OPPORTUNITY ZONES PROGRAM

The 2017 Tax Cuts and Jobs Act provides tax incentives for investments in Opportunity Zones ("OZ"), in an effort to promote economic development in the selected communities. Faegre Baker Daniels has been at the vanguard of the Opportunity Zone program helping to form Qualified Opportunity Zone funds ("QOF"), working with OZ Investors and working with municipalities to develop Opportunity Zone investment strategies. The third set of regulations were released by the Treasury Department April 17, 2019 which resolve many, but not all, of the outstanding issues related to the use of OZ. Below is a "cliff-note version" of the 169 page regulations to help guide your reading of the full document.

What the April 2019 Treasury Regulations Outline for the Opportunity Zone Program

Definition of "Substantially All"

The new regulations note that "substantially all" means different things in various places in the OZ statute. With regards to "qualified use" or "tangible property" the requirement is 70%. As a measure for a fund's holding period of the tangible property, it is 90%.

Definition of "Substantially Improvement"

The new regulations fail to provide a test to determine satisfaction of this requirement - it will be made on an asset-by-asset basis. Land is not required to be improved as long as it is NOT held for investment purposes. **This definition will allow for many agricultural investments.**

Issues Related to Leased Property as an OZ Investment

1) Tangible property's "original use" standard begins once property is placed in OZ service as long as the property has not been depreciated by another OZ fund or business.
2) Leased tangible property can be treated as a QOZ business if purchased after 12/31/2017 AND located within a Opportunity Zone for the entirety of the lease period.
3) Previously leased property can still qualify for OZ investment
4) The regulations provide two methods of valuing leased property either of which must be applied at the execution of the lease and will be used to meet the 90% asset test.

Operating Investments and the 50% Gross Income Test

The new regulations address what has been a substantial roadblock to operating investments by clarifying and creating **three safe harbors that enable operating investments**. As long as operating investments within Opportunity Zones document ANY ONE of the following metrics, it may be a qualified investment:
1) 50%+ hours of service comes from employees and/or contractors within the OZ
2) 50% + of aggregate dollars is paid to employees and/or contractors within the OZ
3) if the tangible property AND the management or operational functions within the OZ are NECESSARY to generate 50% + of gross income of the trade or business

Regulations Related to Tribal Entities

The new regulations determined that a Qualified Opportunity Zone Fund "QOF" may be organized under the law of a federally recognized Indian tribe if the entity's domicile is located in one of the 50 states, noting however, that the QOF will be subject to federal income tax notwithstanding any tribal ordinance provisions.

FaegreBD is ready to address these issues and help you capitalize on the Opportunity Zones Program!

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