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OPPORTUNITY ZONES: Will Florida Business Capitalize on the Opportunity?

Presented By:

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November 29, 2018

Opportunity Zones

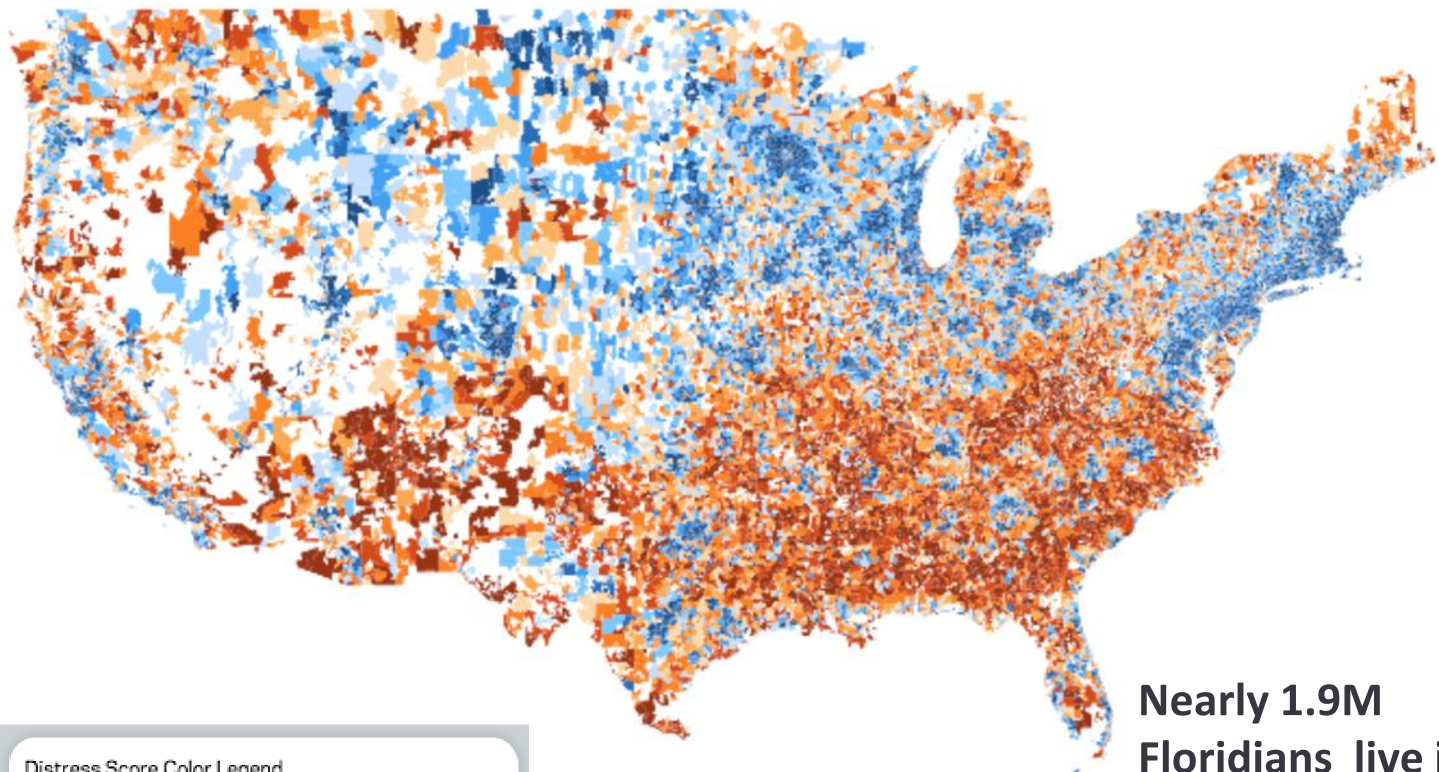
- Overview
  - Tax Cuts & Jobs Act
  - Florida’s Designated Opportunity Zones
  - Cumulative Benefits to Investing
- October 19th Proposed Regulations
  - Forms
  - Issues Addressed
- October 19th Revenue Ruling 2018-29
- What’s next?
  - Issues still Outstanding
  - Second round of regulations
  - Comments due December 28, 2018
  - Public hearing scheduled for January 10, 2019

2017 Tax Cuts & Jobs Act

- Created §1400Z-1 & §1400Z-2 Revenue Code
- New rules for capital gains opportunity zones
  - Deferral of capital gain
  - Reduction of amount of gain realized through a basis adjustment
  - Exclusion of gain on disposition of interest in a qualified opportunity fund
- Designated low-income communities

TAX CUTS & JOBS ACT

52 million Americans (1 in 6) live in economically distressed communities.



Prosperous **Distressed**

Nearly 1.9M Floridians live in economically distressed zip codes.

Source: EIG's "Distressed Communities Index"

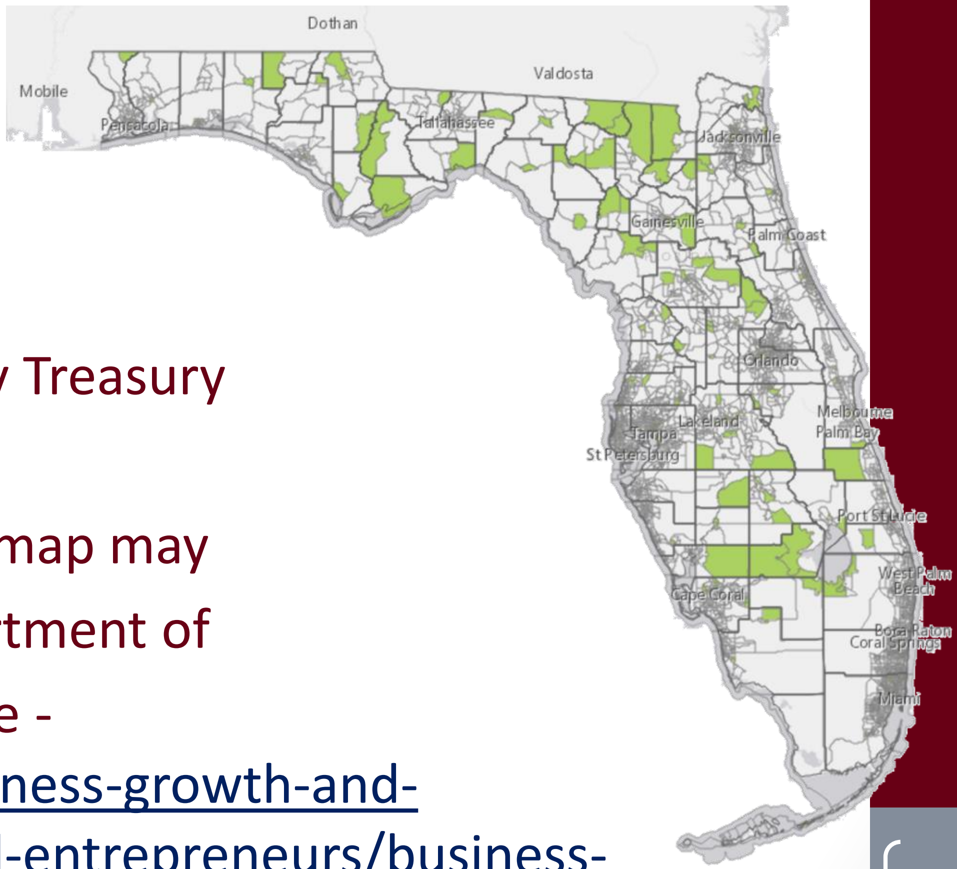
Investment Length	Benefits are Progressive
Less than 5 years	Deferred recognition of capital gain reinvested into Opportunity Fund until the investment is sold or exchanged
5-7 years	Deferred recognition above ***plus*** 10% increase in basis on initial gain invested
7-10 years	Deferred recognition of reinvested capital gain until earlier of December 31, 2026 or date Opportunity Fund investment is sold or exchanged ***plus another*** 5% increase in basis
Greater than 10 years	Deferred recognition of reinvested capital gain until earlier of December 31, 2026 or date Opportunity Fund investment is sold or exchanged ***plus* 15% basis step up on initial gain invested** ***AND*** investors get a step up in basis equal to fair market value in their Qualified Opportunity Zone Fund investment if held for > 10 years.

Opportunity Zones

- On or before March 21, 2018, or April 22 with extension, the chief executive officer of each state was allowed to designate low-income census tracts as Opportunity Zones
- The chief officer was allowed to designate up to 25% of the number of low-income communities in the State
  - If a state had less than 100 low-income tracts, the chief officer could designate up to 25 opportunity zones
- After timely designation, the Secretary of the Treasury had 30 days to approve each zone
- Designations end December 31, 2028

Florida Opportunity Zones

- 427 census tracts
- Every Florida County
- Designated by Governor Scott on April 18, 2018
- Opportunity Zones certified by Treasury on June 14, 2018
- A list of zones and interactive map may be found on the Florida Department of Economic Opportunity website - http://www.floridajobs.org/business-growth-and-partnerships/for-businesses-and-entrepreneurs/business-resource/opportunity-zones



Sample Investment

Jan. 2, 2018
Taxpayer enters into a sale that generates $1M of capital gain

June 30, 2018
(Within 180 days), Taxpayer contributes entire $1M of capital gain to a Qualified Opportunity Fund

- Taxpayer is deemed to have a $0 basis in its QOF investment
- QOF Invests the $1MM in Qualified Opportunity Zone Property

2018 2019 2020 2021 2022 2023

Sample Investment

June 30, 2023
(After 5 years), Taxpayer's basis in investment in QOF increases from $0 to $100k

June 30, 2025
(After 7 years), Taxpayer's basis in investment in QOF increases from $100k to $150k

Dec. 31, 2026
$850K of the 1MM of deferred capital gains are taxed and the basis in QOF investment increases to $1MM.

June 30, 2028
(10 years later), Taxpayer sells investment for $2.0MM. Basis is deemed to be FMV.
Thus, no tax on appreciation

2023 2024 2025 2026 2027 2028

Qualified Opportunity Fund (QOF)

- A QOF is an investment vehicle setup as a corporation or partnership (includes limited liability companies)
- Eligible investors include individuals, C corporations, REITs, partnerships, S corporations, trusts and estates
- The QOF uses invested capital to make equity investments in qualified property located in Opportunity Zones
- QOFs must hold at least 90% of their assets in Opportunity Zone Property which includes partnership interests, newly issued stock, or business property

Form 8996

Form **8996**
(December 2018)
Department of the Treasury
Internal Revenue Service

Qualified Opportunity Fund

► Go to *www.irs.gov/Form8996* for the latest information.
► Attach to your tax return. See instructions.

OMB No. 1545-0123

Attachment
Sequence No. 996

Name | **Employer identification number**

Part I **General Information and Certification**

1 Type of taxpayer: ☐ Corporation ☐ Partnership

2 Is the taxpayer organized for the purpose of investing in qualified opportunity zone property (other than another qualified opportunity fund)?

☐ **No. STOP.** Do not file this form with your tax return.

☐ **Yes.** Go to line 3.

3 Is this the first period the taxpayer is a Qualified Opportunity Fund?

☐ **Yes.** By checking this box, you certify that by the end of the taxpayer's first qualified opportunity fund year, the taxpayer's organizing documents include a statement of the entity's purpose of investing in qualified opportunity zone property and the description of the qualified opportunity zone business. See instructions.

☐ **No.** Go to Part II.

4 If "Yes" on line 3, list the first month in which the fund chooses to be a Qualified Opportunity Fund.

Part II **Investment Standard Calculation**

5	Total qualified opportunity zone property held by the taxpayer on the last day of the first 6-month period of the taxpayer's tax year. See instructions if Part I, line 3 is "Yes"	5	
6	Total assets held by the taxpayer on the last day of the first 6-month period of the taxpayer's tax year. See instructions if Part I, line 3 is "Yes"	6	
7	Divide line 5 by line 6	7	
8	Total qualified opportunity zone property held by the taxpayer on the last day of the taxpaye's tax year	8	
9	Total assets held by the taxpayer on the last day of the taxpayer's tax year	9	
10	Divide line 8 by line 9	10	

Proposed Regulations – 10.19.18

- Clarifies only "capital" gains for federal income tax purposes are eligible. See Form 8949.
- Provides guidance regarding self-certification
- Creates a 31-month "working capital" safe harbor for QOFs that acquire, construct, or rehabilitate real and tangible business property in an OZ
  - Allows QOFs to hold cash or other liquid assets as long as there is a written schedule or plan consistent with the ordinary business operations that such working capital will be used within the 31-month period to acquire, construct or substantially improve the OZ property
  - But what about contingencies for hurricanes and other natural disasters?

Form 8949

Form **8949**

Department of the Treasury
Internal Revenue Service

Sales and Other Dispositions of Capital Assets

► **Go to www.irs.gov/Form8949 for instructions and the latest information.**

► **File with your Schedule D to list your transactions for lines 1b, 2, 3, 8b, 9, and 10 of Schedule D.**

OMB No. 1545-0074

2017

Attachment Sequence No. **12A**

Name(s) shown on return | **Social security number or taxpayer identification number**

Before you check Box A, B, or C below, see whether you received any Form(s) 1099-B or substitute statement(s) from your broker. A substitute statement will have the same information as Form 1099-B. Either will show whether your basis (usually your cost) was reported to the IRS by your broker and may even tell you which box to check.

Part I **Short-Term.** Transactions involving capital assets you held 1 year or less are short term. For long-term transactions, see page 2.

Note: You may aggregate all short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the totals directly on Schedule D, line 1a; you aren't required to report these transactions on Form 8949 (see instructions).

You *must* check Box A, B, or C below. Check only one box. If more than one box applies for your short-term transactions, complete a separate Form 8949, page 1, for each applicable box. If you have more short-term transactions than will fit on this page for one or more of the boxes, complete as many forms with the same box checked as you need.

☐ **(A)** Short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (see **Note** above)

☐ **(B)** Short-term transactions reported on Form(s) 1099-B showing basis **wasn't** reported to the IRS

☐ **(C)** Short-term transactions not reported to you on Form 1099-B

1 (a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold or disposed of (Mo., day, yr.)	(d) Proceeds (sales price) (see instructions)	(e) Cost or other basis. See the **Note** below and see *Column (e)* in the separate instructions	Adjustment, if any, to gain or loss. If you enter an amount in column (g), enter a code in column (f). See the separate instructions.		(h) **Gain or (loss).** Subtract column (e) from column (d) and combine the result with column (g)
					(f) Code(s) from instructions	(g) Amount of adjustment	

180 Day Rule – Proposed Regulation 10.19.18

Section 1400Z-2 permits a taxpayer to defer recognition of a capital gain if an amount equal to such gain is invested in a qualified opportunity fund ("QOF") within 180 days of the date that the tax would have been recognized by the taxpayer.

The Proposed Regulations allow for a very liberal application of this 180 day rule for partnerships, S corporations and other pass-through entities, such as trusts and estates, to defer capital gains at the entity level, or if the partnership or S corporation (or other pass-through entity) decides not to defer gain and invest in a QOF, the partners or shareholders (or beneficiaries) can make the elections on their portion of their distributive share of such income. In the case where the partner, shareholder or beneficiary elects to defer the gain, the 180-day deferral period begins on the last day of the taxable year of the partnership, S corporation or other pass-through entity in which such partner's, shareholder's or beneficiary's allocable share of such gain was taken into account.

Proposed Regulation 10.19.18

Qualified Opportunity Fund

The Proposed Regulations set forth the requirements for a fund to qualify as a QOF. A QOF means any investment vehicle which is organized as a corporation or a partnership for the purpose of investing in Qualified Opportunity Zone Property that holds at least 90% of its assets in Qualified Opportunity Zone Property determined by the average of the percentage of Qualified Opportunity Zone Property held in the fund measured on the last day of the first six-month period of the taxable year of the fund, and on the last day of the taxable year of the fund.

Proposed Regulation 10.19.18

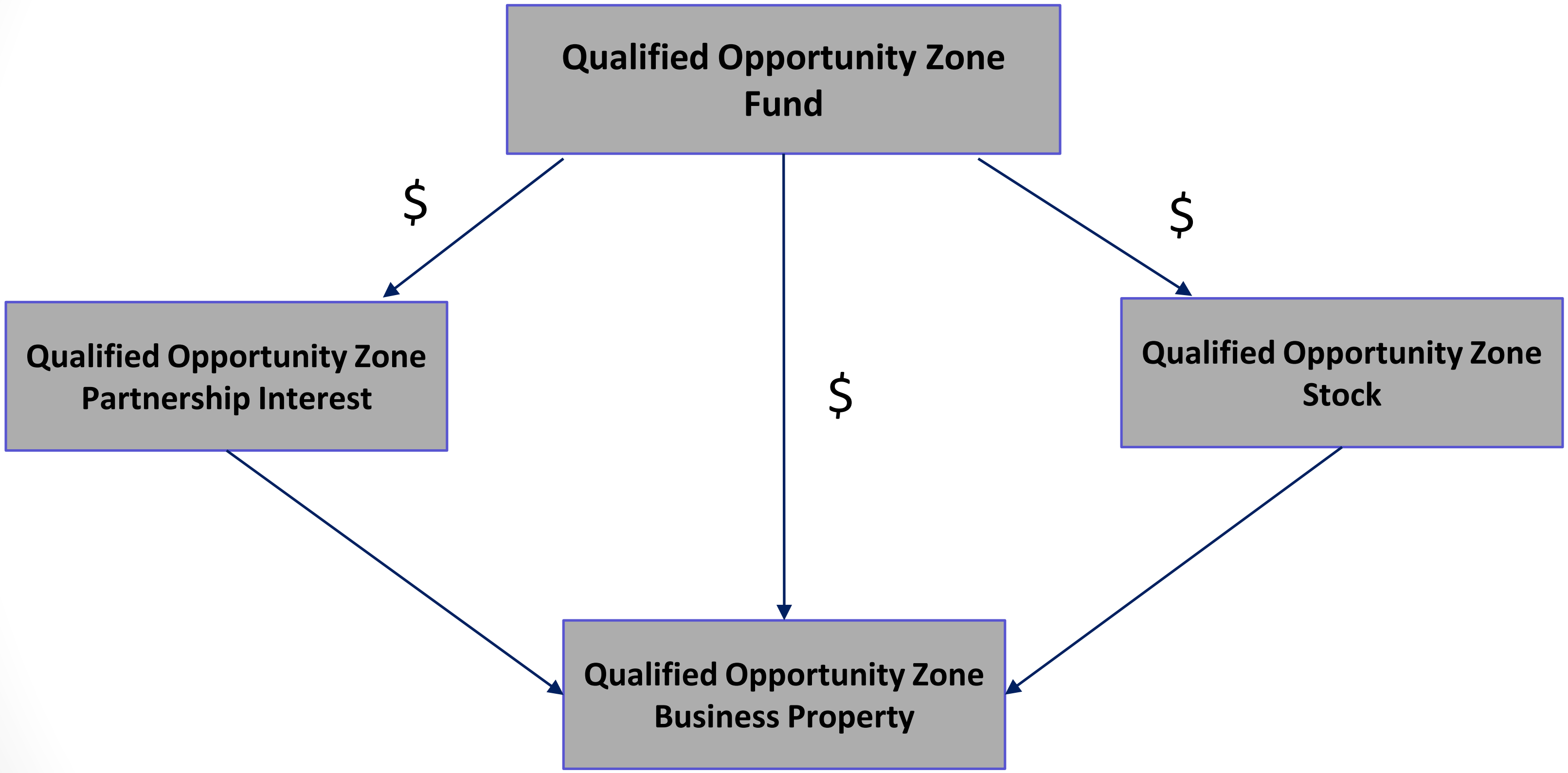
Qualified Opportunity Zone Property means: (1) Qualified Opportunity Zone Stock; (2) Qualified Opportunity Zone Partnership Interest; or (3) Qualified Opportunity Zone Business Property. The Proposed Regulations elaborate on the definitions of each of these terms.

Proposed Regulation 10.19.18

Note the Cascading Effect!

As stated above, a QOF must hold at least 90% of its assets in Qualified Opportunity Zone Property, either directly or through a Qualified Opportunity Zone Stock or Qualified Opportunity Zone Partnership Interest. The Proposed Regulations provide taxpayer-friendly provisions which allow the value of the QOF's entire interest in an entity to count for the QOF's satisfaction of the 90% asset test, and which provide that stock or a partnership interest will be treated as Qualified Opportunity Zone Stock and Qualified Opportunity Zone Partnership Interest if at least 70% of such entity's assets are in Qualified Opportunity Zone Business Property.

Investments in Qualified Opportunity Zone Property



Qualified Opportunity Zone Business

Qualified opportunity zone business is a trade or business in which substantially all of the tangible property owned or leased by the taxpayer is Qualified Opportunity Zone Business Property and
≥50% of income is from active conduct;

Substantial portion of intangible property is used in an active conduct of business; and

Less than 5% unadjusted basis of property is nonqualified financial property

Cannot be an excluded business like a golf course or a sin business.

Qualified Opportunity Zone Business Property

- Tangible property used in a trade or business
- Acquired by purchase from an unrelated party (20% threshold) after December 31, 2017
- During substantially all of the holding period, substantially all the use is in QOZ
- Original use in QOZ commences with the taxpayer

OR

- Taxpayer substantially improves the property during 30-months after acquisition
  - Double Basis in Improvement

Proposed Regulations – 10.19.18

- Clarifies the “substantially all” threshold is satisfied if at least 70 percent of the tangible property owned or leased by the business is qualified as opportunity zone business property
- Provides QOF includes any entity that is treated as a corporation or partnership for federal income tax purposes, and thus limited liability companies may qualify as a QOF
- Clarifies taxpayers may make the basis step-up election after a qualified opportunity zone designation expires, until December 31, 2047
- Addresses illusory concerns raised by early commentators regarding December 31, 2028 Sunset liberally for taxpayer

Revenue Ruling 2018-29 – 10.19.18

- Addresses investments in buildings and land
- Clarifies Zone Business Property is tangible property used in a trade or businesses
- Consistent with the intent of the legislation, a building located on land within an OZ is substantially improved if, during any 30-month period beginning after the date of acquisition of the building, additions to the basis in the building exceed an amount equal to the taxpayer’s adjusted basis of the building at the beginning of the period
- The cost of the land is *not* included in the taxpayer’s adjusted basis

Round Two

- Identified Questions
  - Initial 180 day rule – Safe Harbor Post Regulations
  - Clarification of “original use”
  - Further clarification of “substantial improvement,” and “substantially all”
  - Form and instructions for deferral elections
  - 90% asset test penalties
  - Address reasonable time for reinvestment

- Comments due December 28, 2018
- Public hearing scheduled for January 10, 2019

Florida Bar Tax Section Comments:

- 1) Original use of Building Commences with C.O.
- 2) Will non-brick & mortar improvements qualify for original use and substantial improvement
- 3) Leased Property – Distinguish between Operational Lease and Long Term/Ground Leases
- 4) Tacking of Holding Period
- 5) How can Non-U.S. Persons Participate?

Questions?

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