Strafford

Presenting a live 90-minute webinar with interactive Q&A

Structuring Investment Funds for Qualified Opportunity Zones: Maximizing Tax Benefits and Preserving Flexibility

WEDNESDAY, DECEMBER 19, 2018

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 1**.

NOTE: If you are seeking CPE credit, you must listen via your computer — phone listening is no longer permitted.

Quick Qualified Opportunity Zones Rules

SINGLE TIER STRUCTURE

INVESTORS

↓ *Cash contribution*

QUALIFIED OPPORTUNITY FUND (QOF)

partnership or corporation for tax purposes

90% of *all* of the Fund's assets must be (average of two snapshot dates): Qualified Opportunity Zone Business Property (**QOZBP**).

Cash and accounts receivable are not good assets for purposes of the 90% test

TWO TIER STRUCTURE

INVESTORS

↓ *Cash contribution*

QOF

partnership or corporation for tax purposes

90% of *all* of the Fund's assets must be (average of two snapshot dates):

- Interests in subsidiaries that are corporations or partnerships for tax purposes and that meet the requirements to be qualified opportunity zone businesses (Subsidiary **QOZB**); and/or
- **QOZBP**

Cash and accounts receivable are not good assets for purposes of the 90% test

Any percentage ownership ↓ *Cash contribution*

SUBSIDIARY QOZB

partnership or corporation for tax purposes

- 70% of its *tangible assets* (owned or leased) are **QOZBP**;
- At least 50% of its gross income is from the *active conduct of its trade or business in the zone;*
- A substantial portion of its intangible property is used in the *active conduct of its trade or business in the zone;*
- Not a sin business; and
- Less than 5% of the tax basis of its assets is comprised of *nonqualified financial property,* although *reasonable working capital* is permitted.

DEFINITION OF QUALIFIED OPPORTUNITY ZONE BUSINESS PROPERTY (QOZBP)

- Tangible property;
- Acquired by purchase from an unrelated party after December 31, 2017; and
- The original use of the property in the zone commences with the QOF or Subsidiary QOZB or the property is substantially improved by the QOF or Subsidiary QOZB
    - Substantial improvement means spending more than the acquisition cost. But for land and a building, all of which is in a zone, a substantial improvement is spending more than the cost of the building only.

NOTES

- Both the QOF and the Subsidiary QOZB may be LLCs, but neither can be a disregarded entity.
- Different requirements apply at the QOF level as compared to the Subsidiary QOZB level, including
  - the base for determining the 90% and 70% tests; and
  - additional requirements the Subsidiary QOZB must satisfy.
- Subsidiary QOZB must have at least 50% of its gross income from the *active conduct* of a trade or business in the zone. What constitutes the *active conduct* of a trade or business is not yet clear in the context of rental real estate. Also, rules for sourcing the Subsidiary QOZB's gross income to the zone are not yet clear.
- Safe harbor for *reasonable working capital* that may be held at Subsidiary QOZB level:
  - designated as working capital for acquisition, construction and/or substantial improvement of *tangible* property in a zone;
  - written schedule for spending the working capital;
  - working capital spent consistent with the written schedule; and
  - working capital spent within 31 months of receipt.
- No safe harbor yet for other working capital (*e.g.*, no safe harbor for working capital of an operating business or for developing intangible assets.)

For questions about qualified opportunity zones, please contact:

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https://www.ballardspahr.com/practiceareas/initiatives/qualified_opportunity_zones.aspx