Gain Deferral Through Opportunity Zone Reinvestment

June 2018

Attorneys

James Duffy

The 2017 Tax Act implemented the Qualified Opportunity Zone program which makes available substantial tax benefits for investors who reinvest capital gains in certain qualified investments. Under the program, individuals and companies can

- defer tax of the gain from the sale of an asset until 2026, or sale of the investment, if earlier;
- reduce the portion of gain that is taxed by up to 15%; and
- pay no tax on additional appreciation of the investment if held for 10 years.

To qualify for these benefits, a taxpayer must reinvest the gain from the sale of any property in a Qualified Opportunity Fund within 180 days of the sale. A Qualified Opportunity Fund ("Fund") is any corporation or partnership that invests directly (or indirectly through qualifying corporations or partnerships) at least 90% of its assets in either real or personal property ("Qualified Opportunity Zone Property") that is located in a "Qualified Opportunity Zone."

Generally speaking, a Qualified Opportunity Zone ("Qualified Zone") is a low-income census tract or contiguous census tract that has been designated as qualified. A low-income census tract is any census tract that has median family income that does not exceed 80% of the state median family income or that has a poverty rate of at least 20%. On May 18th, 2018, Minnesota's Qualified Zones were designated. As of June 14, 2018, Qualified Zones have been designated in all states and five territories. To see a list and map of all Qualified Zones go to: www.cdfifund.gov/Pages/Opportunity-Zones.

Qualified Opportunity Zone Property can be either: (A) tangible property or (B) stock in a corporation or an interest in a partnership. The tangible property must be (i) acquired by purchase by the Fund, (ii) the original use of the property in the Qualified Zone commences with the Fund, or the Fund substantially improves the property; and (iii) during substantially all of the property's holding period, substantially all the use of the property is in the Qualified Zone. Property is considered "substantially improved" if within any 30-month period, the cost of improvements made to it exceed the cost of the property. Stock and partnership interests, are Qualified Opportunity Zone Property if (i) acquired from the issuer for cash (ii) substantially all of the tangible property of the business is used in a Qualified Zone, (iii) at least 50% of its gross income is from the active conduct of a business in a Qualified Zone, (iv) less than 5% of its property consists of financial property (e.g., stocks, bonds, etc.), and (v) it does not conduct certain “sin” businesses (e.g., liquor stores, gambling).

As noted earlier, tax on the gain that is reinvested is deferred until the earlier of December 31, 2026 or the date that the taxpayer sells his investment. If the taxpayer holds the investment for five years, then 10% of the deferred gain is forgiven. If it is held for seven years, then an additional 5% of the deferred gain is forgiven so that only 85% of the gain is ultimately subject to tax. Additionally, if the taxpayer holds the investment for ten years, then none of the appreciation on the investment is subject to tax.

To learn more about this new tax saving opportunity, please contact James E. Duffy at (612) 977-8626 or jduffy@briggs.com, or Dimitrios C. Lalos at (612) 977-8830 or dlalos@briggs.com, or another member of our tax department.