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Department of the Treasury  
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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP

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Date:

June 03, 2024

Legend:

Taxpayer =

Tenant =

Property =

State =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Dear \_\_\_\_\_ :

This is in response to your request on behalf of Taxpayer for a ruling that the craft distillery described below (the Business) will not be treated as a store the principal business of which is the sale of alcoholic beverages for consumption off premises within the meaning of § 144(c)(6)(B) of the Internal Revenue Code (the Code).

### FACTS AND REPRESENTATIONS

According to the information submitted and representations made, Taxpayer is a limited liability company organized under the laws of State. Taxpayer, through its wholly owned entities, owns Property. Taxpayer has made improvements to Property and has entered into a lease agreement with Tenant with respect to Property (the Lease). Tenant will use Property to operate the Business, which involves distilling, storing, and selling various bottled spirits, such as bourbon, gin, and whiskey. The net square footage of Property leased to Tenant is a square feet. Tenant will use Property space as follows: (i) a tasting room and common area, approximately b square feet (the Tasting Room); (ii) a merchandise (products other than alcoholic beverages) display area, approximately c square feet (the Display Area); (iii) the craft distillery and product storage area, approximately d square feet (the Distillery); and (iv) an outdoor space, approximately e square feet, which can potentially be used as an extension of the Tasting Room (the Patio). Tenant will also provide tours to the public.

The Business will sell to local distributors, grocery stores, bars, and restaurants on a wholesale basis most of the alcoholic beverages it produces. The wholesale business, which is expected to be at least f percent of the annual gross sales revenue of the Business (based on gross selling prices), represents the largest segment of the Business.

The Business will also sell alcoholic beverages that it either produces or procures from local breweries to customers for consumption on premises in the Tasting Room. It is expected that such sales will be at least g percent of the annual gross sales revenue of the Business.

In addition, in the Tasting Room, the Business will sell alcoholic beverages that it produces at Property on a retail basis to customers for consumption off premises. It is expected that, in any calendar year, sales of alcoholic beverages for consumption off premises will not exceed h percent of the annual gross sales revenue of the Business and, under the Lease, Tenant expressly agrees to restrict such sales to no more than h percent of the annual gross sales revenue of the Business (the Restriction). Tenant is required to maintain a detailed recordkeeping and reporting system to ensure compliance with the Restriction. Further, the Lease provides that a violation of the Restriction will constitute, at Taxpayer's election, an immediate and incurable default by Tenant without further notice.

Finally, the Business will sell merchandise, such as mugs, glasses, accessories, and apparel, to customers in the Display Area. These sales are expected to be approximately  $\frac{1}{2}$  percent of the annual gross sales revenue of the Business.

The Business does not offer its products for sale via the internet. To ensure compliance with local laws related to age verification, shipping restrictions, and taxation, among others, all orders are received by the Business via email, phone, or in person.

Taxpayer is requesting this ruling because it intends to qualify as a "qualified opportunity zone business" under § 1400Z-2(d)(3) of the Code.

### LAW AND ANALYSIS

Section 1400Z-2(d)(1) defines a qualified opportunity fund (QOF) as any investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (other than another QOF). This definition also requires a QOF to hold at least 90 percent of its assets in qualified opportunity zone property, determined by the average of the percentage of qualified opportunity zone property held by that QOF as measured (i) on the last day of the first 6-month period of the taxable year of the QOF, and (ii) on the last day of the taxable year of the QOF. See § 1400Z-2(d)(1).

Section 1400Z-2(d)(2)(A) defines qualified opportunity zone property as property which is "qualified opportunity zone stock", "qualified opportunity zone partnership interest", or "qualified opportunity zone business property". Qualified opportunity zone stock and a qualified opportunity zone partnership interest must qualify as a qualified opportunity zone business as defined in § 1400Z-2(d)(3) during substantially all of the qualified opportunity fund's holding period for such stock or partnership interest. See § 1400Z-2(d)(2)(B) and (C). Among other requirements, § 1400Z-2(d)(3) provides that a "qualified opportunity zone business" is a trade or business which is not described in § 144(c)(6)(B).

Section 144(c)(1) provides that the term "qualified redevelopment bond" means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used for 1 or more redevelopment purposes in any designated blighted area. Section 144(c)(6)(B) provides, in relevant part, that the use of the proceeds of an issue meets the requirements of § 144(c)(6)(B) if no portion of the proceeds of such issue is to be used to provide (including the provision of land for) any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

In the instant case, the issue is whether the Business is a store the principal business of which is the sale of alcoholic beverages for consumption off premises under § 144(c)(6)(B). Section 144(c)(6)(B) does not define the term "sale of alcoholic beverages for consumption off premises." There are no regulations or other guidance under § 144 that defines the term. Thus, in considering whether the term includes the

sale of alcoholic beverages on a wholesale basis, we look to the plain and ordinary meaning of the words “wholesale,” “retail,” and “consumption” as defined in the dictionary. Ordinarily, “wholesale” refers to the sale of commodities or goods in quantity usually for resale, and “retail” sale refers to the sale of commodities or goods in small quantities to ultimate consumers. See *wholesale, retail*, Merriam-Webster's Collegiate Dictionary (11<sup>th</sup> ed. 2003); cf. § 1.141-7(b)(3) (defining “sale at wholesale” as a “sale. . . to any person for resale”). Therefore, the term “sale of alcoholic beverages for consumption off premises” under § 144(c)(6)(B) refers to the sale of alcoholic beverages on a retail basis for consumption off premises.

In this case, the Business sells alcoholic beverages both on a wholesale and retail basis. The Business' retail sales of alcoholic beverages include those for consumption on and off premises. Thus, only a portion of the Business' sales, that is, the retail sales of alcoholic beverages for consumption off premises, are sales of alcoholic beverages for consumption off premises within the meaning of § 144(c)(6)(B).

Next, we must determine whether the retail sales for consumption off premises are “the principal business” of the Business within the meaning of § 144(c)(6)(B).

Section 144(c)(6)(B) does not define “the principal business” for purposes of that section. When a term is not defined, we use the plain and ordinary meaning. The Merriam-Webster Collegiate Dictionary defines the term “principal” as most important, consequential, or influential, chief. *Principal*, Merriam-Webster's Collegiate Dictionary (11<sup>th</sup> ed. 2003). Similarly, Black's Law Dictionary defines “principal” as chief, most important, primary. *Principal*, Black's Law Dictionary, (11<sup>th</sup> ed. 2019). In addition, the use of the definite article “the” before the term “principal business” (as opposed to the indefinite article “a”) indicates that § 144(c)(6)(B) should be read to mean that there is only one principal business. See *generally*, *Love v. Comm'r*, 103 T.C.M. (CCH) 1887 (2012), *Plains Petroleum Co. v. Comm'r*, 78 T.C.M. (CCH) 130 (1999) (interpreting the term “the principal purpose” to mean the purpose that exceeds in importance any other purpose as used in the anti-avoidance provision under § 269 of the Code); *Guenther v. Comm'r*, 69 T.C.M. (CCH) 2980 (1995) (interpreting the term “a principal purpose” to be synonymous with “one of its principal purposes” as used in the anti-avoidance provision under § 453(g) of the Code).

To determine “the principal business” of the Business for purposes of §144(c)(6)(B), we examine the facts and representations provided by Taxpayer. Here, Property is generally divided to conduct different business segments in different areas. The Distillery is generally used to produce and store the alcoholic beverages for both wholesale and retail sale; but the Distillery will also be used for customer tours of the production process, which are intended to further generate retail sales (both for consumption on and off premises). The Tasting Room will be used for retail sales of alcoholic beverages, both for consumption on premises and off premises. Whether it is predominantly used for on-premises or off-premises consumption sales can vary daily. In addition, the Tasting Room may be expanded into the Patio, which is expected to be used in connection with retail sales for consumption on premises. As such, the portion

of Property attributable to sales of alcoholic beverages for consumption off premises is not readily determinable and, therefore, is not a reliable indicator of the Business' principal business.

However, in the instant case, the Business' sale of alcoholic beverages at wholesale, based on expected annual gross sales revenue, represents the largest business segment of the Business. In contrast, the Business' retail sale of alcoholic beverages for consumption off premises is expected to be, and is restricted to, no more than h percent of the annual gross sales revenue of the Business. To comply with the Restriction, Tenant is required to maintain a detailed recordkeeping and reporting system. A violation of the Restriction by Tenant may be deemed by Taxpayer as an immediate and incurable default under the Lease. Accordingly, the Business' retail sale of alcoholic beverages for consumption off premises is not its principal business. As such, we need not decide whether the Business is a store within the meaning of § 144(c)(6)(B).

## CONCLUSION

Based solely on the information submitted and representations made, we conclude that the Business is not a store the principal business of which is the sale of alcoholic beverages for consumption off premises within the meaning of § 144(c)(6)(B).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion, either express or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in § 1.1400Z2(a)-1(b)(34) of the Income Tax Regulations or whether the taxpayer meets the requirements under § 1400Z-2 of the Code and the regulations thereunder to be a QOF. Further, we also express no opinion on whether any interest in any entity owned by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2), or whether any business would be treated as a qualified opportunity zone business, as defined in § 1400Z-2(d)(3). We express no opinion regarding the tax treatment of the instant transaction under the provisions of any other sections of the Code or regulations that may be applicable, or regarding the tax treatment of any conditions existing at the time of, or effects resulting from, the instant transaction.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Jian H. Grant  
Branch Chief, Branch 5  
Office of Associate Chief Counsel  
(Financial Institutions & Products)

cc: