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The Biggest Surprise in the QOZ Regs Is How Many Surprises There Are

April 23, 2019

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Those following the developments in the world of Qualified Opportunity Zonesthose tax benefits derived from investing in economically disadvantaged areaswill already know that the highly anticipated second set of proposed regulations came out on April 17. Once we got past the sheer volume of this set of regs on top of the many pages containing the first set, we realized that these regs contain gifts for the right taxpayers.

In an article soon to be published by David Neufeld, a member of Flaster Greenbergs Tax Department, he unearthed several surprises. These include:

- The long term (5+ years) vacant properties can be acquired without the need to match the acquisition basis with additional investment.
- When waiting to reinvest proceeds from one QOZ property into another taxpayers have 12 months to do so, but that 12-month period will be suspended if there is a delay due to government inaction.
- Land speculation and land banking is prohibited.
- While a QOF cannot buy a property from a related (20% overlap) person it can lease property from a related person.
- QOFs are given four different ways to satisfy the 50% income test, including comparing relative hours spent performing services in the QOZ, comparing relative payroll, comparing locations of essential property and management and a facts and circumstances test.
- Triple net leases do not qualify as QOZ Business.
- Investments can be made in-kind, but carried interests do not qualify for any tax benefit.
- The eventual gain recognized after deferral is over is the lesser of the amount for deferred gain or the fair market value of the QOF interest.
- There are a number of transactions that will trigger an early termination of deferral and inclusion of gain, many of which involve transactions with C or S corporations, partnerships and trusts.

This is a gift that will keep on giving.

ATTORNEYS MENTIONED

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