Internal Revenue Bulletin or in forms and instructions (see §§601.601(d)(2) and 601.602 of this chapter).

(b)Definitions. The following definitions apply for purposes of section 1400Z-2 and the section 1400Z-2 regulations:

(1)30-month substantial improvement period. The term 30-month substantial improvement period means any 30-month period, beginning after the date of acquisition of tangible property, in which additions to the basis of the tangible property in the hands of the QOF or qualified opportunity zone business (see §1.1400Z2(d)-2(b)(4)) exceed an amount equal to the adjusted basis of such property at the beginning of the 30-month period in the hands of the QOF or qualified opportunity zone business.

(2)70-percent tangible property standard. The term 70-percent tangible property standard means the requirement in section 1400Z-2(d)(3)(A)(i) that a qualified opportunity zone business must satisfy with respect to qualified opportunity zone business property (see § 1.1400Z2(d)-2) that the qualified opportunity zone business holds, whether the qualified opportunity zone business property is owned by the qualified opportunity zone business or leased by the qualified opportunity zone business from another person.

(3)70-percent use test. The term 70-percent use test means the test used to determine if a QOF or qualified opportunity zone business satisfies the requirement in sections 1400Z-2(d)(2)(D)(i)(III) and 1400Z-2(d)(3)(A)(i) that substantially all of the use of tangible property was in a qualified opportunity zone.

(4)90-percent investment standard. The term 90-percent investment standard means the requirement provided in section 1400Z-2(d)(1) that a QOF must hold at least 90 percent of its assets in qualified opportunity zone property, as defined in section 1400Z-2(d)(2) and §1.1400Z2(d)-1(c)(1), determined by the average of the percentage of qualified opportunity zone property held by the QOF as measured on the last day of the first six-month period and on the last day of the taxable year of the QOF.

(5)90-percent qualified opportunity zone property holding period. The term 90-percent qualified opportunity zone property holding period means the minimum portion of a QOF's holding period in stock of a corporation or interests in a partnership, during which the corporation or partnership qualifies as a qualified opportunity zone business in order for the stock or the partnership interests to meet the substantially all requirement under section 1400Z-2(d)(2)(B)(i)(III) to be treated as qualified opportunity zone stock or the substantially all requirement under section 1400Z-2(d)(2)(C)(iii) to be treated as qualified opportunity zone partnership interests, as applicable, held by the QOF.

(6)90-percent qualified opportunity zone business property holding period. The term 90-percent qualified opportunity zone business property holding period means the minimum portion of a QOF's or qualified opportunity zone business's holding period in tangible property during which the 70-percent use test with respect to the tangible property must be satisfied, in order for the tangible property to meet the requirement under section 1400Z-2(d)(2)(D)(i)(III) to be treated as qualified opportunity zone business property held by the QOF or qualified opportunity zone business.

(7)180-day period.

(i) In general. Except as otherwise provided elsewhere in this section, the term 180-day period means the 180-day period referred to in section 1400Z-2(a)(1)(A) with respect to any eligible gain meeting the requirements of paragraph (b)(11) of this section that begins on the day on which the gain would be recognized for Federal income tax purposes if the eligible taxpayer did not elect under section 1400Z-2 and the section 1400Z-2 regulations to defer recognition of that gain.

(ii) 180-day period for RIC and REIT capital gain dividends.

(A) General rule. Unless the shareholder of a regulated investment company (RIC) or real estate investment trust (REIT) chooses to apply paragraph (b)(7)(ii)(B) of this section, the 180-day period for a RIC or REIT capital gain dividend begins on the last day of the shareholder's taxable year in which the capital gain dividend would otherwise be recognized by the shareholder.

(B) Elective rule. Notwithstanding the general rule in paragraph (b)(7)(ii)(A) of this section, a shareholder of a RIC or REIT may choose to treat the 180-day period with respect to a capital gain dividend that the shareholder receives from the RIC or REIT as beginning on the date of the dividend distribution; provided, however, that the aggregate amount of the shareholder's eligible gain with respect to capital gain dividends from the RIC or REIT is limited to the aggregate amount of capital gain dividends reported for that shareholder by the RIC for that shareholder's taxable year or designated for that shareholder by the REIT for that shareholder's taxable year.

(C) Undistributed capital gains. If section 852(b)(3)(D) or 857(b)(3)(C) (concerning undistributed capital gains) requires the holder of shares in a RIC or REIT to include an amount in the shareholder's long-term capital gains, the rule in paragraph (b)(7)(ii)(B) of this section does not apply to that amount. The 180-day period with respect to the included undistributed capital gain begins, at the shareholder's election, on either the last day of the RIC or REIT's taxable year or the last day of the shareholder's taxable year in which the amount would otherwise be recognized as long-term capital gains by the shareholder.

(iii) 180-day period for partners, S corporation shareholders, and owners of other passthrough entities. See paragraph (c)(8) and (9) of this section for rules relating to the determination of the 180-day period for partners, S corporation shareholders, or beneficiaries of a trust or decedent's estate in cases in which a partnership, S corporation, trust, or decedent's estate is not an eligible taxpayer with respect to an eligible gain, or does not make a deferral election with respect to an eligible gain.

(iv) Examples. The following examples illustrate the principles of paragraph (b)(7)(i) through (iii) of this section.

(A)

Example (1). Regular-way trades of stock. Individual A sells stock at a gain in a regular-way trade on an exchange (that is, in a transaction in which a trade order is placed on the trade date, and settlement of the transaction, including payment and delivery of the stock, occurs a standardized number of days after the trade date). The 180-day period with respect to A's gain on the stock begins on the trade date.

(B)

Example (2). Capital gain dividends received by a REIT shareholder. REIT and Shareholder are calendar year taxpayers. REIT distributes a dividend to Shareholder on March 1, Year 1. REIT designates the March 1 dividend as a capital gain dividend before 30 days after the close of Year 1. Shareholder's 180-day period with respect to that capital gain dividend begins on December 31, Year 1. However, Shareholder may choose to begin the 180-day period on March 1, Year 1. If so, an equity interest in a QOF received by Shareholder in exchange for an investment of an amount corresponding to that capital gain dividend may be a qualifying investment to the extent that Shareholder's aggregate elected deferrals of dividends from REIT for Year 1 do not exceed Shareholder's aggregate capital gain dividends from REIT for the taxable year.

(C)
Example (3). Multiple capital gain dividends received by a RIC shareholder. RIC is a calendar year taxpayer. RIC distributes a dividend of $100 to Shareholder, a calendar year taxpayer, on March 1, Year 1 and distributes another dividend of $50 to Shareholder on June 1, Year 1. RIC reports both the March 1 and June 1 dividends as capital gain dividends on Shareholder's Form 1099-DIV for Year 1. Shareholder's 180-day period with respect to both capital gain dividends begins on December 31, Year 1. However, Shareholder may choose to begin the 180-day period for the $100 RIC capital gain dividend on March 1, Year 1, and may choose to begin the 180-day period for the $50 RIC capital gain dividend on June 1, Year 1. Thus, if Shareholder makes a single investment of $200 in a QOF in exchange for an eligible interest (as defined in paragraph (b)(12) of this section) on July 1, Year 1, absent any other eligible gain, Shareholder may treat $150 of the eligible interest as a qualifying investment in the QOF (that is, the amount that corresponds to the aggregate amount of the RIC capital gain dividends in Year 1) and $50 of the eligible interest as a non-qualifying investment therein.

(D)
Example (4). Additional deferral of previously deferred gains.
(1) Facts. Taxpayer A invested in a QOF and properly elected to defer realized gain. On March 15, 2025, A disposes of its entire investment in the QOF in a transaction that, under sections 1400Z-2(a)(1)(B) and (b), triggers an inclusion of gain in A's gross income. Section 1400Z-2(b) determines the date and amount of the gain included in A's income. That date is March 15, 2025, the date on which A disposed of its entire interest in the QOF. A wants to make a deferral election with respect to A's gain from the disposal of the QOF investment.

(2) Analysis. Under paragraph (b)(7)(i) of this section, the 180-day period for making another investment in a QOF begins on the day on which section 1400Z-2(b) requires the prior gain to be included. As prescribed by section 1400Z-2(b)(1)(A), that is March 15, 2025, the date of the inclusion-triggering disposition. Thus, in order to make a deferral election under section 1400Z-2, A must invest the amount of the inclusion in the original QOF or in another QOF during the 180-day period beginning on March 15, 2025, the date when A disposed of its entire investment in the QOF.

(8)Boot. The term boot means money or other property that section 354 or 355 does not permit to be received without the recognition of gain.

(9)Consolidated group. The term consolidated group has the meaning provided in §1.1502-1(h).

(10)Deferral election. The term deferral election means an election under section 1400Z-2(a) and the section 1400Z-2 regulations made before January 1, 2027, with respect to an eligible gain.

(11)Eligible gain.

(i) In general. An amount of gain is an eligible gain, and thus is eligible for deferral under section 1400Z-2(a) and the section 1400Z-2 regulations, if the gain-

(A) Is treated as a capital gain for Federal income tax purposes or is a qualified 1231 gain within the meaning of paragraph (b)(11)(iii)(A) of this section, determined by-

(1) Not taking into account any losses unless otherwise specified in the section 1400Z-2 regulations; and

(2) Taking into account any other provision of the Code that requires the character of potential capital gain to be recharacterized or redetermined as ordinary income, as defined in section 64, for purposes of the Code;

(B) Would be recognized for Federal income tax purposes and subject to tax under subtitle A of the Code before January 1, 2027 (subject to Federal income tax), if section 1400Z-2(a)(1) did not apply to defer recognition of the gain; and

(C) Does not arise from a sale or exchange of property with a person that, within the meaning of section 1400Z-2(e)(2), is related to-

(1) The eligible taxpayer that would recognize the gain in the taxable year in which the sale or exchange occurs if section 1400Z-2(a)(1) and the section 1400Z-2 regulations did not apply to defer recognition of the gain; or

(2) Any passthrough entity or other person recognizing and allocating the gain to the eligible taxpayer described in paragraph (b)(11)(i)(C)(1) of this section.

(ii) Portion of eligible gain not already subject to a deferral election. In the case of an eligible taxpayer who has made an election under section 1400Z-2(a) and the section 1400Z-2 regulations regarding some but not all of an eligible gain, the portion of that eligible gain with respect to which no election under section 1400Z-2(a) and the section 1400Z-2 regulations has been made remains an eligible gain for which a deferral election may be made.

(iii) Qualified 1231 gains.

(A) Definition. A section 1231 gain (as defined in section 1231(a)(3)(A)) recognized on the sale or exchange of property defined in section 1231(b) (1231(b) property) is a qualified 1231 gain to the extent that it exceeds any amount with respect to the 1231(b) property that is treated as ordinary income under section 1245 or section 1250.

(B) 180-day period. For the applicable 180-day period with respect to a qualified 1231 gain, see paragraph (b)(7) of this section.

(C) Attributes of included income when deferral ends. For the Federal income tax treatment of the later inclusion of a qualified 1231 gain deferred under section 1400Z-2(a)(1) and the section 1400Z-2 regulations, see paragraph (c)(1) of this section.

(iv) Gain arising from an inclusion event.

(A) In general. Gain that is otherwise required to be included in gross income under § 1.1400Z2(b)-1(e)(1), whether from the disposition of an entire interest in a QOF or a disposition of a partial interest, may be eligible for deferral under section 1400Z-2(a)(1), provided that all of the requirements to elect to defer gain under section 1400Z-2(a)(1)(A) are met. For purposes of determining whether such gain is eligible gain under section 1400Z-2(a)(1)(A) and this paragraph (b)(11)(iv)(A), the eligible taxpayer should treat such inclusion gain as if it was originally realized upon the occurrence of the inclusion event rather than on the sale or exchange that gave rise to the eligible gain to which the inclusion event relates.

(B) 180-day period. The 180-day period for investing gain from an inclusion event begins on the date of the inclusion event.

(C) Holding period. The holding period for a qualifying investment attributable to eligible gain arising from an inclusion event begins on the date that the gain is reinvested in a QOF.

(v) No deferral for gain realized upon the acquisition of an eligible interest. Gain is not eligible for deferral under section 1400Z-2(a)(1) and the section 1400Z-2 regulations if such gain is realized upon the contribution, exchange, or other transfer of property to a QOF in exchange for an eligible interest (see paragraph (c)(6)(ii)(C) of this section) or the transfer of property to an eligible taxpayer in exchange for an eligible interest (see paragraph (c)(6)(iv) of this section).

(vi) Gain from section 1256 contracts and from positions in a straddle.

(A) General rule. Except as otherwise explicitly provided in paragraph (b)(11)(vi)(B), (C), or (D) of this section, eligible gain for a taxable year does not include-

(1) Gain from a section 1256 contract as defined in section 1256(b);

(2) Gain from a position that was part of a straddle as defined in section 1092 (straddle) during the taxable year; or

(3) Gain from a position that was part of a straddle in a previous taxable year if, under section 1092(a)(1)(B), a loss from any position in that straddle is treated as sustained, subject to the limitations of section 1092(a)(1)(A), during the taxable year.

(B) Exception for net gain from certain section 1256 contracts. Paragraph (b)(11)(vi)(A)(1) of this section does not apply to the net gain during the taxable year from section 1256 contracts that were not part of a straddle at any time during the taxable year (qualified section 1256 contracts). For purposes of this paragraph (b)(11)(vi)(B), the net gain during the taxable year from qualified section 1256 contracts is determined by taking into account all capital gains and losses from such contracts for the taxable year that are recognized for Federal income tax purposes, determined without regard to section 1400Z-2(a)(1). The 180-day period with respect to any eligible gain described in this paragraph (b)(11)(vi)(B) begins on the last day of the taxable year, and the character of that gain when it is later included under sections 1400Z-2(a)(1)(B) and 1400Z-2(b) is determined under the general rule in paragraph (c)(1) of this section. If, under section 1256(a)(4), section 1092 does not apply to a straddle, such straddle is not treated as a straddle for purposes of this paragraph (b)(11)(vi)(B).

(C) Exception for net gain from certain identified straddles.

(1) Paragraph (b)(11)(vi)(A) of this section does not apply to the net gain during the taxable year from positions in a straddle if-

(i) During the taxable year, the positions were part of an identified straddle under section 1092(a)(2), part of an identified mixed straddle under §1.1092(b)-3T (and, as applicable, § 1.1092(b)-6), part of an identified straddle under section 1256(d), or included in a mixed straddle account under §1.1092(b)-4T;

(ii) All gains and losses with respect to the positions that were part of such straddle or included in such mixed straddle account are recognized by the end of the taxable year (other than gain that would be recognized but for deferral under section 1400Z-2(a)(1));

(iii) None of the positions in such straddle or mixed straddle account were part of a straddle during the taxable year, other than a straddle described in paragraph (b)(11)(vi)(C)(1)(i) and (ii) of this section; and

(iv) None of the positions in such straddle or mixed straddle account were part of a straddle in a previous taxable year if, under section 1092(a)(1)(B), a loss from any position in such straddle is treated as sustained, subject to the limitations of section 1092(a)(1)(A), during the taxable year.

(2) For purposes of paragraph (b)(11)(vi)(C)(1) of this section, net gain during the taxable year from an identified straddle or mixed straddle account described in paragraph (b)(11)(vi)(C)(1)(i) through (iv) of this section is equal to the excess of the capital gains recognized in the taxable year for Federal income tax purposes, determined without regard to section 1400Z-2(a)(1),

from all of the positions that were part of that straddle over the sum of the capital losses and net ordinary loss (if any) from all of the positions that were part of that straddle. For purposes of this paragraph (b)(11)(vi)(C)(2), capital gains and losses from an identified straddle or mixed straddle account include capital gains and losses from section 1256 contracts and other positions marked to market either upon termination or on the last business day of the taxable year, as well as annual account net gain from positions in a mixed straddle account covered by § 1.1092(b)-4T. In addition, for purposes of this paragraph (b)(11)(vi)(C)(2), net ordinary loss means the excess of ordinary losses over ordinary gains.

(3) If a straddle is an identified straddle described in section 1092(a)(2), the basis adjustment provisions described in sections 1092(a)(2)(A)(ii) and (iii) must be applied in determining the net gain during the taxable year from positions that were part of that straddle.

(4) The 180-day period with respect to any eligible gain described in paragraph (b)(11)(vi)(C)(2) of this section begins on the earlier of the date when all of the positions that are, or have been, part of the straddle are disposed of (or otherwise terminated) or the last day of the taxable year.

(5) If net gain described in paragraph (b)(11)(vi)(C)(2) of this section is deferred under section 1400Z-2(a)(1), that gain is not treated as unrecognized gain for purposes of section 1092(a)(3)(A)(ii).

(D) Additional exceptions to the general rule. Additional exceptions to the general rule in paragraph (b)(11)(vi)(A) of this section may be prescribed in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter).

(E) Examples. The following examples illustrate the rules described in paragraph (b)(11)(vi) of this section. All of the examples assume that Taxpayer holds the positions described as capital assets and that Taxpayer holds no offsetting positions other than those described in the examples.
(1)
Example (1). Taxpayer owns 100 shares of publicly traded Company X common stock and acquires put options on 100 shares of Company X common stock during the taxable year. Taxpayer does not make any straddle identifications under section 1092. During the taxable year, Taxpayer sells all 100 shares of its Company X common stock and has a $40 capital gain. During the taxable year, Taxpayer also closes out all of its put options on Company X common stock and has a $30 capital loss. That $40 of capital gain is from a position that was part of a straddle during the taxable year because the position in Company X common stock and the position in put options on Company X stock are offsetting

positions as defined in section 1092(c). Under paragraph (b)(11)(vi)(A) of this section, none of Taxpayer's $40 of capital gain is eligible gain.

(2)
Example (2). Taxpayer's taxable year is the calendar year. Taxpayer owns 100 shares of publicly traded Company Y common stock and has a basis in each share of $10.00. Taxpayer also owns put options on 100 shares of Company Y common stock. Taxpayer makes a valid and timely identification under section 1092(a)(2) of the 100 shares of Company Y common stock and the put options on the 100 shares of Company Y common stock. On January 10, Year 1, Taxpayer closes out all of the put options and has a $30.00 capital loss. On March 10, Year 1, Taxpayer sells 40 shares of the Company Y common stock for $11.00 per share. At the end of Year 1, the fair market value of each of the 60 remaining shares of Company Y common stock held by Taxpayer is $10.50. Under section 1092(a)(2)(A)(ii), when the put options are closed out at a loss of $30.00, the basis of each of Taxpayer's shares of Company Y common stock is increased by $0.30 ($30.00/100). Thus, Taxpayer has a gain of $28.00 ((40 * $11.00)-(40 * $10.30)) on the sale of the 40 shares of Company Y common stock. Paragraph (b)(11)(vi)(A) of this section applies to all of Taxpayer's gain during the taxable year from the straddle. Because Taxpayer has unrecognized gain from the straddle at the end of the taxable year, paragraph (b)(11)(vi)(C) of this section does not shield any of Taxpayer's gain from that result. The $28 of gain is thus not eligible gain. Taxpayer must recognize and include in taxable income for the taxable year the $28.00 capital gain. Under section 1092(a)(2)(A)(iv), Taxpayer may not deduct the $30.00 loss from the put options.

(3)
Example (3). The facts are the same as in paragraph (b)(11)(vi)(E)(2) of this section (Example 2), except Taxpayer sells the 100 shares of Company Y common stock on March 10, Year 1, for $11.50 per share. Under section 1092(a)(2)(A)(ii), as in paragraph (b)(11)(vi)(E)(2) of this section (Example 2), when the put options are closed out at a loss of $30.00, the basis of each of Taxpayer's shares of Company Y common stock is increased by $0.30 ($30.00/100). Taxpayer has a gain of $120.00 ((100 * $11.50)-(100 * $10.30)) on the sale of the 100 shares of Company Y common stock. Taxpayer has net gain during the taxable year from the identified straddle of $120.00. Under paragraph (b)(11)(vi)(C) of this section, paragraph (b)(11)(vi)(A) of this section does not apply to prevent the $120.00 net gain from being eligible gain. As in paragraph (b)(11)(vi)(E)(2) of this section (Example 2), under section 1092(a)(2)(A)(iv), Taxpayer may not deduct the $30.00 loss from the put options.

(4)
Example (4). Taxpayer's taxable year is the calendar year. Taxpayer owns 100 shares of publicly traded Company Z common stock and has a basis in each share of $10. Taxpayer also owns put options on 100 shares of

Company Z common stock. In Year 1, Taxpayer closes out the put options at a $100 loss. At the end of Year 1, the fair market value of each of the shares of Company Z common stock held by Taxpayer is $15 and, under section 1092(a)(3), Taxpayer has $500 of unrecognized gain. Because Taxpayer's unrecognized gain on the Company Z common stock at the end of Year 1 exceeds Taxpayer's loss on the put options, Taxpayer's loss is deferred under section 1092(a)(1). During Year 2, Taxpayer sells 40 shares of Company Z common stock for $14 per share. Taxpayer has a gain of $160 ((40 * $14)-(40 * $10)) on the sale of the 40 shares of Company Z common stock. Under paragraph (b)(11)(vi)(A) of this section, because Taxpayer's Company Z common stock was part of a straddle in a previous taxable year and a loss from a position in that straddle was deferred under section 1092(a) at the end of Year 1, the preceding taxable year, Taxpayer's $160 Year 2 gain on the sale of the Company Z common stock is not eligible gain. At the end of Year 2, the fair market value of each of the 60 remaining shares of Company Z common stock held by Taxpayer is $10 and Taxpayer has no unrecognized gain on its Company Z common stock. Under section 1092(a)(1)(B), Taxpayer's $100 loss from Year 1 is treated as sustained in Year 2. Because Taxpayer has no unrecognized gain on its Company Z common stock at the end of Year 2, Taxpayer may deduct the $100 loss in Year 2. In Year 3, Taxpayer sells the remaining 60 shares of Company Z common stock for $50 per share. Taxpayer has a gain of $2,400 ((60 * $50)-(60 * $10)) on the sale of the 60 shares of Company Z common stock. Because there was no loss from the straddle deferred under section 1092(a) at the end of Year 2, paragraph (b)(11)(vi)(A) of this section does not apply to prevent the $2,400 of Year 3 net gain from being eligible gain.

(5)

Example (5). Taxpayer's taxable year is the calendar year. On October 5, Year 1, Taxpayer buys 100 shares of publicly traded Exchange Traded Fund A (ETF A) and acquires offsetting section 1256 contracts on the index that underlies the ETF A shares. Taxpayer makes a valid and timely identification of all 100 ETF A shares and the offsetting section 1256 contracts under §1.1092(b)-3T. On December 31, Year 1, the fair market value of the ETF A shares has increased by $500, and the fair market value of the section 1256 contracts has decreased by $450. On December 31, Year 1, Taxpayer sells the ETF shares for a $500 gain. In addition, under section 1256(a)(1), the section 1256 contracts are treated as sold for fair market value on December 31, Year 1, for a $450 loss. Pursuant to §1.1092(b)-3T(b)(4), Taxpayer has a net short term capital gain from the identified mixed straddle of $50 ($500-$450). Under paragraph (b)(11)(vi)(C) of this section, paragraph (b)(11)(vi)(A) of this section does not apply to prevent the $50 of net short term capital gain from being eligible gain.

(vii) [Reserved]

(viii) Eligible installment sale gains.

(A) In general. The term eligible gain includes gains described in this paragraph (b)(11) that would be recognized by an eligible taxpayer under the installment method pursuant to section 453 and with §§1.453-1 through 1.453-12 for a taxable year, provided such gain otherwise meets the requirements of this paragraph (b)(11). This includes gains recognized under the installment method under section 453 from an installment sale that occurred before December 22, 2017.

(B) 180-day period for gain from installment sales. For gains reported on the installment method, an eligible taxpayer may treat the date the payment on the installment sale is received or the last day of the taxable year in which the eligible taxpayer would have recognized the gain under the installment method as the beginning of the 180-day period described in paragraph (b)(7) of this section. Thus, if an eligible taxpayer receives one or more payments on an installment sale and treats the date the payment on the installment sale is received as the beginning of the 180-day period, each payment will begin a new 180-day period.

(ix) Additional rules for determining if gain is subject to Federal income tax.

(A) Application of a treaty.

(1) In general. For purposes of paragraph (b)(11)(i)(B) of this section, whether gain would be subject to Federal income tax is determined after application of any treaty exemption provision that an eligible taxpayer elects to apply under any applicable U.S. income tax convention.

(2) Treaty waiver. An eligible taxpayer who is not a United States person within the meaning of section 7701(a)(30) (or an eligible taxpayer who is a United States person within the meaning of section 7701(a)(30) but who is treated as a resident of another country under an applicable U.S. income tax convention) may not make an election to defer gain pursuant to section 1400Z-2(a) after the applicability date of this section (see paragraph (g) of this section) unless such eligible taxpayer irrevocably waives, in accordance with forms and instructions (see §601.602 of this chapter), any treaty benefits that would exempt such gain from being subject to Federal income tax at the time of inclusion pursuant to an applicable U.S. income tax convention. In the event that such forms and instructions that include such waiver have not yet been published when an election pursuant to paragraph (d)(1) of this section is required to be made, such an eligible taxpayer must attach a written statement, signed under penalties of perjury, to any forms on which an election is made pursuant to paragraph (d)(1) of this section, which states "With respect to gain deferred pursuant to an election under section 1400Z-2(a), the below signed taxpayer irrevocably waives any treaty benefits that would exempt such gain from being subject to Federal income tax at the time of inclusion pursuant to an applicable U.S. income tax convention." If such an eligible taxpayer chooses to apply the section 1400Z-2

regulations in a consistent manner for all taxable years (see paragraph (g)(2)(i) of this section), the taxpayer must include the signed statement required under this paragraph (b)(11)(ix)(A)(2) with the first annual report described in paragraph (d)(2) of this section that is required to be filed on a date that is after March 13, 2020. An eligible taxpayer not described in the first sentence of this paragraph (b)(11)(ix)(A)(2) will only be required to make the waiver described in this paragraph (b)(11)(ix)(A)(2) if and to the extent required in forms and publications (see §601.602 of this chapter).

(3) Non-application to certain entities. This paragraph (b)(11)(ix)(A) does not apply to an entity described in paragraph (b)(11)(ix)(B) of this section.

(B) Gain of a partnership. Subject to §1.1400Z2(f)-1(c), with respect to a partnership, the requirement in paragraph (b)(11)(i)(B) of this section that a gain be subject to Federal income tax does not apply to an otherwise eligible gain of the partnership, provided the partnership acquires the eligible interest with respect to such gain. See §1.1400Z2(f)-1(c)(3)(i) and (ii), Examples 1 and 2, for illustrations of the application of §1.1400Z2(f)-1(c) (providing an anti-abuse rule) to a partnership.

. . .