TAPPING THE POTENTIALS OF OPPORTUNITY ZONES

2019 Breakthrough Solutions Conference

Round II Breakout Session
Wednesday, June 26, 2019
3:15 P.M. to 4:00 P.M.

Adam D. Reid, Attorney
Panelists

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Arkansas Opportunity Zones
### Arkansas Opportunity Zone Census Tract Nominations

**Approved by U.S. Treasury Department on 5/18/2018**

To view details on an interactive map, [click here](#).

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**Legend**

- **Census Tract**
- **Nominees for Opportunity Zone**

**Total 85 Tracts**

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Opportunity Zone Tax Benefits - Overview

• **What are Opportunity Zones?**
  • An Opportunity Zone is an existing census tract that has been designated as a “qualified” zone through which investors can receive substantial tax benefits for investments made within the zone.
  • The Tax Cuts and Jobs Act of 2017 created the Opportunity Zones (“QOZ”) program under IRC Sections 1400Z-1 and 1400Z-2 as a way to incentivize private sector investment in low income areas.

• **Where are we now?**
  • On May 18, 2018, the Department of Treasury approved Arkansas’s 85 nominated census tracts.
  • On October 19, 2018, the IRS issued a first set of proposed regulations on QOZs.
  • On April 17, 2019, the Treasury released the second set of regulations which provide more clarity to investors.
  • Arkansas adopted 1400Z-2 on February 26, 2019.

• **Terminology:**
  • **QOZ** or **Zone**: Qualified Opportunity Zone
  • **QOF** or **Fund**: Qualified Opportunity Fund
  • **QOZB**: Qualified Opportunity Zone Business
  • **QOZBP**: Qualified Opportunity Zone Business Property
Opportunity Zone Tax Benefits - Basics

Three Main Tax Benefits For Investors:

Initial deferral of tax: Investors with existing capital gains from the sale or exchange of prior investments can elect to defer paying tax on these capital gains by investing an amount up to such gains into a qualified opportunity fund (QOF) within 180 days following the date of the sale or exchange giving rise to the original gain (“old gain”). This deferral lasts until the earlier of 2026 or upon exit from the QOF.

Reduction of tax on deferred capital gains after 5 & 7 years: Investors can receive a permanent reduction of tax on their deferred capital gain after holding their investment in a QOF for 5 and 7 years.
  - 10% reduction after 5 years (via basis step up)
  - 15% reduction after 7 years (via basis step up)

Exclusion of capital gains tax after 10 years: Investors can exclude tax on the appreciation of QOF investments after 10 years (“new gain”) by receiving a full step up in basis to their market value of the QOF investment valued as of the date the investment is sold.
Qualified Opportunity Zone Investing

One or more investors defer tax on existing capital gains by investing cash in a Qualified Opportunity Fund (QOF)

The QOF receives capital from investors and must identify properties and/or businesses located in Qualified Opportunity Zones (QOZs) with development potential

The QOF invests capital in QOZ projects located in one or more cities, jumpstarting business development and economic activity
Opportunity Zone Tax Benefits - Important dates

- **December 31, 2017**
  - The date that serves as a “cutoff” date for purposes of determining which property counts as “qualified” property

- **December 31, 2019**
  - The latest date a QOF investment can receive the 7-year, 15% capital gain reduction (i.e., the latest date that investors seeking to take advantage of all the QOZ tax benefits must invest in a QOF)

- **December 31, 2021**
  - The latest date a QOF investment can receive the 5-year, 10% capital gain reduction

- **December 31, 2026**
  - The date on which investors must pay capital gains on their initial deferred capital gains (possibly reduced by the 10% or 15% reduction)

- **December 31, 2037**
  - The latest date a QOF investment can receive the 10-year “new gain” exclusion

- **December 31, 2047**
  - The last day investors may elect to exclude “new gain” on their QOF investment (i.e., after a 10-year hold)
General Anti-Abuse Rule

• **New Anti-Abuse Rule:** If a significant purpose of a transaction is to achieve a tax result that is inconsistent with the purposes of the OZ rules (based on all of the facts and circumstances), the IRS Commissioner is able to recast the transaction (or series of transactions) for federal tax purposes in a manner that achieves tax results consistent with those purposes.

• **Purpose:** The Preamble to the 2019 proposed regulations describes the purposes of the OZ program as follows:
  
  • [Sections 1400Z-1](#) and [1400Z-2](#) seek to encourage economic growth and investment in designated distressed communities (qualified opportunity zones) by providing Federal income tax benefits to taxpayers who invest new capital in businesses located within qualified opportunity zones through a QOF.
QUALIFIED OPPORTUNITY ZONE BUSINESS

- **TRADE OR BUSINESS:** Must be a “trade or business” as defined in Section 162 of the Code.
  - **NOTE:** The ownership and operation (including leasing) of real property **is** considered the active conduct of a trade or business. However, merely entering into a triple-net-lease with respect to real property owned by a taxpayer is **not** considered the active conduct of a trade or business by such taxpayer.

- **NO SIN BUSINESS:** Trade or business must NOT be a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

- **MUST MEET ALL OF THE FOLLOWING:**
  - **THE 70% TEST;**
  - **THE 50%-OF-TOTAL INCOME-TEST;**
  - **THE INTANGIBLE PROPERTY TEST;** and
  - **THE NONQUALIFIED FINANCIAL PROPERTY TEST.**
Opportunity Zone Business Requirements

- If the QOF invests in a business (i.e., invests indirectly into a partnership or corporation), rather than directly investing in QOZBP itself, then that business must meet the following **five tests** in order to be a “qualified” opportunity zone business:

  1. At least 70% of the property owned or leased by the business in a QOZ is QOZBP during at least 90% of the holding period.
  2. The business derives at least 50% of its gross income from the active conduct of a trade or business in a QOZ.
  3. Use of at least 40% of its intangible assets in an “active” business.
  4. No more than 5% of the assets can be financial assets.
  5. No “sin” business investments (disqualified-business test):
     - Any private or commercial golf course;
     - Country club;
     - Massage parlor;
     - Hot tub facility;
     - Suntan facility;
     - Racetrack or other facility used for gambling; or
     - Any store, the principal business of which is the sale of alcoholic beverages for consumption off the premises.
QOZB’s: 50% Gross Income Safe Harbor Tests

• More Businesses May Now Qualify:
  • To qualify as a QOZB, the business must derive at least 50 percent of its total gross income during a taxable year from the active conduct of a qualified business in a zone. The new proposed regulations provide four safe harbor tests for determining whether a business meets this standard.

• Four Tests Available For A Business To Qualify:
  1. Employee Hours: at least 50% of its employees or independent contractors’ hours are performed within the QOZ.
  2. Employee Wages: at least 50% of its employees or independent contractors’ wages are from services performed within the QOZ.
  3. Revenue: at least 50% of the gross income is generated by tangible property of the business in the QOZ and the management or operational functions performed for the business in the QOZ.
  4. Facts & Circumstances: at least 50% of the gross income of the trade or business is derived from the active conduct in the QOZ.
QOZBP: What Qualifies as Qualified Opportunity Zone Business Property?

- **QOZBP** is tangible property used in a trade or business of the QOF or QOZB within an opportunity zone if (among other requirements):
  - (i) the property is acquired by the qualified opportunity fund by purchase after December 31, 2017 from an unrelated person, and
  - (ii) either the original use of the property in the opportunity zone commences with the qualified opportunity fund or the qualified opportunity fund “substantially improves” the property by doubling the basis of the property over any 30-month period after the property is acquired, and
  - (iii) substantially all of the use of the property is within an opportunity zone.
QOZBP: “Original Use” Requirement

- **New Relief From “Original Use” Test:**
  - Originally, QOZBP was “tangible property used in a trade or business of a QOF, but only if” (among other things) “the original use of the property in the QOZ commences with the QOF.”
  - The new regulations now provide further that the original use of tangible property acquired by any person commences on the date when that person or a prior person first places the property in service in the QOZ for purposes of depreciation or amortization.
  - **Land:** The original use requirement does not apply to land, but land must be used in connection with the trade or business of the QOF or QOZB.
  - **Improvements to the leased property** made by the lessee also satisfy the "original use" requirement and are considered purchased property for the amount of the unadjusted cost basis of the improvements.
  - **Vacant Buildings:** If a building or other structure in a QOZ has been unused or vacant for an uninterrupted period of at least five years, original use in the zone commences on the date after the period of non-use or vacancy when any person first uses the property in the zone.
  - **Used Property:** Used property can now meet this test if it has not been previously used within that QOZ in a manner that would have allowed it to be depreciated or amortized by any taxpayer.
QOZBP: Leased Property Treatment

Leased Property Eligible as QOZBP:

Leased tangible property meeting certain criteria may now be treated as qualified opportunity zone business property for purposes of satisfying the 90% asset test under 1400Z-2(d)(1) and the substantially all requirement under 1400Z-2(d)(3)(A)(i).

General Criteria

1) Leased tangible property must be acquired under a lease entered into after December 31, 2017; and
2) Substantially all of the use of the leased tangible property must be in a qualified opportunity zone during substantially all of the period for which the business leases the property.

Ownership and operation of real property, including leasing, is deemed to be the active conduct of a trade or business.

“Original Use” and “Substantial Improvement” tests do not apply to leased tangible property.
Implementing Opportunity Zones in Arkansas

Arkansas Opportunity Zones:

- 85 Total Opportunity Zones
  - 45% located in Metro Areas, 55% Non-Metro Areas
- 364,000 Opportunity Zone Residents
- 279,000 Opportunity Zone Jobs
- 19,000 Opportunity Zone Businesses

Interactive Maps And Listings Of All Opportunity Zones:
- [https://eig.org/opportunityzones](https://eig.org/opportunityzones)

- With over 8,000 QOZs across the United States, competition for investor funds is inevitable.

*Source: [https://eig.org](https://eig.org)*
How can Cities Prepare For Opportunity Zones?

- Educate and engage city leaders and community
- Identify potential projects
- Review and streamline processes
- Prioritize projects that are in line with your city’s goals
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