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Opportunity Zones: What You Should Know to Meet a December 31st Deadline?

As we near the end of 2019, we approach an important time for people who wish to invest in a qualified opportunity zone (QOZ), a federal economic development program enacted in 2017. The purpose is to encourage investments in designated economically disadvantaged communities by providing certain tax benefits to investors. December 31, 2019 is the last day to invest and reap all the potential benefits including: (1) tax deferral until the end of 2026, (2) tax reduction of 15%, and (3) elimination of capital gain tax when the investor sells the appreciated investment. Therefore, the individuals that still desire to invest and capitalize on all the available benefits should act by December 31. After 2019, the only difference is that the maximum potential tax reduction benefit is reduced from 15% to 10%.

For many taxpayers that already have an investment in a QOZ, the end of 2019 will be the first time they are filing tax returns for this investment. A taxpayer is required to invest in the program through a company that must self-certify as a Qualified Opportunity Zone Fund ("Fund") and file Form 8996 annually with its tax return.

On Form 8996, the taxpayer designates:

- Whether the Fund is taxed as a corporation or a partnership,
- Confirmation that the purpose of the Fund is to invest in property by submitting organizational documents,
- The first month that the entity is to be considered a Fund (this may or may not be the date of formation), and;
- Information to determine whether the 90% asset test was met as of the relevant semiannual testing dates, as discussed in more detail below.

The end of the year is notable since the Fund must have invested 90% of its assets in QOZ property at semiannual testing dates: June 30 and December 31, for calendar year taxpayers. However, if the entity makes its Fund election on or after July 1, then the only relevant testing date for the first year is December 31. If the Fund fails to meet the 90% asset test, the Fund is obligated to pay a penalty for each month that 90% of its assets are not invested in a QOZ property. The penalty rate is published monthly by the IRS and is multiplied by the shortfall. However, the Fund is not disqualified as a Fund and it does not lose its potential future tax benefits. Taxpayers that are already invested in a QOZ should review their balance sheets prior to December 31, 2019 to ensure that they are sufficiently invested in qualifying property.

Whether you would like to invest in a QOZ or you are already invested in one, you should be aware of the importance of December 31.