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Opportunity Zones in the Wake of COVID-19

The IRS and Congress have worked hard in the wake of COVID-19 to provide Americans and taxpayers with assistance to weather the storm. Most recently, the IRS issued Notice 2020-23 which extends the time-period for which taxpayers can complete their Qualified Opportunity Zone Investment to July 15 if the original due date fell between April 1, 2020 – July 15, 2020. Additionally, the statutory language of the law provides additional relief as summarized below. If you have any specific questions about your existing or potential opportunity zone project, please do not hesitate to contact our office.

31 Month Working Capital Safe-Harbor Requirements

- Any Qualified Opportunity Zone Business (QOZB) that is located in a Federal Disaster Area (North Carolina included) receives 24 month extension to the 31 month working capital safe-harbor (WCSH).
- Some have interpreted that the President's declaration of a National Emergency would provide a 24 month extension to WCSH requirements for all QOZBs. Treasury has not yet explicitly confirmed this interpretation so err on the side of caution.
- If your project is delayed due to a delay in government approval (any level of government), you are eligible for an extension of time for compliance of the 31 month WCSH. Detailed record-keeping of the reason for the delay is advised.

90% and 70% Asset Tests

- For QOZ Funds (90% test) and QOZ Businesses (70%) that fail to meet their respective asset tests, penalties are to be imposed based on asset amounts below these thresholds. The original statutory language of the law has a "reasonable cause" exception to these penalties that is extremely general and broad. One can only rightfully assume that the impacts of COVID-19 would provide reasonable cause to be exempt from these penalties. The IRS has not directly confirmed this interpretation, so please use caution.
 - Documentation of the reasoning for non-compliance is paramount (i.e., employees were working remotely (outside of the opportunity zone), due to safety/health concerns).
- For QOZ Funds located in a Federal Disaster Area (North Carolina included), funds received from the sale of QOZB or a return of capital may be granted an additional 12 months (on top of 12 month original time-line) to reinvest the funds, provided it invests the funds as originally intended.
 - Eg. Fund that has delayed its funding due to the QOZ Property being located in a Federal Disaster Area must ultimately invest the funds in similar property in that same QOZ as originally intended.

Other Considerations

- Market volatility has likely freed up cash for worried investors who took chips off the table. In a lot of instances, these triggered capital gains that would be eligible for Qualified Opportunity Zone investments. While a 10 year hold-period requirement to fully maximize QOZ benefits, might not be ideal for a worried investor, main-street and small business will be chomping at the bit to be back up and running post COVID-19 and hopefully, consumers will be right there to support them.
- Qualified Opportunity Zone Investments are extremely deadline driven and while we have not received any explicit relief from Treasury or Congress by way of guidance or new legislation, we are hopeful that this is to come, by way of extensions. We will be following this closely and will keep you updated.