

Helpful QOZ Resources

Compliments of



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While mid-April is typically associated by most with Tax Day, this year, April 2019, also became the month the highly awaited second round of Qualified Opportunity Zone Proposed

Regulations were issued.

With the enactment of the tax law in December 2017, we were introduced to this new concept and, with the first set of Proposed Regulations released in October 2018, several, but not all, questions were answered. Now, six months later, many remaining questions have been answered. This article presents some of the practical impacts of the Proposed Regulations. Subsequent articles will include those that specify the contractual representations and warranties that real estate developers and investors might wish to use to ensure the tax benefits are achieved and the projects are built.

By now, a lot of ink has been spilled across the country on Opportunity Zones and the base line tax benefits. Undoubtedly, contemporaneous with this article will be others synthesizing the rules. While we will leave that to others, a brief framework is in order.

Fundamental QOZ Framework

An individual or entity with capital gains realized after 2017 and before 2027 from any source (e.g. the sale of stock, not just from real estate) can defer paying tax on that capital gain to the extent the gain amount is invested within 180 days of realization in a Qualified Opportunity Fund ("QOF"). That gain can be deferred until as late as the end of 2026 as long as the funds remain invested in the QOF. Depending on the length of that investment period, 10% (for a five-year investment) or 15% (for a seven year investment) of the deferred gain can, in fact, be abated completely (under current law, to achieve the 15% abatement the investment must be made by December 31, 2019, and

to achieve the 10% abatement the investment must be made by December 31, 2021). In addition, any tax on the gain from the new investment in the QOF can be entirely abated if the new investment in the QOF is held at least ten years. To be a QOF, the fund must itself be invested in tangible property (real or personal) or businesses located within certain specified zones, called Qualified Opportunity Zones ("QOZ"), located in economically disadvantaged census tracts designated by the governors of each state, and with some limitations, in contiguous census tracts. The Internal Revenue Code and Proposed Regulations, including the second set, delineate the quantum of time and criteria governing the investment necessary to satisfy the opportunity zone rules. Suffice it to say, for purposes of this article, if the QOF touches all bases, the investors should realize the tax benefits appropriate to their situation.

Surprises in the Proposed Regulations

Here are a few of the most interesting and surprising results of the two sets of regulations that may not have been obvious until now:

1. Qualified Opportunity Zone Business Property and Original Use

- **Background:** Among the criteria necessary to meet the definition of "Qualified Opportunity Zone Business Property" is one that states that either (1) the original use of the tangible business property in the QOZ must commence with the QOF or (2) the QOF must make an expenditure on improvements that equal or exceed its investment in the property acquired within "any" 30-month period beginning after the date of acquisition. In order to be classified as a QOF the fund must hold at least 90% of its assets in Qualified Opportunity Zone Property (the 90% Asset Test").
- **Proposed Regulations:** Original use is determined by who placed the property in service for purposes of depreciation; if someone had depreciated the property before the QOF acquired



the property it cannot be deemed to be original use property of the QOF in the QOZ, and therefore, must receive an additional investment equal to or exceeding the basis of the investment in the acquisition to satisfy the definition of QOZ Business Property.

- **Proposed Regulations:** Vacant buildings within the QOZ are an appropriate investment by the QOF. While it might seem that a vacant building cannot be original use property of a QOF, so long as it has been vacant and has not been depreciated by the seller for at least five years it can be classified as original use property of the QOF (meaning its use is treated as having commenced in the QOZ with the QOF). As such it then satisfies the first clause set forth above and **need not be “substantially improved”** (i.e. the QOF need not invest an amount that exceeds its basis in the vacant building).
- **Proposed Regulations:** The Proposed Regulations repeat the “any 30 month period” language from the Code without elucidation. On its face, it appears that the countdown does not have to commence on the date of acquisition, but once it commences there is a 30-month period for completion. While the consequences of this delay could impede the 90% asset test, there may be circumstances where it does not have a negative impact.
- **Proposed Regulations:** When a QOF sells or disposes of QOZ Business Property or otherwise receives a return of capital from a resulting distribution these proceeds are no longer QOZ Business Property and the QOF could fail the 90% Asset Test. The Proposed Regulations provide that so long as the proceeds are continuously held in cash, cash equivalents, and debt instruments with terms of eighteen months or less, and the proceeds are reinvested in QOZ Business Property within twelve months of the event, the proceeds will nevertheless be deemed to be QOZ Business Property for the 90% Asset Test. With a tip of the hat to reality, Treasury acknowledges that government action (zoning boards, for instance) can delay projects and consequently reinvestment; such delay will not cause a failure to meet the twelve month requirement. There is no stated time limit in that case.

- **Proposed Regulations:** Raw land and land underlying a structure is excluded from calculating the substantial improvement calculation. However, this liberalization will not be allowed to permit speculation in land. The Proposed Regulations prohibit an investor from sitting on land with no plan to improve it or with a plan to improve it only insubstantially within 30-months.

2. Leased Qualified Opportunity Zone Business Property

- **Background:** QOZ Business Property can be either owned or leased. There are several rules concerning leased property, including:
- **Proposed Regulations:** While owned property cannot be acquired from a related person, using a 20% overlap rule, there is no such prohibition on leasing property from a related person so long as (1) the lease contains arms-length terms, (2) there is no prepayment that exceeds 12 months and, (3) with certain qualifiers, if the original use of the leased property did not commence with the lessee the lessee must also acquire other QOZ Business Property with a value that equals or exceeds the value of the leased property within no more than 30 months from the date the lessee takes possession of the leased property. In other words, Treasury is not compelling the lessee to make substantial improvements to the related lessor’s property but instead, using analogous rules, requiring the lessee to spend as much on other property in the QOZ.
- **Proposed Regulations:** The value of leased property is equal to the present value of the leased asset, using the AFR for the discount rate.



3. Qualified Opportunity Zone Business

- **Background:** A QOZ Business is a trade or business in which 70% of the tangible property owned or leased by it is QOZ Business Property, 50% of the gross income of the business is derived from the QOZ Business Property (among other rules) and is not the type of business contained in a list of prohibited ventures, described below.

- **Proposed Regulations:** There are four ways to satisfy the 50% Gross Income Test:

1. By the proportion of the number of hours during the year performed by employees, independent contractors, and employees of independent contractors in the QOZ to the total number of hours these persons perform overall in that time frame.

While it does not say so, the only way for this to work properly is to use an overall number in the denominator that such persons perform for that QOF. Otherwise, the hours a true independent contractor works on other jobs having nothing to do with the QOF or with the QOZ will skew the results.

2. By the proportion of the amount paid during the year to employees, independent contractors, and employees of independent contractors for work in the QOZ to the total amount paid to these persons overall in that time frame.
3. "The tangible property of the trade or business located in a [QOZ] and the management or operational functions performed in the [QOZ] are each necessary for the generation of at least 50 percent of the gross income of the trade or business."

4. A facts and circumstances test.

- **Proposed Regulations:** Solely for the purpose of defining a QOZ Business (which is a baseline criterion for a corporation's stock or a partnership interest to be a valid QOF investment), the ownership and operation (including leasing) of real property by the entity is considered the active conduct of a trade or business by the entity but

not if the entity leases the real property it owns to a tenant subject to a triple net lease. The owner is now just a passive investor in real estate and is not running a QOZ Business; as such the QOF cannot count this investment as QOZ Business in computing its 90% Asset Test.

- **QUERY:** By limiting this rule "solely" to the definition of QOZ Business was Treasury allowing triple net leased real property to still qualify as QOZ Business Property?

- **Observation:** The prohibited businesses are golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, gambling establishments, and stores that sell alcohol for off premises consumption. Nothing more and nothing less. With states now coming on line with both medical and recreational marijuana it appears from this list that a marijuana facility of any type would not be prohibited by this list. It is important to note that this list is not a creature of regulation but instead derived by statute; it would therefore take an act of Congress to change it. For Congress to do so it would have to acknowledge that, notwithstanding the federal stance on marijuana, it is a legal substance under the laws of several states. How Congress deals with this existential question will be very interesting to watch. Furthermore, an argument can be made that any marijuana facilities set up under the current formulation of the law will have to be grandfathered if the law were to change.

4. Notable Rules Governing the Investment

- Only net section 1231 gain—gain from the sale of property used in business—can be deferred.
- An investment can be made in-kind and qualify for deferral.
- Services to a QOF—carried interests—are not considered an investment resulting in a an interest in a QOF that will qualify for tax benefits.
- A QOF interest can be acquired from an earlier QOF investor and qualify for the tax benefits.
- When the final reckoning comes on the deferred gain the gain will be recognized on the earlier of the date the QOZ investment is disposed of or by December 31, 2026. Furthermore, if the deemed sale date is December 31, 2026, the amount of gain will be computed by subtracting the taxpayer's



basis in the QOZ investment on that date from the lesser of the remaining deferred gain or the fair market value of the QOZ interest on that date. This is a gift! If the investment in the QOF is doing well the deferred gain ultimately recognized is capped at the amount deferred. If the investment is doing poorly it is possible the recognized gain can be lower than the amount deferred. Not only is the federal government reducing the amount recognized by increasing basis by up to 15% it is also indemnifying a portion of this investment by effectively stating that a taxpayer with a bad investment might avoid paying the tax on some or all of the 85% remaining deferred.

- Watch out for those who will try to artificially reduce values on December 31, 2026.

5. Inclusion Events—events that will accelerate the inclusion of gain

- Gain will be triggered if the QOF ceases to exist.
- Gain will be triggered if the QOF that is a corporation liquidates and distributes the QOF interests in a taxable transaction; the exception would be a distribution to an 80% distributee under section 337(a).
- A gift outright or in trust will trigger gain, but not a transfer by reason of death.
- While a contribution to a grantor trust or other disregarded entity will not be an inclusion event, the change in the transparent status of the grantor trust or DRE will trigger inclusion (with an exception for a change in status to a grantor trust due to death).
- Contributions to and distributions from a partnership or S corporation will be an inclusion event only if and to the extent gain is realized.
- The conversion of an S corporation to a Partnership or DRE is an inclusion event.

Summary

QOZs represent a sweeping program that can have massive tax benefits to investors and economic revitalization to areas that have long been on the losing end of the economy. As we enter this new Emerald City we have to be cautious that the government's munificence is not met by foolhardy financial deals chasing tax benefits at the expense of true economic worth. 🏗️



ABOUT DAVID

David S. Neufeld is a shareholder at Flaster Greenberg and is licensed to practice in New Jersey, Florida, Pennsylvania and New York. He has practiced law for more than 30 years, advising individuals on sophisticated wealth planning (encompassing income tax, estate tax, state residency tax planning, asset protection, and the legal aspects of insurance and investment planning) and fiduciary due diligence. Additionally, he is an international tax lawyer who has helped business clients engaged in both inbound and outbound transactions as well as the individual tax issues that arise from cross-border business and transactions.

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Designated Qualified Opportunity Zones

This document was updated **December 14, 2018**, to reflect the final Qualified Opportunity Zone designations for all States.

Please note that the below list of designated tracts is not the official list. The official list will be published in the Internal Revenue Bulletin at a later date.

Click arrow to filter state				
State	County	Census Tract Number	Tract Type	ACS Data Source
New Jersey	Atlantic	34001000400	Low-Income Community	2011-2015
New Jersey	Atlantic	34001001900	Low-Income Community	2011-2015
New Jersey	Atlantic	34001002300	Low-Income Community	2011-2015
New Jersey	Atlantic	34001002400	Low-Income Community	2011-2015
New Jersey	Atlantic	34001010600	Low-Income Community	2011-2015
New Jersey	Atlantic	34001011702	Low-Income Community	2011-2015
New Jersey	Atlantic	34001012100	Low-Income Community	2011-2015
New Jersey	Atlantic	34001012702	Low-Income Community	2011-2015
New Jersey	Burlington	34005700104	Low-Income Community	2011-2015
New Jersey	Burlington	34005700703	Low-Income Community	2011-2015
New Jersey	Burlington	34005701204	Low-Income Community	2011-2015
New Jersey	Burlington	34005702207	Low-Income Community	2011-2015
New Jersey	Burlington	34005702807	Low-Income Community	2011-2015
New Jersey	Camden	34007600200	Low-Income Community	2011-2015
New Jersey	Camden	34007600700	Low-Income Community	2011-2015
New Jersey	Camden	34007601300	Low-Income Community	2011-2015
New Jersey	Camden	34007601500	Low-Income Community	2011-2015
New Jersey	Camden	34007601800	Low-Income Community	2011-2015
New Jersey	Camden	34007607702	Low-Income Community	2011-2015
New Jersey	Camden	34007608504	Low-Income Community	2011-2015
New Jersey	Camden	34007610300	Low-Income Community	2011-2015
New Jersey	Camden	34007610400	Low-Income Community	2011-2015
New Jersey	Camden	34007610600	Low-Income Community	2011-2015
New Jersey	Camden	34007610800	Low-Income Community	2011-2015
New Jersey	Mercer	34021000100	Low-Income Community	2011-2015
New Jersey	Mercer	34021000200	Low-Income Community	2011-2015
New Jersey	Mercer	34021000800	Low-Income Community	2011-2015
New Jersey	Mercer	34021000900	Low-Income Community	2011-2015
New Jersey	Mercer	34021001000	Low-Income Community	2011-2015
New Jersey	Mercer	34021002000	Low-Income Community	2011-2015
New Jersey	Mercer	34021002100	Low-Income Community	2011-2015
New Jersey	Mercer	34021002902	Low-Income Community	2011-2015

CHOOSE NEW JERSEY OPPORTUNITY ZONES



Opportunity Zones

In December 2017, legislation authored by U.S. Senators Cory A. Booker (D-NJ) and Tim Scott (R-SC) was passed into law after being incorporated into the Tax Cuts and Jobs Act. The “Opportunity Zones Program” is designed to spur economic development and job creation in designated Opportunity Zones.

Opportunity Zones are low-income census tracts nominated by governors and certified by the U.S. Department of the Treasury allowing investors to direct capital into new projects and enterprises in exchange for certain federal capital gains tax advantages.

Governor Phil Murphy worked directly with U.S. Senator Cory Booker’s office, convened meetings and round tables with mayors throughout the State to receive feedback and input, and met with the New Jersey Congressional delegation to ensure a fair and transparent selection process. New Jersey Opportunity Zones are located in 75 municipalities, representing every county. The Opportunity Zone initiative will be housed at the Department of Community Affairs.

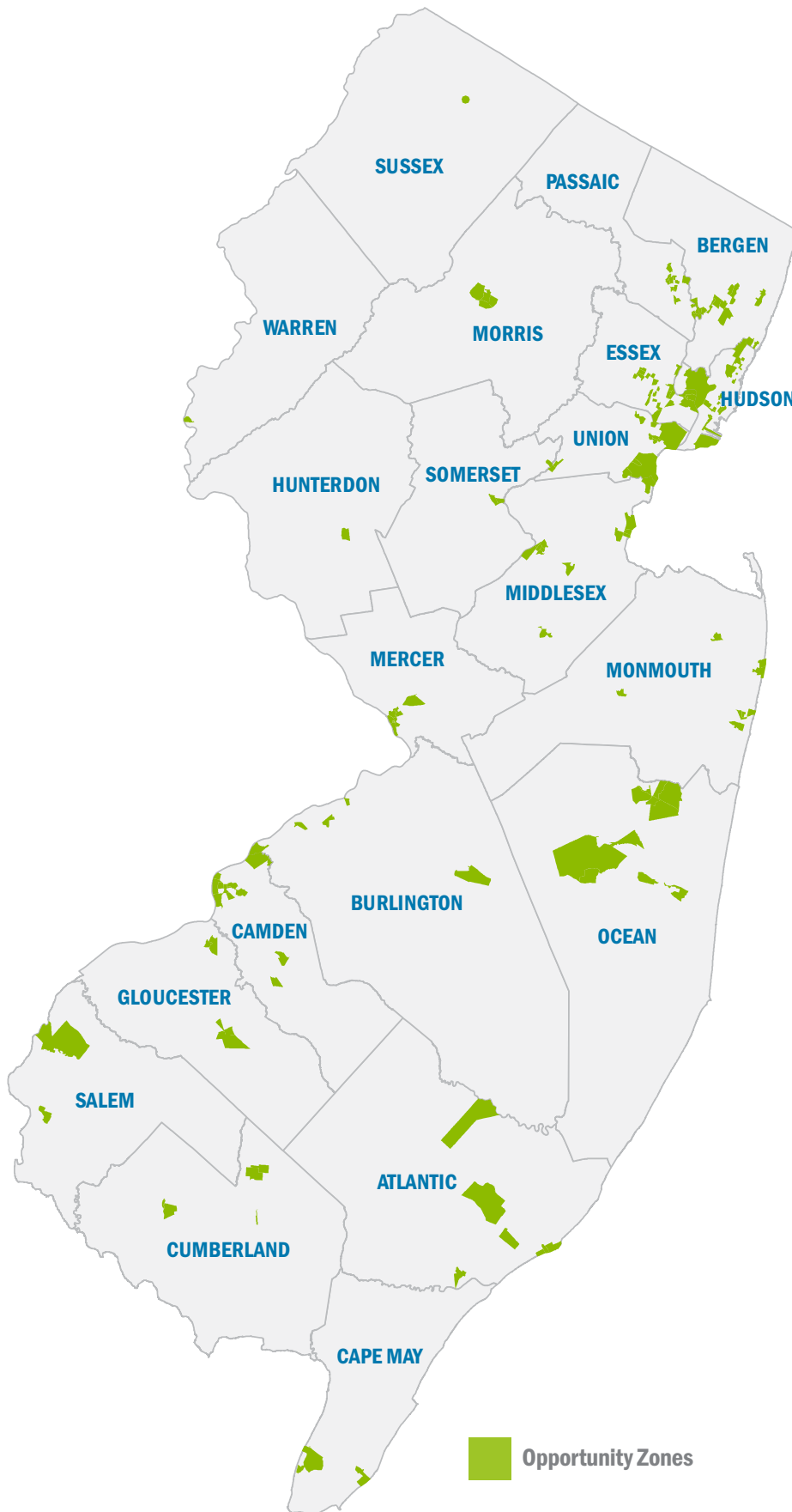
Opportunity Funds

Opportunity Funds are private sector investment vehicles that invest at least 90 percent of their capital in Opportunity Zones. Opportunity Funds provide investors the chance to put that capital to work rebuilding the nation’s low-income rural and urban communities.

Investment Incentives

- A **temporary tax deferral** for capital gains reinvested in an Opportunity Fund. The deferred gain must be recognized on the earlier of the date on which the opportunity zone investment is sold or December 31, 2026.
- A **step-up in basis** for capital gains reinvested in an Opportunity Fund. The basis of the original investment is increased by 10% if the investment in the qualified opportunity zone fund is held by the taxpayer for at least 5 years, and by an additional 5% if held for at least 7 years, excluding up to 15% of the original gain from taxation.
- A **permanent exclusion from taxable income of capital gains** from the sale or exchange of an investment in a qualified opportunity zone fund, if the investment is held for at least 10 years. (Note: this exclusion applies to the gains accrued from an investment in an Opportunity Fund, not the original gains).

NEW JERSEY OPPORTUNITY ZONES BY CENSUS TRACT



Atlantic County:

- Atlantic City
- Egg Harbor City
- Egg Harbor Twp
- Pleasantville
- Somers Point

Bergen County:

- Cliffside Park
- Englewood
- Fairview
- Garfield
- Hackensack
- Lodi
- South Hackensack
- Teterboro

Burlington County:

- Burlington City
- Palmyra
- Pemberton Twp
- Riverside
- Willingboro

Camden County:

- Camden City
- Lindenwold
- Pennsauken
- Pine Hill

Cape May County:

- Wildwood
- West Wildwood
- Lower Twp

Cumberland County:

- Bridgeton
- Vineland
- Millville

Essex County:

- East Orange
- Irvington
- Newark
- Orange

Gloucester County:

- Deptford
- Glassboro
- Woodbury

Hudson County:

- Bayonne
- Kearny
- Jersey City
- North Bergen
- Union City
- West New York

Hunterdon County:

- Flemington

Mercer County:

- Trenton
- Hamilton

Middlesex County:

- Carteret
- Jamesburg
- New Brunswick
- Perth Amboy
- South River

Monmouth County:

- Asbury Park
- Freehold Borough
- Long Branch
- Neptune City
- Neptune Twp
- Red Bank

Morris County:

- Dover
- Wharton Borough

Ocean County:

- Berkeley
- Lakewood
- Manchester

Passaic County:

- Clifton
- Passaic City
- Paterson
- Prospect Park

Salem County:

- Carney's Point
- Salem City

Somerset County:

- Bound Brook
- North Plainfield

Sussex County:

- Sussex Borough

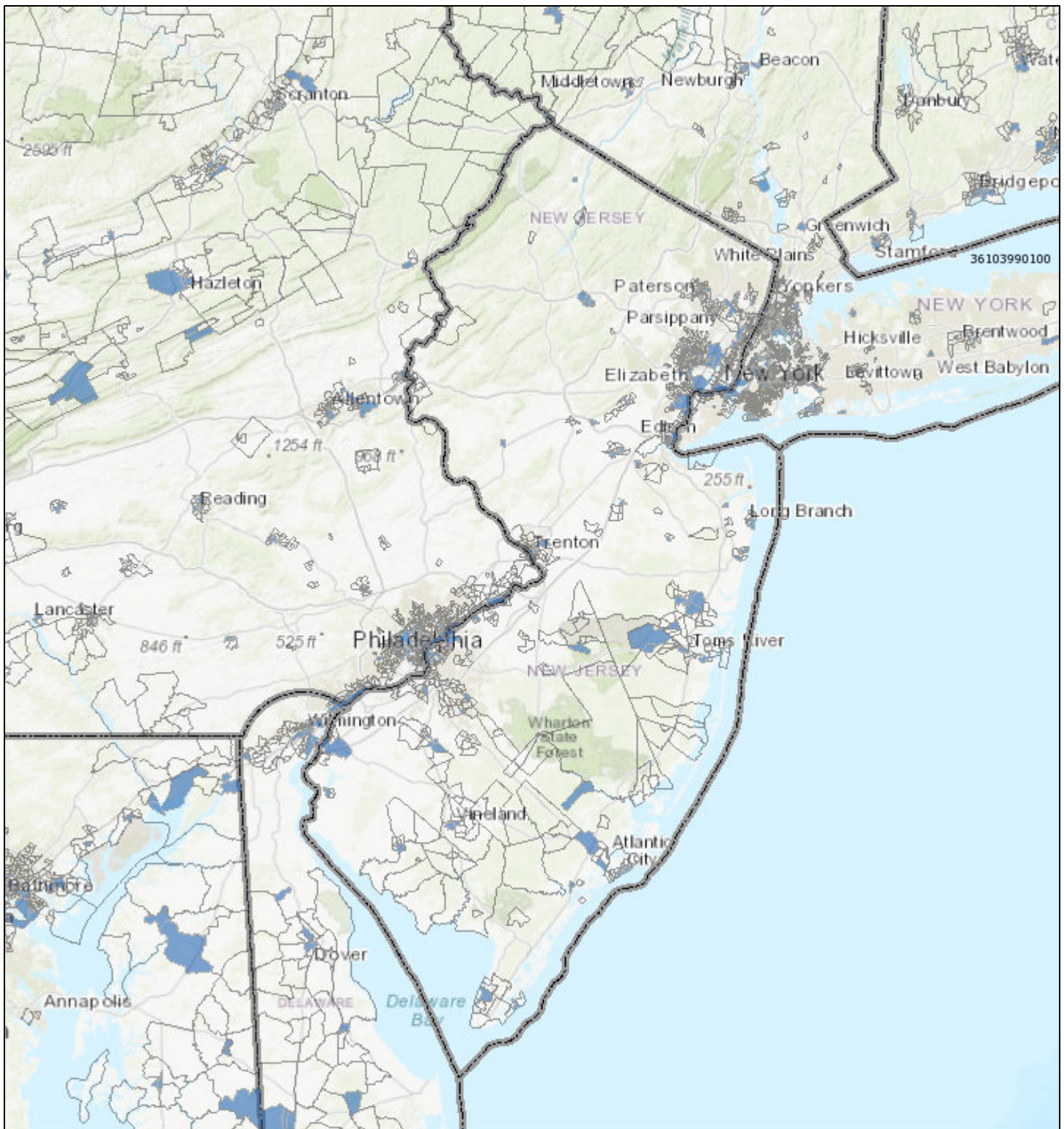
Union County:

- Elizabeth
- Hillside
- Plainfield
- Linden
- Rahway

Warren County:




- Phillipsburg

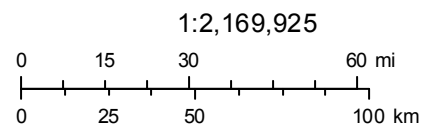
Map of OZ-NJ



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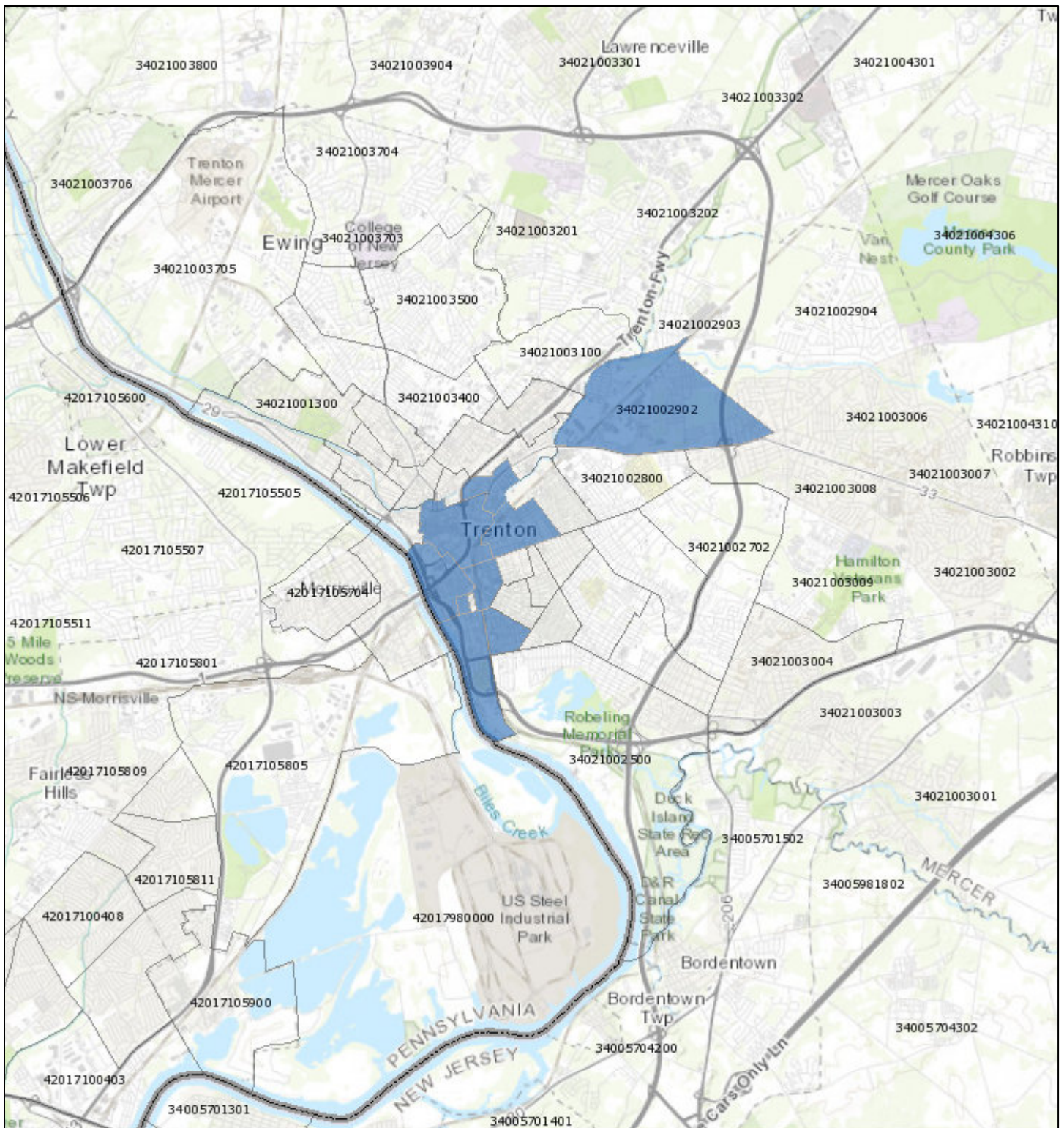
Designated Opportunity Zone Tracts

-  Opportunity Zone Tracts
-  Census Tracts
-  State Census Boundaries



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, © OpenStreetMap contributors, and the GIS User Community

Map of OZ-TRENTON

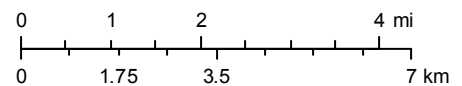


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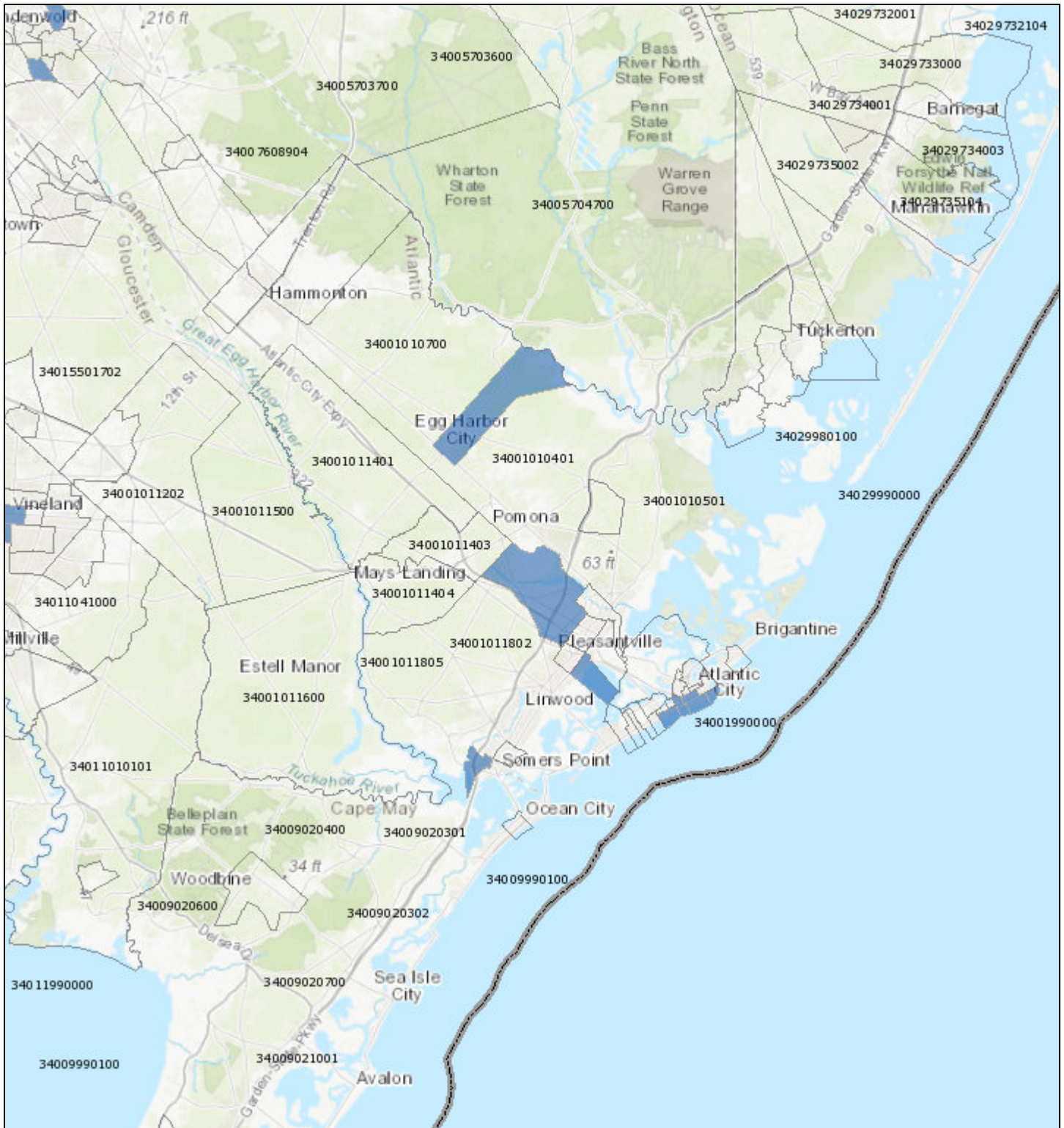
Designated Opportunity Zone Tracts

- Opportunity Zone Tracts
- Census Tracts
- State Census Boundaries



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Map of OZ-AC AREA

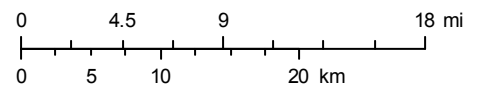


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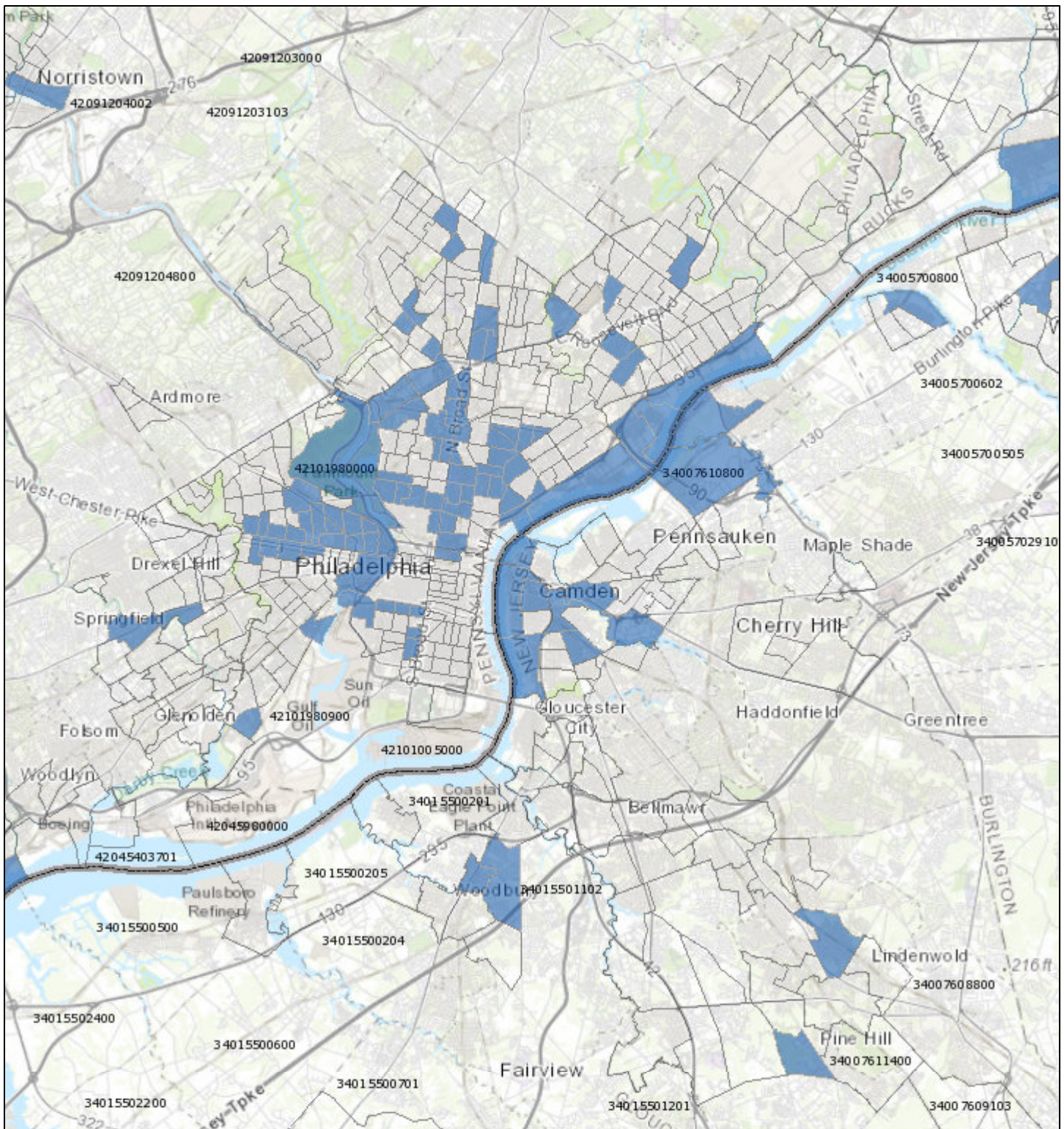
Designated Opportunity Zone Tracts

- Opportunity Zone Tracts
- Census Tracts
- State Census Boundaries



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Map of OZ-PHILA AREA

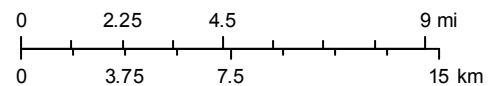


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Designated Opportunity Zone Tracts

- Opportunity Zone Tracts
- Census Tracts
- State Census Boundaries



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Almost every form and publication also has its own page on IRS.gov. For example, the Form 1040 page is at [IRS.gov/Form1040](https://www.irs.gov/Form1040); the Publication 17 page is at [IRS.gov/Pub17](https://www.irs.gov/Pub17); the Form W-4 page is at [IRS.gov/W4](https://www.irs.gov/W4); and the Schedule A (Form 1040) page is at [IRS.gov/ScheduleA](https://www.irs.gov/ScheduleA). If typing in a link above instead of clicking on it, be sure to type the link into the address bar of your browser, not in a Search box. Note that these are friendly shortcut links that will automatically go to the actual link for the page.

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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**

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 taxpayer'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		

Part III Qualified Opportunity Fund Average and Penalty

11 Add lines 7 and 10	11		
12 Divide line 11 by 2.0. See instructions if Part I, line 3 is "Yes"	12		
13 Is line 12 equal to or more than .90? <input type="checkbox"/> Yes. Enter -0- on this line and file this form with your tax return. <input type="checkbox"/> No. The fund has failed to maintain the investment standard. Complete Part IV to figure the penalty. Enter the penalty from line 8 of Part IV on this line, and file this form with your tax return	13		

Part IV Line 13 Penalty

If you checked "No" in Part III, line 13 complete Part IV to figure the penalty. Enter the number from line 8 below on Part III, line 13. See instructions if Part I, line 3 is "Yes."

	(a) Month 1	(b) Month 2	(c) Month 3	(d) Month 4	(e) Month 5
1 Total assets on the last day of the month					
2 Multiply line 1 by .90					
3 Total Qualified Opportunity Zone Property on the last day of the month					
4 Subtract line 3 from line 2. If less than zero, enter -0-					
5 Underpayment rate					
6 Multiply line 4 by line 5					
7 Divide line 6 by 12.0. Round up to two decimal places. See instructions if Part I, line 3 is "Yes"					

	(f) Month 6	(g) Month 7	(h) Month 8	(i) Month 9	(j) Month 10	(k) Month 11	(l) Month 12
1							
2							
3							
4							
5							
6							
7							
8 Penalty. Add columns (a) through (l) of line 7. Enter the total here and on Part III, line 13							\$



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Early release drafts are at [IRS.gov/DraftForms](https://www.irs.gov/DraftForms), and may remain there even after the final release is posted at [IRS.gov/DownloadForms](https://www.irs.gov/DownloadForms). All information about all forms, instructions, and pubs is at [IRS.gov/Forms](https://www.irs.gov/Forms).

Almost every form and publication also has its own page on IRS.gov. For example, the Form 1040 page is at [IRS.gov/Form1040](https://www.irs.gov/Form1040); the Publication 17 page is at [IRS.gov/Pub17](https://www.irs.gov/Pub17); the Form W-4 page is at [IRS.gov/W4](https://www.irs.gov/W4); and the Schedule A (Form 1040) page is at [IRS.gov/ScheduleA](https://www.irs.gov/ScheduleA). If typing in a link above instead of clicking on it, be sure to type the link into the address bar of your browser, not in a Search box. Note that these are friendly shortcut links that will automatically go to the actual link for the page.

If you wish, you can submit comments about draft or final forms, instructions, or publications at [IRS.gov/FormsComments](https://www.irs.gov/FormsComments). We cannot respond to all comments due to the high volume we receive. Please note that we may not be able to consider many suggestions until the subsequent revision of the product.

Instructions for Form 8996

(Rev. December 2018)

Qualified Opportunity Fund



Department of the Treasury
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Future Developments

For the latest information about developments related to Form 8996 and its instructions, such as legislation enacted after this form and instructions were published, go to www.irs.gov/form8996.

Purpose of Form

The Tax Cuts and Jobs Act (TCJA), section 13823, added section 1400Z-1 to provide for the designation of certain low-income communities as qualified opportunity zones and added section 1400Z-2 to provide certain benefits for investments in these qualified opportunity zones through investment in qualified opportunity funds (QOF). Taxpayers that invest in qualified opportunity zone property through a QOF can defer the recognition of certain gains. See [Definitions](#) below.

A corporation or partnership uses Form 8996 to certify that it is organized to invest in qualified opportunity zone property. In addition, a corporation or partnership files Form 8996 annually to report that the QOF meets the investment standard of section 1400Z-2 or to figure the penalty if it fails to meet the investment standard. See [Definitions](#) next. See also the [Opportunity Zones Frequently Asked Questions](#) page on IRS.gov for more information and guidance.

Definitions

Qualified opportunity zone. For a complete list of qualified opportunity zones, see [Notice 2018-48](#), [2018-28 IRB 9](#).

Qualified opportunity fund (QOF). A QOF is an investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (other than another QOF). A QOF must hold at least 90% of its assets in qualified opportunity zone property.

The 90% investment standard is determined by the average of the percentage of qualified opportunity zone

property held in the QOF as measured on:

1. The last day of the first 6-month period of the tax year of the QOF, and
2. The last day of the tax year of the QOF.

See the instructions for [Part I](#) if this is the first year the corporation or partnership self-certifies as a QOF and the corporation or partnership selects a month other than the first month of the tax year as the first month in which it chooses to be a QOF.

If you fail to satisfy this 90% investment standard, you may have to pay a penalty for each month the QOF does not satisfy the investment standard. See [Part II](#) and [Part III](#) of these instructions for more details.



If a corporation or partnership is organized in a U.S. possession, it may be a QOF only if it is organized for the purpose of investing in [qualified opportunity zone property](#) that relates to a trade or business operated in the U.S. possession in which the corporation or partnership is organized.

Qualified opportunity zone property.

Qualified opportunity zone property includes qualified opportunity zone stock, a qualified opportunity zone partnership interest, and qualified opportunity zone business property.

Qualified opportunity zone stock is any stock of a domestic corporation that a QOF acquires after 2017 from the corporation, either directly or through an underwriter, solely in exchange for cash. The corporation must be a [qualified opportunity zone business](#), defined later, when the stock is purchased. The corporation must be organized for the purpose of being a qualified opportunity zone business. The corporation must qualify as a qualified opportunity zone business for substantially all of the time the QOF holds the stock.

A corporation organized in a U.S. possession is a domestic corporation for this purpose only if the corporation conducts a [qualified opportunity zone business](#) in the U.S. possession in which the corporation is organized.

Qualified opportunity zone partnership interest is any capital or

profits interest in a domestic partnership that a QOF acquires after 2017 in exchange for cash. The partnership must be a [qualified opportunity zone business](#) when the QOF acquires the interest. The partnership must be organized for the purpose of being a qualified opportunity zone business. The partnership must qualify as a qualified opportunity zone business for substantially all of the time the QOF holds the interest.

A partnership organized in a U.S. possession is a domestic partnership for this purpose only if the partnership conducts a [qualified opportunity zone business](#) in the U.S. possession in which the partnership is organized.

Qualified opportunity zone business property is tangible property that a QOF acquires after 2017 and uses in a trade or business and that satisfies both of the following tests.

1. The use of the property in the qualified opportunity zone originates with the QOF, or the QOF substantially improves the property; and
2. During substantially all of the QOF's holding period for such property, substantially all of the use of such property was in a qualified opportunity zone.

To satisfy the test in (1) above, the QOF substantially improves property if, during any 30-month period beginning after the date of the acquisition of such property, additions to basis with respect to such property in the hands of the QOF are more than an amount equal to the adjusted basis of such property at the beginning of such 30-month period in the hands of the QOF.

Qualified opportunity zone business is a trade or business if substantially all of its owned or leased tangible property is qualified opportunity zone business property, defined earlier, and if the trade or business satisfies all of the following tests.

1. The business generates at least 50% of its total gross income from the active conduct of a qualifying trade or business;
2. The business uses a substantial part of its intangible property in the active conduct of any such business;

3. Less than 5% of the average of the total unadjusted basis of the property of the business is from nonqualified financial property; and

4. The business is not 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.

U.S. possession. Guam, the Commonwealth of the Northern Mariana Islands (CNMI), American Samoa, the U.S. Virgin Islands, and Puerto Rico.

Nonqualified financial property. Debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities and other similar property. The definition does not include reasonable amounts of working capital held as cash, cash equivalents, or debt instruments with a term of 18 months or less.

Who Must File

Corporations or partnerships that are organized and operated as a QOF must file Form 8996 annually with one of the following tax returns.

- Form 1120, U.S. Corporation Income Tax Return.
 - Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, but only if the corporation is organized in a U.S. possession. See note below.
 - Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts.
 - Form 1120S, U.S. Income Tax Return for an S Corporation.
 - Form 1065, U.S. Return of Partnership Income.
- File Form 8996 by the due date of the tax return (including extensions).

Note. Only [QOFs](#) organized in a [U.S. possession](#) should fill out and attach this form with their Form 1120-F.

Specific Instructions

Name and Employer Identification Number

Enter the same information as shown on the QOF's applicable tax return under [Who Must File](#).

Part I

Complete Part I to certify that the corporation or partnership was

organized to operate as a QOF. See [Definitions](#).

Line 3

Check "Yes" if you are certifying that this is the first period in which you are a QOF, and fill out line 4.



If you answer "Yes" in line 3, your organizing documents must include a statement of your purpose of investing in qualified opportunity zone property by the end of your first QOF year. The documents should include a description of the qualified opportunity zone business(es) that the QOF expects to engage in, either directly or indirectly through a first-tier operating entity.

If you check "No," you are indicating that you have certified in a prior year that you are a QOF. Continue to [Part II](#) and [Part III](#) to determine if the QOF met the investment standard for this tax year.

Line 4

Provide the first month in which you chose to be a QOF.

Example 1. A new corporation is formed on January 5, 2018, for the purpose of operating a QOF, but it does not receive until April 2018 any investment under a deferral election under section 1400Z-2(a). The corporation may choose any month from January through April 2018 to use as a certification date. This example also applies to pre-existing corporations or partnerships that become a QOF.

Part II

Complete Part II annually and attach it to your applicable tax return listed under [Who Must File](#) above. Part II determines whether you meet the 90% investment standard for a QOF. See [Definitions](#).

Value determination. If you prepare a financial statement that you file with the SEC or with a federal agency other than the Internal Revenue Service or if you have a certified audited financial statement that is prepared in accordance with U.S. GAAP, then use the value of the assets reported on this financial statement. In other cases, use the QOF's cost basis of the asset on the date of acquisition by the QOF.

Cash as qualified opportunity zone property of a qualified opportunity zone business. You can exclude reasonable amounts of working capital from the value of property that is treated as nonqualified financial property. See [Definitions](#). A reasonable amount of

working capital satisfies all of the following tests.

1. The working capital is designated in writing for the acquisition, construction, and/or substantial improvement of tangible property in a qualified opportunity zone.

2. There is a reasonable written schedule for the expeditious consumption of the working capital to achieve the goal set out in (1) above.

3. The working capital will be completely consumed no later than 31 months after the amounts are first invested in eligible interests in the relevant QOF.

4. The working capital is consumed in a manner that is substantially consistent with the requirements in items (1) through (3).

Line 5

Enter the value of qualified opportunity zone property (see [Definitions](#)) held by the QOF on the last day of the first 6-month period of the tax year.

Special rule for first year of QOF. If you answered "Yes" on line 3, the 6-month period starts from the month you indicated on line 4. Line 5 may be blank depending on the tax year and the month indicated on line 4.



If you check "Yes" on line 3, but do not list the first month in which you choose to be a QOF on line 4, the 6-month period of the QOF starts on the first day of your tax year, even if the QOF bought no qualified opportunity zone property until later in the year.

Example 2. Virginia, Joe, Laura, and Ishmael formed a new partnership in January 2018 for the purposes of operating as a QOF, but it does not receive until July 2018 any investments under a deferral election under section 1400Z-2(a). The partnership has a calendar year tax year. The QOF may choose any month from January through July 2018 to use as its first month for certification. It chooses April 2018. The first 6-month period for the QOF asset test ends on September 30. January to March are not considered for purposes of the 6-month period.

Example 3. The facts are the same as in Example 2, except the partnership chooses July 2018 as the certification date. The first 6-month period for the QOF assets ends on December 31. The 6 months from January through June are not considered, and lines 5 through 7 will be blank.

Line 6

Enter the value of total assets held by the QOF on the last day of the first 6-month period of the tax year.

If you checked "Yes" on line 3, the 6-month period starts from the month you indicated on line 4. Line 6 may be blank depending on the tax year and the month indicated on line 4. See the discussion for line 5 and see [Example 3](#) in *Line 5*.

Line 7

If the figure entered on line 7 is less than 90% (.90), a penalty may apply. See [Part III](#) of the instructions for more details. Enter -0- if lines 5 and 6 are blank.

Line 8

Enter the value of qualified opportunity zone property (see [Definitions](#)) held by the QOF on the last day of the tax year.

Note. If you answered "Yes" on line 3, the tax year may be less than 12 months.

Line 9

Enter the value of total assets held by the QOF on the last day of the tax year.

Note. If you checked "Yes" on line 3, the tax year may be less than 12 months.

Part III

Complete Part III annually and attach it to your applicable tax return listed under [Who Must File](#) above. Part III determines whether you are subject to a penalty. See [Qualified opportunity fund](#) in *Definitions*.

Line 12

If lines 5 and 6 are blank, then divide line 11 by 1.0 instead of 2.0, and enter the result.

Line 13

If you checked "Yes," the QOF met the 90% investment standard. Attach the form to your tax return to report you met the investment standard for the current tax year.

If you checked "No," the QOF failed to meet the 90% investment standard. Go to Part IV to figure the penalty for each month the QOF did not satisfy that investment standard. The IRS will issue a notice regarding the penalty reported on line 13. This notice will include instructions on the penalty, the reasonable cause relief process, and payment instructions.

Part IV

Complete Part IV if you checked "No" on Part III, line 13. Use Part IV to figure the penalty for each month that the QOF did not hold at least 90% of its assets in qualified opportunity zone property. See [Definitions](#).

Accounting period. Columns (a) through (l) in Part IV assume that the QOF was in existence for the full tax year (January to December for calendar year or 12 consecutive months for fiscal year). See [Pub. 538, Accounting Periods and Methods](#) for more information on accounting periods.



If you answered "Yes" on Part I, line 3 and the QOF did not exist for the full tax year, you will not use all of the columns in Part IV. Instead, use the month listed on Part I, line 4 as your Month 1 (see column (a) of Part IV of the form), and continue using the other columns as needed to complete the tax year.

Example 4. The facts are the same as in [Example 2](#) under the Part I, line 5 instructions. In that situation, the partnership entered April on Part I, line 4. The answer to Part III, line 13 was "No." When filling out Part IV, the partnership will enter months only in columns (a) through (i), since April would be Month 1 and December would be Month 9.

Lines 1 and 3

See [Value determination](#) for information on what figure to enter on these lines.

Line 5

The figure to enter here is the interest rate for each calendar quarter, which

the IRS will determine during the first month in the preceding quarter. These rates are published quarterly in an IRS news release and in a revenue ruling in the Internal Revenue Bulletin (IRB). Go to www.irs.gov/irb for the IRBs. You can subscribe to IRS Newswire to receive news releases of the quarterly interest rates, and IRS GuideWire to receive emails with a link to the revenue rulings in which the quarterly interest rates are published by going to www.irs.gov/uac/e-news-subscriptions-2.

Line 7

Divide line 6 by 12 even if you answered "Yes" in Part I, line 3 and the QOF did not exist for a full tax year. This is because the underpayment rate used on line 5 is annualized.

Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The average time and expense required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.



Opportunity Zones Frequently Asked Questions

Q. What is an Opportunity Zone?

A. An Opportunity Zone is an economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the state and that nomination has been certified by the Secretary of the U.S. Treasury via his delegation of authority to the Internal Revenue Service.

Q. How were Opportunity Zones created?

A. Opportunity Zones were added to the tax code by the Tax Cuts and Jobs Act on December 22, 2017.

Q. Have Opportunity Zones been around a long time?

A. No, they are new. The first set of Opportunity Zones, covering parts of 18 states, were designated on April 9, 2018. Opportunity Zones have now been designated covering parts of all 50 states, the District of Columbia and five U.S. territories.

Q. What is the purpose of Opportunity Zones?

A. Opportunity Zones are an economic development tool—that is, they are designed to spur economic development and job creation in distressed communities.

Q. How do Opportunity Zones spur economic development?

A. Opportunity Zones are designed to spur economic development by providing tax benefits to investors. First, investors can defer tax on any prior gains invested in a Qualified Opportunity Fund (QOF) until the earlier of the date on which the investment in a QOF is sold or exchanged, or December 31, 2026. If the QOF investment is held for longer than 5 years, there is a 10% exclusion of the deferred gain. If held for more than 7 years, the 10% becomes 15%. Second, if the investor holds the investment in the Opportunity Fund for at least ten years, the investor is eligible for an increase in basis of the QOF investment equal to its fair market value on the date that the QOF investment is sold or exchanged.

Q. What is a Qualified Opportunity Fund?

A. A Qualified Opportunity Fund is an investment vehicle that is set up as either a partnership or corporation for investing in eligible property that is located in a Qualified Opportunity Zone.

Q. Do I need to live in an Opportunity Zone to take advantage of the tax benefits?

A. No. You can get the tax benefits, even if you don't live, work or have a business in an Opportunity Zone. All you need to do is invest a recognized gain in a Qualified Opportunity Fund and elect to defer the tax on that gain.

Q. I am interested in knowing where the Opportunity Zones are located. Is there a list of Opportunity Zones available?

A. Yes. The list of designated Qualified Opportunity Zones can be found at [Opportunity Zones Resources](#) and in the Federal Register at [IRB Notice 2018-48](#). Further a visual map of the census tracts designated as Qualified Opportunity Zones may also be found at Opportunity Zones Resources.

Q: What do the numbers mean on the Qualified Opportunity Zones list, Notice 2018-48?

A: The numbers are the population census tracts designated as Qualified Opportunity Zones.

Q: How can I find the census tract number for a specific address?

A: You can find 11-digit census tract numbers, also known as GEOIDs, using the U.S. Census Bureau's Geocoder. After entering the street address, select ACS2015_Current in the Vintage drop-down menu and click Find. In the Census Tracts section, you'll find the number after GEOID.

Q. I am interested in forming a Qualified Opportunity Fund. Is there a list of Opportunity Zones available in which the Fund can invest?

A. Yes. The list of designated Qualified Opportunity Zones in which a Fund may invest to meet its investment requirements can be found at [Notice 2018-48](#).

Q. How does a corporation or partnership become certified as a Qualified Opportunity Fund?

A. To become a Qualified Opportunity Fund, an eligible corporation or partnership self-certifies by filing Form 8996, Qualified Opportunity Fund, with its federal income tax return. Early-release drafts of the [form](#) and [instructions](#) are posted, with final versions expected in December. The return with Form 8996 must be filed timely, taking extensions into account.

Q: Can a limited liability company (LLC) be an Opportunity Fund?

A: Yes. A LLC that chooses to be treated either as a partnership or corporation for federal tax purposes can organize as a Qualified Opportunity Fund.

Q. I sold some stock for a gain in 2018, and, during the 180-day period beginning on the date of the sale, I invested the amount of the gain in a Qualified Opportunity Fund. Can I defer paying tax on that gain?

A. Yes, you may elect to defer the tax on the amount of the gain invested in a Qualified Opportunity Fund. Therefore, if you only invest part of your gain in a Qualified Opportunity Fund(s), you can elect to defer tax on only the part of the gain which was invested.

Q. How do I elect to defer my gain on the 2018 sale of the stock?

A. You may make an election to defer the gain, in whole or in part, when filing your 2018 Federal Income Tax return. That is, you may make the election on the return on which the tax on that gain would be due if you do not defer it.

Q. I sold some stock on December 15, 2017, and, during the required 180-day period, I invested the amount of the gain in a Qualified Opportunity Fund. Can I elect to defer tax on that gain?

A. Yes. You make the election on your 2017 return. Attach [Form 8949](#), reporting Information about the sale of your stock. Precise instructions on how to use that form to elect deferral of the gain will be forthcoming shortly.

Q. Can I still elect to defer tax on that gain if I have already filed my 2017 tax return?

A. Yes, but you will need to file an amended 2017 return, using [Form 1040X](#) and attaching [Form 8949](#).

Q. How can I get more information about Opportunity Zones?

A. Over the next few months, the Treasury Department and the Internal Revenue Service will be providing further details, including additional legal guidance, on this new tax benefit. More information will be available at [Treasury.gov](#) and [IRS.gov](#).

Page Last Reviewed or Updated: 11-Jan-2019



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OPPORTUNITY ZONES RESOURCES

The authority to implement IRC 1400Z-1 and 1400Z-2 has been delegated to the IRS. The CDFI Fund is supporting the IRS with the Opportunity Zone nomination and designation process under IRC 1400Z-1 only.

Treasury and IRS have issued an initial set of [proposed regulations and guidance](#) on how the Qualified Opportunity Zone tax benefits under IRC 1400Z-2 (including the certification of Qualified Opportunity Funds and eligible investments in Qualified Opportunity Zones) will be administered. IRS also has posted a list of [Frequently Asked Questions about Opportunity Zones](#) on the [irs.gov Tax Reform](#) pages. **You may submit comments on the proposed regulations electronically via the Federal Rulemaking Portal at www.regulations.gov (IRS REG-115420-18).** You will want to monitor the [Tax Reform page](#) at the IRS website for additional Opportunity Zone information and other Tax Reform information. **For any other questions, please call (800) 829-1040.**

Opportunity Zones

- **List of designated Qualified Opportunity Zones** (QOZs): This spreadsheet was updated **December 14, 2018**, to include two additional census tracts in Puerto Rico that, based on 2012-2016 American Community Survey data, meet the statutory criteria for a Low-Income Community and are deemed as designated QOZs.
 - Based on nominations of eligible census tracts by the Chief Executive Officers of each State, Treasury has completed its designation of Qualified Opportunity Zones. Each State nominated the maximum number of eligible tracts, per statute, and these designations are final. The statute and legislative history of the Opportunity Zone designations, under IRC § 1400Z, do not contemplate an opportunity for additional or revised designations after the maximum number of zones allowable have been designated in a State or Territory.
 - Based on IRC 1400Z-1, designations are based upon the boundaries of the tract at the time of the designation in 2018, and do not change over the period of the designation, even if the boundaries of an individual census tract are redefined in future Census releases.
- For a **map** of all designated QOZs, [click here](#).
 - To view all designated QOZs, click on the “Layers” tab on the menu on the right hand side of the screen. Select “Opportunity Zone Tract” and unselect “2011-2015 LIC Census Tract,” and zoom in to a specific area on the map. Designated QOZs will appear in **blue**. (Please note that if other layer options are selected, it will change the colors of the tracts.)
 - To view a specific census tract, enter the tract number in the search bar, select “2011-2015 Census Tract” by clicking on the mailbox symbol on the left of the search bar, click search, and select the census tract number that

appears in the results below.

- Additional guidance on visualizing designated QOZs can be found in this [user guide](#).

● **Additional Resources**

- **IRS Revenue Procedure**: Provides information on the eligibility criteria for census tract designation as a Qualified Opportunity Zone and the nomination and designation process.
- **Opportunity Zones Information Resource**, with sortable lists by State of all census tracts originally eligible for designation as a QOZ.
- **Opportunity Zones Shapefile**: This Zip file contains a Geographic Information System (GIS) shapefile of all population census tracts designated as QOZs as well as all population census tracts originally eligible for designation as a QOZ. See Readme text document for additional detail.

For all questions on IRC 1400Z-2 related to Opportunity Funds and Opportunity Zone Investments:

Phone: (800) 829-1040

For questions only on IRC 1400Z-1 related to the Opportunity Zone nomination and designation process, or on the list and map of designated QOZs:

E-mail: OpportunityZone@cdfi.treas.gov

Please note that the CDFI Fund is unable to provide confirmation that an investment is in a Qualified Opportunity Zone. Interested parties can use the Census Bureau’s online [Geocoder](#) tool to determine the census tract in which a specific address lies and then use the [Opportunity Zone mapping system](#) or the [list of designated Qualified Opportunity Zones](#) to determine the status of that census tract.

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26 USC 1400Z-2: Special rules for capital gains invested in opportunity zones

Text contains those laws in effect on March 16, 2019

From Title 26-INTERNAL REVENUE CODE

Subtitle A-Income Taxes

CHAPTER 1-NORMAL TAXES AND SURTAXES

Subchapter Z-Opportunity Zones

Jump To:[Source Credit](#)[Effective Date](#)**§1400Z–2. Special rules for capital gains invested in opportunity zones****(a) In general****(1) Treatment of gains**

In the case of gain from the sale to, or exchange with, an unrelated person of any property held by the taxpayer, at the election of the taxpayer-

(A) gross income for the taxable year shall not include so much of such gain as does not exceed the aggregate amount invested by the taxpayer in a qualified opportunity fund during the 180-day period beginning on the date of such sale or exchange,

(B) the amount of gain excluded by subparagraph (A) shall be included in gross income as provided by subsection (b), and

(C) subsection (c) shall apply.

(2) Election

No election may be made under paragraph (1)-

(A) with respect to a sale or exchange if an election previously made with respect to such sale or exchange is in effect, or

(B) with respect to any sale or exchange after December 31, 2026.

(b) Deferral of gain invested in opportunity zone property**(1) Year of inclusion**

Gain to which subsection (a)(1)(B) applies shall be included in income in the taxable year which includes the earlier of-

(A) the date on which such investment is sold or exchanged, or

(B) December 31, 2026.

(2) Amount includible**(A) In general**

The amount of gain included in gross income under subsection (a)(1)(A) shall be the excess of-

(i) the lesser of the amount of gain excluded under paragraph (1) or the fair market value of the investment as determined as of the date described in paragraph (1), over

(ii) the taxpayer's basis in the investment.

(B) Determination of basis**(i) In general**

Except as otherwise provided in this clause or subsection (c), the taxpayer's basis in the investment shall be zero.

(ii) Increase for gain recognized under subsection (a)(1)(B)

The basis in the investment shall be increased by the amount of gain recognized by reason of subsection (a)(1)(B) with respect to such property.

(iii) Investments held for 5 years

In the case of any investment held for at least 5 years, the basis of such investment shall be increased by an amount equal to 10 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

(iv) Investments held for 7 years

In the case of any investment held by the taxpayer for at least 7 years, in addition to any adjustment made under clause (iii), the basis of such property shall be increased by an amount equal to 5 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

(c) Special rule for investments held for at least 10 years

In the case of any investment held by the taxpayer for at least 10 years and with respect to which the taxpayer makes an election under this clause, the basis of such property shall be equal to the fair market value of such investment on the date that the investment is sold or exchanged.

(d) Qualified opportunity fund

For purposes of this section-

(1) In general

The term "qualified opportunity fund" means any investment vehicle which is organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (other than another qualified opportunity fund) that holds at least 90 percent of its assets in qualified opportunity zone property, determined by the average of the percentage of qualified opportunity zone property held in the fund as measured-

- (A) on the last day of the first 6-month period of the taxable year of the fund, and
- (B) on the last day of the taxable year of the fund.

(2) Qualified opportunity zone property**(A) In general**

The term "qualified opportunity zone property" means property which is-

- (i) qualified opportunity zone stock,
- (ii) qualified opportunity zone partnership interest, or
- (iii) qualified opportunity zone business property.

(B) Qualified opportunity zone stock**(i) In general**

Except as provided in clause (ii), the term "qualified opportunity zone stock" means any stock in a domestic corporation if-

- (I) such stock is acquired by the qualified opportunity fund after December 31, 2017, at its original issue (directly or through an underwriter) from the corporation solely in exchange for cash,
- (II) as of the time such stock was issued, such corporation was a qualified opportunity zone business (or, in the case of a new corporation, such corporation was being organized for purposes of being a qualified opportunity zone business), and
- (III) during substantially all of the qualified opportunity fund's holding period for such stock, such corporation qualified as a qualified opportunity zone business.

(ii) Redemptions

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

(C) Qualified opportunity zone partnership interest

The term "qualified opportunity zone partnership interest" means any capital or profits interest in a domestic partnership if-

- (i) such interest is acquired by the qualified opportunity fund after December 31, 2017, from the partnership solely in exchange for cash,
- (ii) as of the time such interest was acquired, such partnership was a qualified opportunity zone business (or, in the case of a new partnership, such partnership was being organized for purposes of being a qualified opportunity zone business), and
- (iii) during substantially all of the qualified opportunity fund's holding period for such interest, such partnership qualified as a qualified opportunity zone business.

(D) Qualified opportunity zone business property**(i) In general**

The term "qualified opportunity zone business property" means tangible property used in a trade or business of the qualified opportunity fund if-

- (I) such property was acquired by the qualified opportunity fund by purchase (as defined in section 179(d)(2)) after December 31, 2017,
- (II) the original use of such property in the qualified opportunity zone commences with the qualified opportunity fund or the qualified opportunity fund substantially improves the property, and
- (III) during substantially all of the qualified opportunity fund's holding period for such property, substantially all of the use of such property was in a qualified opportunity zone.

(ii) Substantial improvement

For purposes of subparagraph (A)(ii), property shall be treated as substantially improved by the qualified opportunity fund only if, during any 30-month period beginning after the date of acquisition of such property, additions to basis with respect to such property in the hands of the qualified opportunity fund exceed an amount equal to the adjusted basis of such property at the beginning of such 30-month period in the hands of the qualified opportunity fund.

(iii) Related party

For purposes of subparagraph (A)(i), the related person rule of section 179(d)(2) shall be applied pursuant to paragraph (8) of this subsection ¹ in lieu of the application of such rule in section 179(d)(2)(A).

(3) Qualified opportunity zone business**(A) In general**

The term "qualified opportunity zone business" means a trade or business-

- (i) in which substantially all of the tangible property owned or leased by the taxpayer is qualified opportunity zone business property (determined by substituting "qualified opportunity zone business" for "qualified opportunity fund" each place it appears in paragraph (2)(D)),
- (ii) which satisfies the requirements of paragraphs (2), (4), and (8) of section 1397C(b), and
- (iii) which is not described in section 144(c)(6)(B).

(B) Special rule

For purposes of subparagraph (A), tangible property that ceases to be a qualified opportunity zone business property shall continue to be treated as a qualified opportunity zone business property for the lesser of-

- (i) 5 years after the date on which such tangible property ceases to be so qualified, or
- (ii) the date on which such tangible property is no longer held by the qualified opportunity zone business.

(e) Applicable rules**(1) Treatment of investments with mixed funds**

In the case of any investment in a qualified opportunity fund only a portion of which consists of investments of gain to which an election under subsection (a) is in effect-

- (A) such investment shall be treated as 2 separate investments, consisting of-
 - (i) one investment that only includes amounts to which the election under subsection (a) applies, and
 - (ii) a separate investment consisting of other amounts, and

(B) subsections (a), (b), and (c) shall only apply to the investment described in subparagraph (A)(i).

(2) Related persons

For purposes of this section, persons are related to each other if such persons are described in section 267(b) or 707(b)(1), determined by substituting "20 percent" for "50 percent" each place it occurs in such sections.

(3) Decedents

In the case of a decedent, amounts recognized under this section shall, if not properly includible in the gross income of the decedent, be includible in gross income as provided by section 691.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including-

- (A) rules for the certification of qualified opportunity funds for the purposes of this section,
- (B) rules to ensure a qualified opportunity fund has a reasonable period of time to reinvest the return of capital from investments in qualified opportunity zone stock and qualified opportunity zone partnership interests, and to reinvest proceeds received from the sale or disposition of qualified opportunity zone property, and
- (C) rules to prevent abuse.

(f) Failure of qualified opportunity fund to maintain investment standard**(1) In general**

If a qualified opportunity fund fails to meet the 90-percent requirement of subsection (c)(1),² the qualified opportunity fund shall pay a penalty for each month it fails to meet the requirement in an amount equal to the product of-

- (A) the excess of-
 - (i) the amount equal to 90 percent of its aggregate assets, over
 - (ii) the aggregate amount of qualified opportunity zone property held by the fund, multiplied by

(B) the underpayment rate established under section 6621(a)(2) for such month.

(2) Special rule for partnerships

In the case that the qualified opportunity fund is a partnership, the penalty imposed by paragraph (1) shall be taken into account proportionately as part of the distributive share of each partner of the partnership.

(3) Reasonable cause exception

No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.

(Added Pub. L. 115-97, [title I, §13823\(a\)](#), [Dec. 22, 2017](#), 131 Stat. 2184 .)

EFFECTIVE DATE

Section effective on Dec. 22, 2017, see section 13823(d) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 1016 of this title.

¹ So in original. This subsection does not contain a paragraph (8).

² So in original. Probably should be "subsection (d)(1)."

Section 1400Z-2.--Special Rules for Capital Gains Invested in Opportunity Zones

Rev. Rul. 2018-29

ISSUES

(1) If a qualified opportunity fund (QOF), as defined in § 1400Z-2(d)(1) of the Internal Revenue Code (Code), purchases an existing building located on land that is wholly within a qualified opportunity zone (QOZ), as defined in § 1400Z-1, can the original use of the building or the land in the QOZ be considered to have commenced with the QOF?

(2) If a QOF purchases an existing building in a QOZ and the land upon which the building is located in a QOZ, is a substantial improvement to the building measured by additions to the adjusted basis in the building or is it measured by additions to the adjusted basis in the building and the land?

(3) If a substantial improvement to the building is measured by additions to the QOF's adjusted basis in the building, does § 1400Z-2(d) require the QOF to separately substantially improve the land?

FACTS

In September 2018, QOF A purchases for \$800x Property X, which is located wholly within the boundaries of a QOZ. Property X consists of a building previously used as a factory erected prior to 2018 and land on which the factory building is located. QOF A intends to convert the factory building to residential rental property. Sixty percent (\$480x) of the \$800x purchase price for Property X is attributable to the value of the land and forty percent (\$320x) is attributable to the value of the building. Within 24 months after the date of QOF A's acquisition of Property X, QOF A invests an additional \$400x in converting the building to residential rental property.

LAW AND ANALYSIS

Pursuant to § 1400Z-1(b)(1)(A) of the Code, the Chief Executive Officer of each State nominated a limited number of population census tracts to be designated as QOZs for purposes of §§ 1400Z-1 and 1400Z-2.

Under § 1400Z-2(d)(1), the term “qualified opportunity fund” (QOF) means any investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (Zone Property) (other than another QOF) that holds at least 90 percent of its assets in Zone Property.

Under § 1400Z-2(d)(2)(A), Zone Property means property that is either qualified opportunity zone stock (Zone Stock), qualified opportunity zone partnership interest (Zone Partnership Interest), or qualified opportunity zone business property (Zone Business Property).

Zone Business Property is defined in § 1400Z-2(d)(2)(D). Section 1400Z-2(d)(2)(D)(i) provides that Zone Business Property is tangible property used in a trade

or business of the QOF if (a) such tangible property is purchased by the QOF after December 31, 2017, (b) the original use of such tangible property commences with the QOF or the QOF substantially improves the tangible property, and (c) during substantially all of the QOF's holding period for such tangible property, substantially all of the use of such tangible property is in a QOZ.

Under § 1400Z-2(d)(2)(D)(ii), tangible property used in a QOF's trade or business is treated as substantially improved by the QOF only if, during any 30-month period beginning after the date of acquisition of such tangible property, additions to basis with respect to such tangible property in the hands of the QOF exceed an amount equal to the adjusted basis of such tangible property at the beginning of such 30-month period in the hands of the QOF.

Questions have arisen as to whether for purposes of § 1400Z-2(d)(2)(D)(i) the original use of land in the QOZ can ever be considered to have commenced with a QOF and, therefore, constitute Zone Business Property. In addition, if the original use of land in the QOZ cannot commence with a QOF and if land is treated as property separate from a building for purposes of § 1400Z-2(d), must land be substantially improved in order to qualify as Zone Business Property?

Given the permanence of land, land can never have its original use in a QOZ commencing with a QOF. Section 1400Z-2 seeks to encourage economic growth and investment in the designated QOZs by providing Federal income tax benefits to taxpayers who newly invest in businesses located within these economically distressed communities. Consistent with this intent, a building located on land within a QOZ is treated as substantially improved within the meaning of § 1400Z-2(d)(2)(D)(ii) if, during

any 30-month period beginning after the date of acquisition of the building, additions to the taxpayer's basis in the building exceed an amount equal to the taxpayer's adjusted basis of the building at the beginning of such 30-month period. Further, the fact that the cost of the land within the QOZ upon which the building is located is not included in the taxpayer's adjusted basis in the building does not mean that the taxpayer is required to separately substantially improve such land for it to qualify as Zone Business Property.

Under the facts of this revenue ruling, QOF A purchased Property X, a factory building and the land on which was located (both wholly within a QOZ), for \$800x with the intent to convert the building into residential rental property. Sixty percent (\$480x) of the purchase price for Property X was attributable to the value of the land and forty percent (\$320x) was attributable to the value of the building. Section 1400Z-2(d)(2)(D)(ii) does not apply to the land on which the factory building is located, but does apply to the building. Because the factory building existed on land within the QOZ prior to QOF A's purchase of Property X, the building's original use within the QOZ did not commence with QOF A. However, under § 1400Z-2(d)(2)(D)(ii) QOF A substantially improved Property X because during the 30-month period beginning after the date of QOF A's acquisition of Property X QOF A's additions to the basis of the factory building (\$400x) exceed an amount equal to QOF A's adjusted basis of the building at the beginning of the 30-month period (\$320x). The fact that the cost of the land on which the building is located is not included in QOF A's adjusted basis of the building does not mean that QOF A is required to separately substantially improve the land.

HOLDING

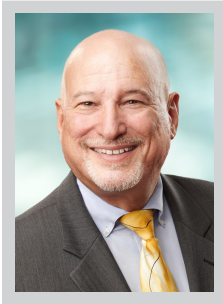
(1) If a QOF purchases an existing building located on land that is wholly within a QOZ, the original use of the building in the QOZ is not considered to have commenced with the QOF for purposes of § 1400Z-2(d)(2)(D)(i), and the requirement under § 1400Z-2(d)(2)(D)(i) that the original use of tangible property in the QOZ commence with a QOF is not applicable to the land on which the building is located.

(2) If a QOF purchases a building wholly within a QOZ, under § 1400Z-2(d)(2)(D)(ii) a substantial improvement to the building is measured by the QOF's additions to the adjusted basis of the building.

(3) Under § 1400Z-2(d), measuring a substantial improvement to the building by additions to the QOF's adjusted basis of the building does not require the QOF to separately substantially improve the land upon which the building is located.

DRAFTING INFORMATION

The principal author of this revenue ruling is Erika C. Reigle of the Office of Associate Chief Counsel Income Tax & Accounting. For further information regarding this revenue ruling, contact Erika C. Reigle at (202) 317-7006 (not a toll-free call).



David S. Neufeld

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David S. Neufeld has practiced law for more than 30 years, advising individuals on sophisticated wealth planning (encompassing income tax, estate tax, state residency tax planning, asset protection, and the legal aspects of insurance and investment planning) and fiduciary due diligence. Additionally, he is an international tax lawyer who has helped business clients engaged in both inbound and outbound transactions as well as the individual tax issues that arise from cross-border business and transactions.

He also advises insurance and wealth management institutions on programs, including "private placement life insurance" and captive insurance companies, that deliver to their clients cost-efficient risk mitigation along with tax-efficient investment opportunities. In addition, David is highly sought after to consult with taxpayers and their legal and accounting advisors on "aggressive tax planning gone bad," including Form 8886 filings (and misfilings), resulting tax audits and tax litigation as well as an expert witness in the consequential civil litigation.

David is past chair of the Insurance & Financial Planning Committee of the Real Property, Trust & Estate (RPTE) Section of the American Bar Association among other leadership positions within the ABA. In 2006 David became Chairman of the *Synergy Summit*, a leadership organization whose members include the top leaders from within the ABA, AICPA, SFSP, NAELA and NAEPC, among others. In 2007 David was appointed ABA Advisor to the NCCUSL drafting committee for the "Uniform Insurable Interest in Trust" Law.

A pioneer in domestic and offshore limited liability company law, including chairing the "Single-Member LLC Task Force" for the New Jersey State Bar Association's Tax Section and drafting the Caribbean island of Nevis' LLC ordinance and its captive insurance amendments, Mr. Neufeld was one of four lawyers in the state to be awarded the New Jersey State Bar Association's 1998 "Advocacy Award." David is rated AV-Preeminent by Martindale-Hubbe, its highest rating, has been designated an Accredited Estate Planner by the National Association of Estate Planners and Councils, has been repeatedly listed in *New Jersey's Top Rated Lawyers* and *Super Lawyers*.

Practice Areas

Taxation

Trusts and Estates

Business and Corporate Law

Admissions

Florida

New Jersey

New York

Pennsylvania

Education

New York Law School, J.D.,
cum laude

New York University, LL.M.,
Taxation

Duke University, A.B.

Continued

Having received his A.B. from Duke University, his J.D. *cum laude* from New York Law School and his LL.M. in Taxation from New York University School of Law, David served a two-year appointment as attorney-advisor to Judge Julian I. Jacobs of the United States Tax Court. He has been admitted to the Society of Trust & Estates Professionals (STEP), has been a member of the Board of Trustees of Prosperity New Jersey and was on the Editorial Advisory Board of the *Asset Protection Journal*. David has published scores of articles and has spoken around the world on the areas of his expertise, as well as having been featured in *BusinessWeek*, *Medical Economics*, *The Wall Street Journal* and appearing on CNBC, among others. One of David's favorite hobbies outside the office is performing stand-up comedy.

HONORS & AWARDS

- Rated AV® Preeminent™ by Martindale-Hubbell
- Named an Awesome Attorney, Business Litigation Law, *South Jersey Magazine*, 2018
- Named a New Jersey "Super Lawyer," by Thomson Reuters, publishers of *New Jersey Super Lawyers* magazine
- Advocacy Award, New Jersey State Bar Association, 1998

A description of the standard or methodology on which the accolades are based can be found here. No aspect of this advertisement has been approved by the Supreme Court of New Jersey.

PROFESSIONAL AFFILIATIONS

- American Bar Association, Real Property, Trust & Estate (RPTE) Section—Chair of Corporate Sponsorship; Council
- American Bar Association, Tax Section, Member
- National Association of Estate Planners & Councils, Accredited Estate Planner
- Society of Trust & Estates Professionals, Member
- Prosperity New Jersey, Past Board Member
- *Asset Protection Journal*, Editorial Advisory Board

ARTICLES & ALERTS

Guide to the Surprises Lurking in the QOZ Proposed Regulations
Legal Alert (April 25, 2019)

The Biggest Surprise in the QOZ Regs Is How Many Surprises There Are
 (April 23, 2019)

Residency Test Is Trickier Than You Think
South Florida Business & Wealth (March 4, 2019)

Calculating the Sec. 6707A Penalty: When a Return is Not The Return--Yari v. Commissioner

Webber: Are Insurance Dedicated Funds Superfluous?
Tax Notes

Continued

To IDF or Not to IDF

MFA Reporter

The Keyport Ruling and The Investor Control Rule--Might Makes Right?

Tax Notes

The 419(e) Plan--Reports of its Death are Greatly Exaggerated

FSP Journal

Tax Planning with Private Placement Life Insurance

Asset Protection Journal

New Version of 419 Plans--An Impending Train Wreck

FSP Journal

New Guidance on Investor Control Rule--Road Map or Roadblock?

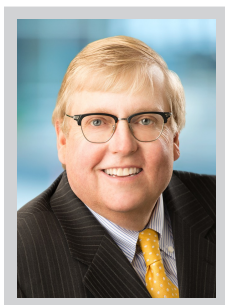
Tax Notes

Nevis Entertains Amendments to its Business Corporations, LLC and Insurance Ordinances--Offshore Investment

Keeping it All--Using Private Placement Life Insurance to Achieve Tax Free Investment Returns

IFC Economic Report Big Debate: Propriety of Tax Planning

The ILIT Liability Minefield: Trustees' and Counsels' Risks--ABA Real Property, Trust and Estate Section
(Fall 2010)



Peter R. Spirgel

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Peter R. Spirgel serves as the firm's Chairman of the Board. He counsels businesses on taxation, shareholder issues, financing transactions – including Crowdfunding and other forms of private offerings – and mergers and acquisitions, and individuals in the area of Federal, State and Estate tax planning. He regularly counsels privately-held companies and their principals on general business issues, capital raising and exit strategies.

Mr. Spirgel's many years of legal experience include the representation of clients in such matters as:

- Private security offerings for start-up ventures including Crowdfunding
- Counseling privately-held businesses
- Tax-free mergers, sales and acquisitions
- Structuring complex estate plans to minimize tax liability
- Documenting and mediating shareholder relationships
- Advising law firms on partnership, management and financial issues

REPRESENTATIVE MATTERS

- Represented one of India's leading pharmaceutical companies with their first international acquisition of a private, NJ-based generic drug development company.
- Represented an international pharmaceutical company in a highly competitive Section 363 auction sale process leading to the \$450,000,000 acquisition of Graceway Pharmaceuticals, LLC by another party, under the supervision of the United States Bankruptcy Court for the District of Delaware
- Represented ASI – a bicycle manufacturer of such brands as Fuji, Breezer and Phat bicycles – in its merger with Performance Inc., the largest retailer of bicycles in the United States, while simultaneously closing a new credit facility for the combined entity with Wells Fargo. The value of the transaction was in excess of \$400 million.

Practice Areas

Business and Corporate Law
Taxation
Trusts and Estates
Crowdfunding
Healthcare
Intellectual Property

Industry Groups

Pharmaceutical
Alternative and Renewable
Energy
Healthcare

Admissions

New Jersey
Pennsylvania
New York
Supreme Court of New
Jersey
Supreme Court of
Pennsylvania
U.S. Supreme Court

Education

- Temple University, L.L.M.,
Taxation
- Georgetown University
Law School, J.D.
- Boston University, B.S. and
B.A., *summa cum laude*
 - Member, Beta Gamma
Sigma (National Honor
Society for Business
Students)

Continued

- Represented a privately held telecommunications equipment manufacturer in the tax-free sale of its business to a public telecommunications company and negotiated key executive positions for major shareholders of client in acquiring the company
- Counseled numerous startup enterprises on formation, capital raising (private offerings, venture financing and debt) and shareholder agreements
- Represented a 50 percent shareholder of a major telecommunications company in a shareholder dispute leading to the sale of the client's interest
- Represented a major manufacturer of bicycles in its merger with the largest U.S. retailer of bicycles
- Represented the acquirer of a paper products distribution company
- Counseled a senior executive of a public company in the termination of her restrictive covenant and startup of new high-tech joint venture with a European company
- Structuring of estate plans for successful executives that are integrated with their business holdings and take full advantage of existing tax-saving techniques
- Fulfills the role of "outside general counsel" to numerous substantial privately held entities advising them on myriad legal issues
- Counseled a senior executive of a major Fortune 500 company in the successful resolution of litigation with the SEC, Justice Department and numerous class action plaintiffs
- Counseled a law firm on the structure of their partnership
- Represented a business in the acquisition of previously-targeted competitors to increase market penetration

HONORS & AWARDS

- Rated AV® Preeminent™ by Martindale-Hubbell
- Selected to *Best Lawyers in America*® in the area of Closely Held Companies and Family Businesses Law, 2015 – 2018
- Distinguished Leaders Award Recipient, *New Jersey Law Journal*, 2017
- Top Attorney List, *SJ Magazine*, 2003, 2004, 2005, and 2009 – 2017
- Named an Awesome Attorney, Corporate Law, *South Jersey Magazine*, 2009, 2011 – 2017
- Named to the "Legal Elite" list by *SmartCEO Magazine*, 2011
- Named a New Jersey "Super Lawyer," 2005 and 2006, by Thomson Reuters, publishers of *New Jersey Super Lawyers*

A description of the standard or methodology on which the accolades are based can be found here. No aspect of this advertisement has been approved by the Supreme Court of New Jersey.

PROFESSIONAL AFFILIATIONS

- Member, NJ Governor-Elect Christopher Christie's Treasury Dept. Transition Subcommittee
- Burlington County Bar Association
 - Past Chairperson, Taxation Committee

Continued

- Camden County Bar Association
 - Past Chairperson, Taxation Committee
- Chamber of Commerce Southern New Jersey
 - Board Member
- New Jersey State Bar Association
- New York Bar Association
- Philadelphia Bar Association

COMMUNITY ACTIVITIES

Mr. Spigel is a past member of the board of directors of the Chamber of Commerce of Southern New Jersey and served as the Chamber's vice president of government affairs. He is also a member and served as a director and past president of the Mount Laurel Rotary Club.

ARTICLES & ALERTS

Only morons pay the estate tax? A Philadelphia attorney takes a look at Gary Cohn's alleged quote.
Philadelphia Business Journal (September 6, 2017)

Pennsylvania's Latest Tax Amnesty Program Expires Soon
Legal Alert (May 22, 2017)

Your Succession Planning in the Age of Trump
Philadelphia Business Journal (January 20, 2017)

Adding Laterals: What's in It for a Firm's Attorneys?
The Legal Intelligencer (February 25, 2014)

Law Firm Leaders Optimistic About Fourth Quarter of 2013
The Legal Intelligencer (October 29, 2013)

Managing Partner Disputes Top 40's Methodology and Accuracy
New Jersey Law Journal (July 1, 2011)

Payment of 'Trust Fund Taxes' Before Bankruptcy Held Not To Be Voidable Preferences

Attachment of Retirement Benefits: How Safe is Your Nest-Egg?

Firms, GCs Starting to Talk the Talk
The Legal Intelligencer (July 13, 2009)

Commentary: Reader Responds to Editorial About Insight on Diversity Column
The Legal Intelligencer (March 29, 2007)

Profits Per Partner: The Bane of the Profession
Pennsylvania Law Weekly (September 2006)

Continued

Schiavo Case Underscores Importance of Living Wills

South Jersey Magazine (March 2005)

How Taxing is the Domestic Partnership Act?

New Jersey Law Journal, vol. CLXXVII, no. 6, index 476 (August 9, 2004)

Mirage in the Contaminated Desert

New Jersey Law Journal, vol. CLXXVII, no. 5, index 402 (August 2, 2004)

Corporate Business Tax Credit for Eligible Brownfields Remediation Costs

(June 28, 2004)

Firm Overview

About Us

Flaster Greenberg PC is a full-service, commercial business law firm serving clients across a range of industries in the public, private, government and nonprofit sectors. Our offices in New Jersey, New York, Pennsylvania and Delaware are strategically located within the mid-Atlantic corridor in close geographic proximity to the hubs of business, industry and government. In 2018, the firm expanded its footprint into South Florida with the opening of a Boca Raton office.



Our clients include companies in all stages of growth and development as well as individuals, from entrepreneurs and start-ups to established family businesses and large Fortune 500 corporations. Having evolved from a two-attorney tax boutique in the 1970s into a mid-sized commercial law firm, our reputation as a formidable alternative to mega national and international legal service providers has fueled our growth.

Businesses including technology companies, manufacturers, commercial real estate developers, healthcare providers, and others as well as individuals increasingly seek our counsel. As the world around us continues to change, we proactively respond by broadening the depth of our practice areas and recommitting ourselves to our clients' success. Flaster Greenberg attorneys value innovative thinking and practical solutions as cornerstones of the success that lies in achieving the best possible results for our clients.

Recognized as a top mid-size law firm by the *National Law Journal*, our attorneys are graduates from top-tier law schools including Harvard, Yale, Columbia, Georgetown and the University of Pennsylvania and have practiced at nationally-esteemed Am Law 100 and 200 firms. Many of our attorneys are nationally recognized for their work, and all of our attorneys focus on meeting the goals of their clients, working as a strategic partner and trusted business advisor.

Our Offices

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Delaware



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Florida



Boca Raton

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Boca Raton, FL 33432
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Our Focus On

- Business Formation
- Contracts
- Shareholder and Partnership Agreements
- Securities and Corporate Finance
- Mergers and Acquisitions
- Liability of Officers and Directors
- Business Separation

Representative Matters

- Represented Stockton University in various matters related to the sale of the former Showboat Casino in Atlantic City
- Represented a restaurant chain in connection with a \$7 million dollar combination private equity investment and mezzanine financing transaction
- Representation of franchisees in the review and negotiation of changes to Franchise Agreements and related Area Development Agreements
- Sale of cellular telephone operating companies in multiple transactions involving aggregate purchase prices of \$100 million
- Sale of large minority interests in cable TV operators
- \$18 million land acquisition and construction loan for New Jersey residential developer
- \$13 million nonrecourse financing of two closely held shopping centers
- Negotiations with the New Jersey Department of Banking and Insurance, leading to first-ever discretionary exemption for 8,000 member organization's health benefits plan
- \$30 million tax credit, state and state agency funding, and commercial financing in the last two years for affordable housing projects
- Two recent "year 16" resyndication projects for Low Income Housing Tax Credit projects of 400 and 200 units
- Structuring closely held business succession plans
- Representing individuals and entities in the acquisition or sale of business interests or assets
- Sale of a multi-franchise automobile dealership
- Structuring and implementation of corporate buy-outs using Employee Stock Ownership Plans

Business law and the business client are the heart of our practice at Flaster/Greenberg. Among the clients we represent are entrepreneurial start-up enterprises, growing technology companies, long-established family-owned businesses, companies involved in industry-wide consolidations, professional corporations, and large privately held as well as publicly traded companies. We are frequently asked to play the role of an experienced business counselor on the range of issues companies encounter. In addition, our business attorneys provide a full range of technical legal services to our business clients.

Business Formation

We form businesses in all industries, from renewable energy to healthcare to e-commerce to everything in between. We take our clients through every step of forming the new business to ensure your understanding and protect your interests.

Form of Entity

We help choose the right form of entity for your business, including:

- A limited liability company (LLC)
- A subchapter S or C corporation
- A professional corporation
- A joint venture

- A limited partnership (LP) or limited liability partnership (LLP)
- A hybrid entity

In choosing an entity, we weigh the factors that are relevant to your business, and seek to:

- Maximize tax and accounting benefits
- Protect you and the other owners from personal liability
- Give you a path for business succession
- Attract investors and potential buyers

Our skilled paralegals can create a new entity and obtain a federal employer identification number for you overnight, if not sooner, ensuring that you hit the ground running.

IP, Trademark and Name Protection

Do you have a name in mind? Within minutes we can confirm the availability of the name on state filing records. Through our Intellectual Property Practice Group, we can offer full legal protection for your name throughout the United States and around the world.

Registered Agent Services

All states require entities to have a “registered agent” which, among other things, provides the address where a lawsuit is served. We offer full registered agent services, ensuring that your legal needs are served under one roof.

Contracts

Through the firm’s long history of providing services to business clients, our attorneys have drafted thousands of contracts in hundreds of industries, covering an enormous range of business relationships. Examples include:

- Partnership, Shareholder and Operating Agreements
- Complex Merger and Acquisition Agreements
- Technology/IP Licensing and Cooperation Agreements
- Research and Development Agreements
- Asset Purchase and Stock Purchase Agreements
- Brokerage Contracts
- Employment Agreements and Employee Benefit Plans
- Management Agreements
- Distributorship Agreements
- Non-Disclosure Agreements
- Corporate Capitalization and Control Agreements
- Phantom Stock Plans



We do not subscribe to the “one size fits all” mentality that results in lengthy contracts that are far more complex than the situation demands. We believe in contracts that are appropriate for the situation and, most important, contracts that protect and advance the interests of our clients.

Shareholder and Partnership Agreements

Whether a Shareholders’ Agreement (for corporations), Operating Agreement (for limited liability companies), or Partnership Agreement (for partnerships), the goal is the same: establish a clear written agreement that maintains harmony among the owners and avoids ugly (and expensive) disputes.

Businesses are often formed by friends or family members. Far too often the owners assume they will always be friends or that family ties will always overcome disagreements. Unfortunately the courts are filled with cases that disprove these natural – but optimistic – assumptions. When things go wrong and there is no written agreement to lead the way, the result can be the end of lifetime personal relationships and the destruction of the business itself.

We see these cases on a regular basis and handle them ourselves. But we prefer to help you prepare a good agreement up front and avoid situations like this.

To avoid this dangerous territory, a good business agreement should deal with at least the following points:

- Ownership Percentages
- Capital Contributions
- Profit Distributions
- Management and Control
- Breaking Deadlocks
- Compensation
- Time Commitment
- Restrictions on Competition
- Buy-Sell Issues

Securities and Corporate Finance

We represent clients in a full range of financing options. In addition to individual and institutional lending and the acquisition of owner and employee-based financing (for example, through the use of tax-favored ESOPs), we have represented clients in a variety of transactions involving the private placement of debt and equity securities. Finally, affiliations with other firms allow us to offer one stop shopping to clients for access to the public securities markets.

Mergers and Acquisitions

Whether our client is the buyer, the seller, a lender, a security-holder, an employee group or another interested party, we apply our extensive experience and knowledge in a variety of merger and acquisition transactions, including cash purchases, earn-outs, spinoffs and splitups, and a range of tax-favored reorganizations. Frequently we are asked to consult not only with respect to the technical legal aspects of a merger and acquisition transaction but also with respect to valuation and other business issues. Our extensive expertise in Federal and State taxation can be especially important in this highly complex area, where a seemingly nominal change in the structure of a transaction can have unexpected and far-reaching tax consequences.

Corporate Governance

The laws applicable to corporations, partnerships and limited liability companies offer a nearly limitless range of possibilities for the governance of a business. A simple majority or a super-majority may govern a business; special interests (for example, business founders) may be given special control rights; and different parties may be given control over different aspects of the business. Knowledge of these laws and possibilities is often fundamental to the successful structuring of a business enterprise. When disputes arise, the same knowledge is essential to resolving problems and, if necessary, protecting the interests of our clients in court.

Liability of Officers and Directors

A key asset of many growing companies is the experience and insight of outside advisors. Yet this asset can be jeopardized by the potential for lawsuits brought by disgruntled shareholders or others. At Flaster/Greenberg we have a deep understanding of the corporate, partnership and limited liability company laws governing such lawsuits. We know how to create a business structure that offers appropriate levels of protection to the management of the business while not undermining fundamental notions of fairness to the shareholders. In this area as in all others, we seek to create a structure tailored to the needs of the business. We also advise officers and directors on shareholder rights and agreements; and the requirements of Sarbanes Oxley (SOX), and represent such parties in connection with SEC, Justice Department and state investigations and enforcement actions.

Business Separation

The break up of a business partnership can be a very stressful and costly process. Whether because of deteriorated personal relationships, financial strains, an aging partner who is seeking an exit strategy, a junior partner wanting to elevate his/her position or a poorly-crafted business model, disputes may escalate to a level where the parties' differences are (or at least initially appear to be) irreconcilable.

There are no cookie-cutter solutions to these complex situations. Each business and every business relationship is unique, shaped by a wide variety of factors, including the personal attributes, emotional issues, and the talents, contributions and characteristics of the individuals involved.

With many years of experience counseling business owners at every stage of the business lifecycle and litigating business disputes, Flaster/Greenberg's attorneys are uniquely positioned to help address and resolve a myriad of legal issues faced by our clients in the context of a business separation. Working together with our clients, our priorities are:

- Achieving a favorable economic result
- Preserving the business and its assets
- Minimizing the adverse impact of a breakup on the business
- Avoiding litigation

To these ends, our team works together to creatively structure the best solution for our clients, bringing objectivity and sensitivity to what is often an intensely emotional process.

Broad Capabilities

Keeping the best interests of our clients in mind, our team of business transaction attorneys works to facilitate an arrangement among the parties that best satisfies our clients' present and future personal and business goals. The advantage for our clients is that our team of attorneys has deep experience in all areas of the law relevant in business divorce matters, including:

- Mergers, acquisitions, divestitures and business valuations
- Corporate governance
- Shareholder, partnership, operating and joint venture agreements
- Financings and other loan matters
- Tax implications
- Bankruptcy and restructuring matters
- Litigation

Options and Alternatives

Our attorneys are keenly aware of the significant cost of litigation, both financially to the individuals involved, as well as the adverse impact on an operating business. They propose creative alternatives, while involving litigators to best position in the event litigation becomes unavoidable. The legitimate threat of litigation through involving an experience litigator early in the process has been proven to facilitate the settlement process. Mediation and arbitration are often pursued if all parties are open to working toward an amicable resolution.

We craft settlements that have involved dissolution of the business, buyout of the business by one or more of the partners or shareholders, sale of the business and restructuring the company or parties roles, among other possibilities.

Growing and managing a business is a multifaceted endeavor. Having talked with hundreds of business owners about issues big and small, our corporate attorneys are often regarded as business consultants to their clients. We understand the excitement, exhilaration and rewards that come with running a business, counterbalanced with at times seemingly endless mundane tasks or bureaucratic obstacles that could impede growth. We can help make a daunting process positive and productive, providing our knowledge every step of the way on the legal and industry landscapes. Please call us to discuss how we might help you and your business thrive.





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Our Focus On

- Alternative and Renewable Energy
- Commercial/Residential Real Estate Leases
- Condemnation
- Condominium and Multifamily Projects
- Construction
- Environmental Issues
- Financing
- Tax and Business Planning
- Joint Ventures
- Land Use and Planning
- Liquor Licenses
- Purchase and Sale of Real Estate
- Litigation and Dispute Resolution
- Residential and Commercial Development

Flaster Greenberg's real estate attorneys represent a variety of industry participants in virtually all aspects of real estate, including development, construction, land use, liquor license matters, taxation and financing - from acquisition to development approvals, to project leasing and/or sale, and/or real estate joint ventures to condemnation, redevelopment and environmental litigation.

We work with individuals and businesses on matters ranging from complex real estate joint ventures and alternative energy initiatives to general, land use and environmental litigation. Because we believe that your interests are best served by those who understand the totality of your business, we provide comprehensive legal counsel and strategic planning.

We represent a broad range of clients, including individuals and entities buying, selling and operating investment properties, and local and national developers building individual and multifamily market rate and low- and moderate-income level residential units, shopping centers and other retail development, automotive and truck dealerships and office and industrial complexes. We also represent and are active in construction industry trade associations.

In real estate as in other practice areas, our attorneys take a practical, creative and cohesive approach to achieving clients' objectives. Our Real Estate and Land Use Practice Group attorneys believe that our clients are best represented when their attorneys can understand and deal with an integrated business, not just narrow legal technicalities.

Alternative and Renewable Energy

The need to embrace alternative and renewable energy initiatives in the United States is clear. This quickly growing industry represents possible solutions to some of our country's most pressing problems, including our current economic status and our dependence on fossil fuels. Situated as we are in the mid Atlantic region, one of the nation's leading areas in solar installations, Flaster Greenberg is familiar with the progress of national alternative and renewable energy projects around the country, as well as those in this region. Our team is poised to assist with a full scope of legal, regulatory and planning services, responsive to the unique needs of the alternative and renewable energy industry.

Commercial and Residential Real Estate Leases

Representing both landlords and tenants in the drafting, negotiation and enforcing of commercial and residential leases, our attorneys have a deep understanding of the legal and business issues involved on both sides of the equation. Our Commercial Leasing Practice encompasses the full spectrum, from the shortterm lease of a small office suite to complex agreements for anchor tenants of large shopping centers, and everything in between. We also understand that with commercial and residential leases, as with other legal documents, there is no one size that fits all.

Condemnation

Our real estate and land use attorneys have been instrumental in resolving condemnation issues faced by both property owners and tenants. We help with precondemnation planning, challenges to condemnation, determining just compensation and litigation of claims.

Among the services we provide are:

- analyzing zoning/planning issues, and the potential damages that might arise from those issues
- fighting challenges to condemnation, such as blight determinations and public purpose
- working to obtain just compensation
- helping with relocation claims
- litigating claims in both federal and state courts to handle unexpected lifetime contingencies.

Condominium and Rental Multifamily Projects

Large residential developments often have special operating needs that may vary widely depending on the project structure or financing. We regularly represent ownership and management groups in establishing the documentation for longterm operation of these properties, whether in dealing with taxing authorities, tenants/owners, contractors, and/or revisions to the operating documents.

Construction

Real estate development projects often require the services of architects, engineers and contractors. Agreements governing the engagement of these professionals often involve millions of dollars in fees and implicate other issues, including plan and permit ownership and thirdparty liabilities. Our real estate attorneys have extensive experience in drafting and negotiating these contracts, as well as construction and demolition agreements for all sizes of projects and, when necessary, in handling all aspects of construction litigation.

Environmental Issues

Environmental laws and regulations can themselves be hazardous to the purchaser or developer of real estate. Our environmental attorneys identify and address potential and actual environmental



problems resulting from the laws and regulations involving water, sewer, drainage, wetlands and waterfront development, as well as mold and other toxic and hazardous substances, and represent clients before the federal and state agencies that implement and enforce the laws and regulations. We realize that the best way to deal with environmental laws is before the fact, identifying potential problems before they arise; but once they arise, we aggressively pursue proper resolutions for our clients.

Financing

We recognize the critical role that financing plays in many real estate transactions, and are well versed in the complexities of acquisition, construction, development and permanent and secondary financing, including affordable housing construction and operation. By actively representing buyers, sellers, developers, lenders and others, we understand the perspectives of all parties to a real estate financing transaction. In the often chaotic real estate marketplace, we can assist our clients in both debt and equity structuring.

Integrated Income Tax, Real Estate Tax and Business Planning

The real estate industry is heavily influenced by tax considerations—federal and state income taxes as well as local real estate taxes. With its strong tax capabilities, Flaster/ Greenberg has attorneys who offer extra skill and advice from a practical perspective to the

firm's real estate clients. We can help to structure joint ventures to maximize tax advantages; guide buyers and sellers of real estate through the complexities of a likekind exchange or farmland assessment rollback taxes; assist in reducing municipal assessments through timely tax appeals; devise legal strategies to minimize ordinary income and maximize capital gain; and otherwise help to ensure that tax considerations are given their due weight in the overall planning for our clients.

Joint Ventures

Real estate projects are often the result of collaboration between two or more parties, or financed through the creation of joint ventures between developers and Real Estate Investment Trusts (REITs). Establishing and operating a successful joint venture requires legal knowledge of tax and commercial law, as well as real estate law, making our integrated approach to the practice of law especially helpful to the client contemplating a joint venture. Joint ventures may take the form of limited liability companies, partnerships, corporations or simple contractual arrangements. No matter what the situation calls for, our highly experienced attorneys can craft a joint venture structure appropriate for the project at hand.

Land Use and Planning

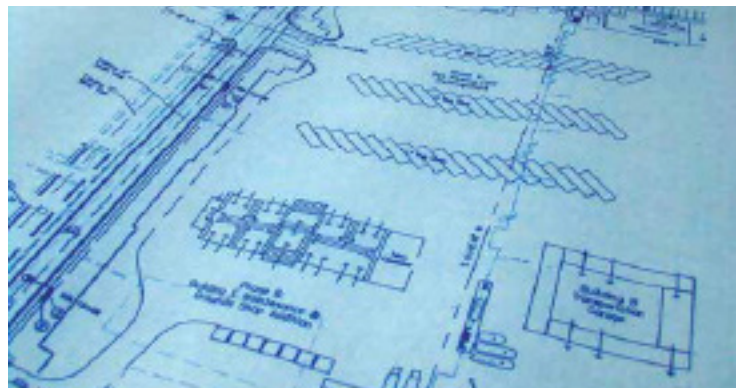
State and local zoning, land use and environmental laws can sometimes present a crazy quilt of impediments to the construction or development of real estate. Flaster Greenberg attorneys help streamline the process, obtaining all required development approvals from municipal, county, state and federal agencies. We are also adept at assisting our clients in obtaining the benefits of sponsored government assistance from tax abatements in designated urban opportunity zones and municipal streetscape grants. Flaster Greenberg attorneys are also experienced in water, sewer, and public utility law. Our Real Estate and Land Use Practice Group has extensive experience in litigating against those same authorities, when necessary.

Liquor Licenses

We handle all aspects of liquor licensing, including obtaining new licenses, transferring or expanding existing licenses, and addressing violations.

Purchase and Sale of Real Estate

We provide assistance through all phases of the transaction, from price negotiations through closing, whether the transaction involves a single property or a portfolio of commercial properties in multiple states. Because we have experience representing buyers and sellers, we are adept at handling the typical and notso typical problems that can arise in a real estate transaction. These problems can range from title defects to financing problems to contaminated soil. Frequently, we are able to assist clients in designing and



implementing creative solutions that enable even the most difficult transaction to go forward.

Real Estate Litigation and Dispute Resolution

Our attorneys are experienced at handling real estate disputes in a variety of tribunals, from the state and federal court systems to arbitration and mediation venues. Where possible, we try to resolve disputes without litigation, knowing that the time and money devoted to litigation can often be used elsewhere. Where litigation is the proper alternative, however, we have the knowledge and experience to vigorously protect and advance the interests of our clients.

Residential and Commercial Development

Representing a wide variety of residential and commercial developers, our attorneys regularly deal with all significant real estate product types, including shopping centers, office and industrial complexes, restaurants, automotive and truck dealerships, golf courses, single application commercial uses, residential subdivisions and multifamily and low and moderate income housing projects. We have extensive experience in all aspects of commercial leasing, including representing national retail tenants, REITs and industrial owners and developers. We structure and create both commercial and residential condominiums and associations, including obtaining all necessary approvals under municipal, state and federal law in both Pennsylvania and New Jersey. We leverage our experience into practical advice and representation, regardless of the type of development contemplated.





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Our Focus On

- Tax Planning
- Business Formation
- Entering or Leaving a Business
- Limited Liability Companies and Partnerships
- Passing a Business from One Generation to the Next
- Mergers and Acquisitions
- Private Letter Rulings
- Structuring Settlements
- Tax Controversies
- Defending Collection Actions

At Flaster Greenberg we take seriously the desire of our clients to legitimately minimize their taxes. Founded more than 45 years ago as a “tax boutique,” today federal and state taxation continues to be an important focus in our firm. Whether this means counseling a large corporate client as to the intricacies of a tax-free reorganization, a real estate developer or investor as to the means of achieving capital gain rather than ordinary income tax treatment, or an individual seeking to preserve wealth for his or her children and grandchildren, the skills and experience of our attorneys as tax advisors is a valuable and pragmatic resource for our clients.

Tax Planning

Too often, “tax advice” amounts to no more than explaining how to report a transaction that has already occurred. Our attorneys understand that such advice is likely to be no more effective than designing a house after the foundation has already been poured. We know that most business transactions can be structured in more than one way, and that two structures reaching the same business result can have dramatically different tax results. Consequently, we work with clients at the earliest stages of a transaction,

seeking to understand the business goals of the client and thereby ensure that tax consequences are carefully weighed and considered. This early intervention, proactive approach to tax matters gives our clients the opportunity for substantial tax savings.

Business Formation

In choosing a form of legal entity, tax considerations play a prominent role. S corporations, C corporations, general partnerships, limited partnerships, limited liability partnerships, limited liability companies—each entity has unique federal and state tax characteristics. Owing to their close familiarity with these characteristics, our attorneys can advise the entrepreneur on the choice best suited for his or her purposes. In some instances, we may recommend a hybrid entity, such as a limited partnership with a limited liability company serving as the general partner, to achieve maximum tax benefit.

Entering or Leaving a Business

Tax consequences frequently come into play when a person joins or leaves an existing business, and the manner in which the transaction is structured can determine whether these consequences are favorable

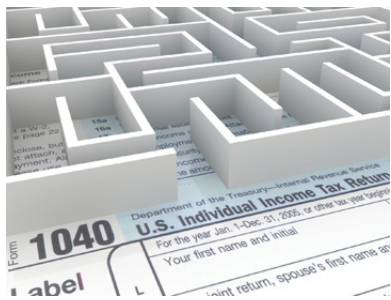
or unfavorable. For example:

- An employee who receives stock options may realize dramatically different tax consequences than a colleague who receives so-called “restricted stock.”
- An investor who receives straight equity in a startup business may realize very different results than the same investor receiving convertible debt.
- A physician or other professional acquiring an interest in an established practice may pay much more if he simply purchases stock than if the transaction is structured with taxes in mind.
- An individual selling stock in an S corporation can face significantly different tax results depending on whether an election is made in connection with the sale.
- An individual who retires from a partnership can face vastly different tax consequences depending on whether the transaction is treated as a “sale or exchange” rather than a “liquidation.”
- An individual purchasing an interest in a partnership can greatly improve his tax position by making a simple election.

In all of these situations and many more, the parties can lower the total cost of the transaction through effective tax planning. At Flaster Greenberg, this is an integral part of our practice.

Limited Liability Companies and Partnerships

The limited liability company, or LLC, has become an enormously popular business vehicle and for good reason. The LLC combines the shareholder protections traditionally associated with corporations with the “pass through” tax treatment traditionally associated with partnerships—and to this attractive combination adds a unique degree of flexibility. However, the LLC, which is generally treated as a partnership for tax purposes, can create serious traps for those unfamiliar with the intricacies of partnership taxation. For example, if the agreement among the members does not reflect the special rules governing allocations of partnership income and loss, the members may find their entire economic arrangement turned upside down. In addition, the structure of the LLC will determine whether other taxes apply, such as tax on self-employment income. Our tax attorneys have the knowledge and experience required to realize the potential of this innovative business tool.



The combination of our experience and depth, in addition to our broad knowledge base, has established our reputation as formidable adversaries when litigating a wide range of benefits disputes. In a recent successful resolution of an ERISA-related matter, we helped a Fortune 100 client achieve a favorable, out-of-court resolution with another large corporation relating to a plan dispute involving tens of millions of dollars in funding obligations.

Passing a Business from One Generation to the Next

In most family owned businesses, there comes a time when the older generation is ready to pass the torch to the younger generation. In some situations, the transition will happen in a single transaction, while in others it may happen over a period of years, with the parent transferring a majority of the equity in the business while retaining control through a special class of voting stock or other mechanisms. No matter what form the transaction takes, minimizing income taxes as well as estate taxes is of great importance. Indeed, the ability to reduce the family’s overall tax burden can make the difference between a successful transition and one that leads to a breakup of the business.

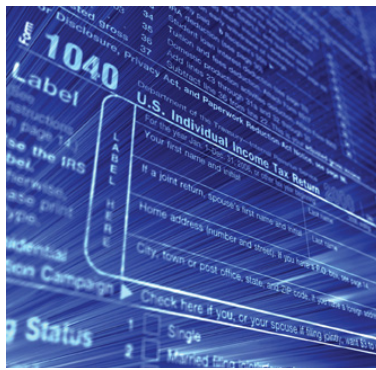
Mergers and Acquisitions

Mergers and acquisitions are among the most complex transactions from a tax perspective, offering great opportunities as well as significant pitfalls for the unwary.

Among the issues that must be addressed:

- Whether the purchaser will be entitled to deduct the payments made to the seller and, if so, when
- Whether the seller will be taxed at capital gain or ordinary income tax rates
- How the purchase price will be allocated among various classes of tangible and intangible assets, and the tax implications of each allocation

- Whether the “goodwill” value being purchased belongs to the corporate seller or to the individual shareholder(s)
- Whether the transaction can or should be structured as a tax-free reorganization
- Whether the seller can defer a portion of the taxable gain by reporting the sale using the installment method of tax accounting
- How state and local sales taxes will apply
- How the transaction will affect net operating losses of the seller, and whether these losses will be available to offset post-transaction income of the purchaser



In merger and acquisitions as in perhaps no other area, the slightest change to the form of a transaction—a change having little or no effect from a business perspective—can have an enormous impact on the tax results. Effective tax planning is therefore essential.

Private Letter Rulings

To be 100 percent certain of the tax consequences of an important transaction, it is sometimes prudent to obtain a private letter ruling from the IRS in advance. Flaster Greenberg attorneys are experienced in advising clients on the situations that may warrant such advance rulings and in applying for and obtaining such rulings from the IRS.

Structuring Settlements

The proper structuring and allocation of proceeds to be paid and received as the result of the settlement of a lawsuit or other dispute can make a significant difference to the tax consequences of the payment. We have substantial experience with structuring settlements to achieve the best tax results for our clients, and work closely with the litigation attorneys in this regard.

Tax Controversies

Our attorneys have substantial experience in handling federal and state tax disputes of all kinds. This ranges from involvement at the audit level, to administrative appeals with the IRS Appeals office and similar state tax authorities, to actual court litigation. We work closely in these matters with our clients' accountants and other advisors.

Examples of recent disputes include:

- Deductibility of certain expenses
- Defending corporate officers against personal liability for unpaid payroll and sales taxes
- Defending out-of-state businesses against imposition of state income taxes on grounds of insufficient nexus
- Determination of a partner's gain on sale of a partnership interest
- Disputes involving independent contractor versus employee status
- Innocent spouse relief

Effective tax planning can frequently avoid disputes. When disputes arise, however, we are prepared to defend vigorously the interests of our clients.

Defending Collection Actions

Situations sometimes arise where a taxpayer's liability is clearly established and the IRS and state tax authorities pursue collection actions. These actions, which may include a lien on the taxpayer's assets, levy of bank and brokerage accounts, the seizure of personal property, levies on wages, a forced closure of the client's business, or a forced sale of the taxpayer's home, can have severe financial and psychological impact. Our attorneys frequently assist clients in stopping the collection activity to achieve a resolution of the outstanding tax debt. Techniques that may be used include installment payment plans, hardship and collection due process filings, statute of limitation defense assertions, innocent spouse relief, Offers in Compromise and in some cases, bankruptcy filings. These techniques can enable the taxpayer to satisfy the tax debt over a long period of time or even discharge the taxes completely.





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