

Rev. Proc. 2002-62

SECTION 1. PURPOSE

This revenue procedure explains how taxpayers may make an election under § 1397B of the Internal Revenue Code to defer recognition of certain gain on the sale of a qualified empowerment zone asset (QEZ asset).

SECTION 2. BACKGROUND

.01 Section 1397B, as added by § 116 of the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763 (December 21, 2000), generally allows a taxpayer to elect to rollover the gain realized from the sale of a QEZ asset purchased after December 21, 2000, and held for more than one year. If the taxpayer makes the election under § 1397B as provided in this revenue procedure, gain from that sale is recognized only to the extent that the amount realized on the sale exceeds (1) the cost of any QEZ asset purchased by the taxpayer in the same zone as the sold QEZ asset during the 60-day period beginning on the date of the sale of the QEZ asset, reduced by (2) any portion of the cost of any replacement QEZ asset referred to in section 2.01(1) of this revenue procedure that was previously taken into account under § 1397B. However, pursuant to § 1397B(b)(2), the election is not available to defer any gain that is: (1) treated as

ordinary income for purposes of subtitle A of the Code; or (2) attributable to real property or an intangible asset neither of which is an integral part of an enterprise zone business.

.02 Under § 1397B(b)(1)(A), a QEZ asset means any property that would be a qualified community asset (as defined in § 1400F) if in § 1400F: (1) references to empowerment zones were substituted for references to renewal communities; (2) references to enterprise zone businesses (as defined in § 1397C) were substituted for references to renewal community businesses; and (3) the date of the enactment of § 1397B (December 21, 2000) were substituted for December 31, 2001, each place it appears. However, under § 1397B(b)(1)(B), the District of Columbia Enterprise Zone is not treated as an empowerment zone for purposes of § 1397B.

SECTION 3. PASSTHROUGH ENTITIES

.01 A passthrough entity (within the meaning of § 1202(g)(4)) may make a § 1397B election if the entity sells a QEZ asset purchased after December 21, 2000, and held for more than one year, purchases a replacement QEZ asset in the same zone as the sold QEZ asset within 60 days of the sale of QEZ asset, and otherwise satisfies the requirements of § 1397B and this revenue procedure.

.02 If the passthrough entity chooses not to make the § 1397B election, a taxpayer who held an interest in the entity at the time the entity sold the QEZ asset, purchases a replacement QEZ asset in the same zone as the sold QEZ asset within 60 days of the sale of the QEZ asset, and otherwise sat-

isfies the requirements of § 1397B and this revenue procedure may make the § 1397B election with respect to the taxpayer's share of any qualifying gain on the sale.

SECTION 4. ELECTION PROCEDURE

.01 *Time for Making the Election.* A § 1397B election must be made by the due date (including extensions) of the tax return for the taxable year in which a QEZ asset is sold.

.02 *Manner of Making the Election.*

(1) *In general.* Except as provided in section 4.02(2) of this revenue procedure, the election is made by:

(a) reporting the entire gain realized from the sale of the QEZ asset on the applicable line of Form 4797, *Sales of Business Property*, or Schedule D, *Capital Gains and Losses*, as appropriate, of the return; and

(b) on line 2 of Form 4797, or the line directly below the line on Schedule D on which the gain is reported, entering in column (a) "Section 1397B Rollover", and on the same line, entering as a loss in column (g) of Form 4797 or column (f) of Schedule D, as appropriate, the amount of the gain deferred under § 1397B.

(2) *Transition rule.* If the gain from the sale of a QEZ asset is reported on a timely filed return before October 7, 2002, and includes an affirmative statement to the effect that a § 1397B election applies to the gain, the requirements of section 4.02(1) of this revenue procedure will be treated as satisfied so that it will not be necessary to file an amended return to make the § 1397B election. Otherwise, an amended return satisfying the requirements of section 4.02(1) of this revenue procedure must be filed in order to make the § 1397B election with re-