

Tax Cuts and Jobs Act – Opportunity Zones

December 6, 2018

Gary Gruner, CPA & Laura Berry, CPA



Opportunity Zone!

- Do you have a capital gain you want to defer tax on until 2026 with the potential of permanently excluding of up to 15% of this gain?
- Want to permanently exclude all further gains on this investment?
- Well, then listen up...



Agenda

- What is a Qualified Opportunity Zone and how they came about?
- What are the tax benefits to an investor?
- What is a Qualified Opportunity Fund?



History of Opportunity Zones?

Sean Parker was the primary architect behind Opportunity Zones. He is a philanthropist and entrepreneur with a record of launching genre-defining companies including Facebook, Napster and Plaxo. He is the Founder and Executive Chairman of the Economic Innovation Group.



What is a Qualified Opportunity Zone?

“Qualified Opportunity Zones are a new community development program established by Congress in the Tax Cuts and Jobs Act of 2017 to encourage long-term investments in low-income rural & urban communities nationwide.

The Opportunity Zones program provides a tax incentive for investors to re-invest their unrealized capital gains into Opportunity Funds that are dedicated to investing into Opportunity Zones designated by the chief executives of every U.S. state and territory.”

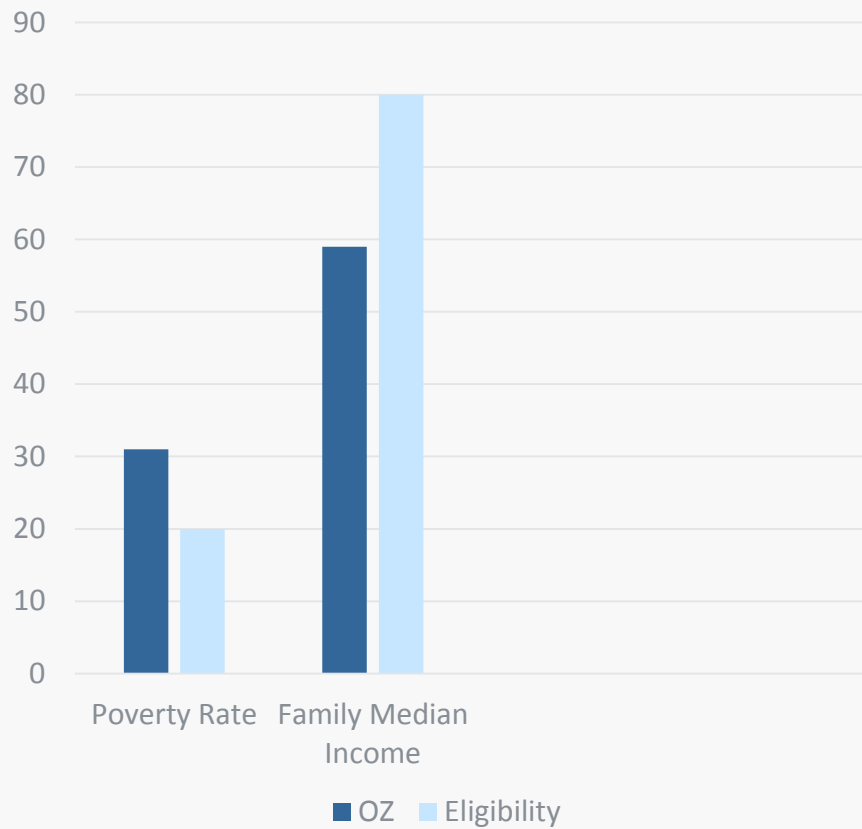
Economic Innovation Group, (EIG)

What is a Qualified Opportunity Zone?

- These new Federal Opportunity Zones are intended to facilitate investment in areas where poverty rates are greater than 20 percent.
- The governor of each state nominated communities as Qualified Opportunity Zones and submitted the nomination to the Secretary of the Treasury no later than April 20, 2018.
- Areas can be nominated as Qualified Opportunity Zones if the areas are low income communities as defined in Code Section 45D(e). The Secretary of the Treasury has 30 days to certify an area as a Qualified Opportunity Zone from the date it receives the nomination.



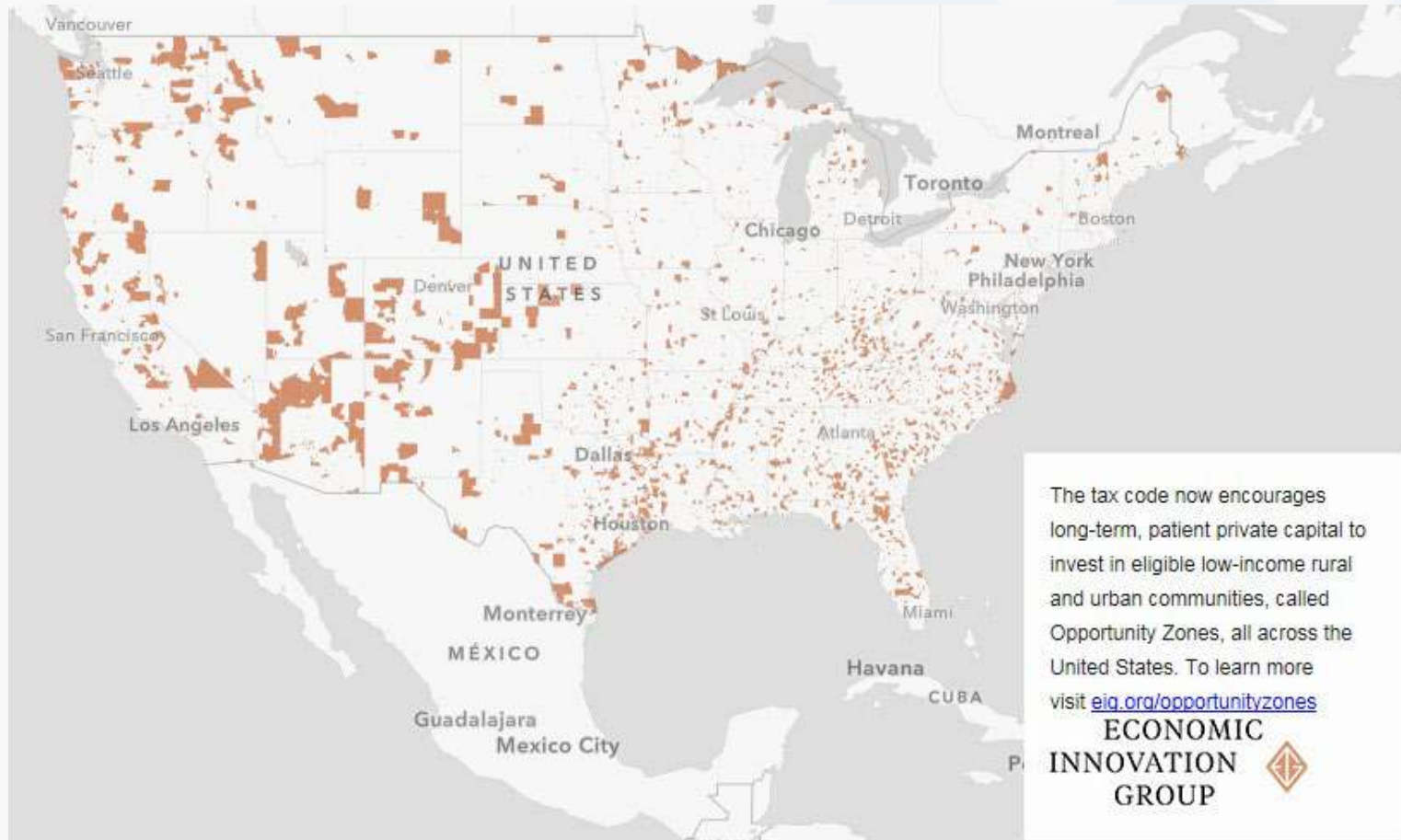
OZ Demographics



Per a study done by EIG (based in DC):

- Average poverty rate of all OZ is ~31% (exceeds 20% eligibility)
- On average family median income of OZ is ~59% of area's median (below 80% eligibility)
- 96% of the areas included in OZ have not experienced significant socioeconomic change in recent year
 - Lowers chances for significant gentrification and displacement of existing communities

Opportunity Zones in USA



- <https://eig.org/opportunityzones>
- https://www.cims.cdfifund.gov/preparation/?config=config_nmtc.xml

GA Opportunity Zones

- “Georgia submitted 260 nominations from 83 counties, comprising 60 percent rural communities and 40 percent urban communities, ahead of the March 21 deadline and all were approved by the Department of the Treasury. The program will be administered by the Georgia Department of Community Affairs (DCA)”

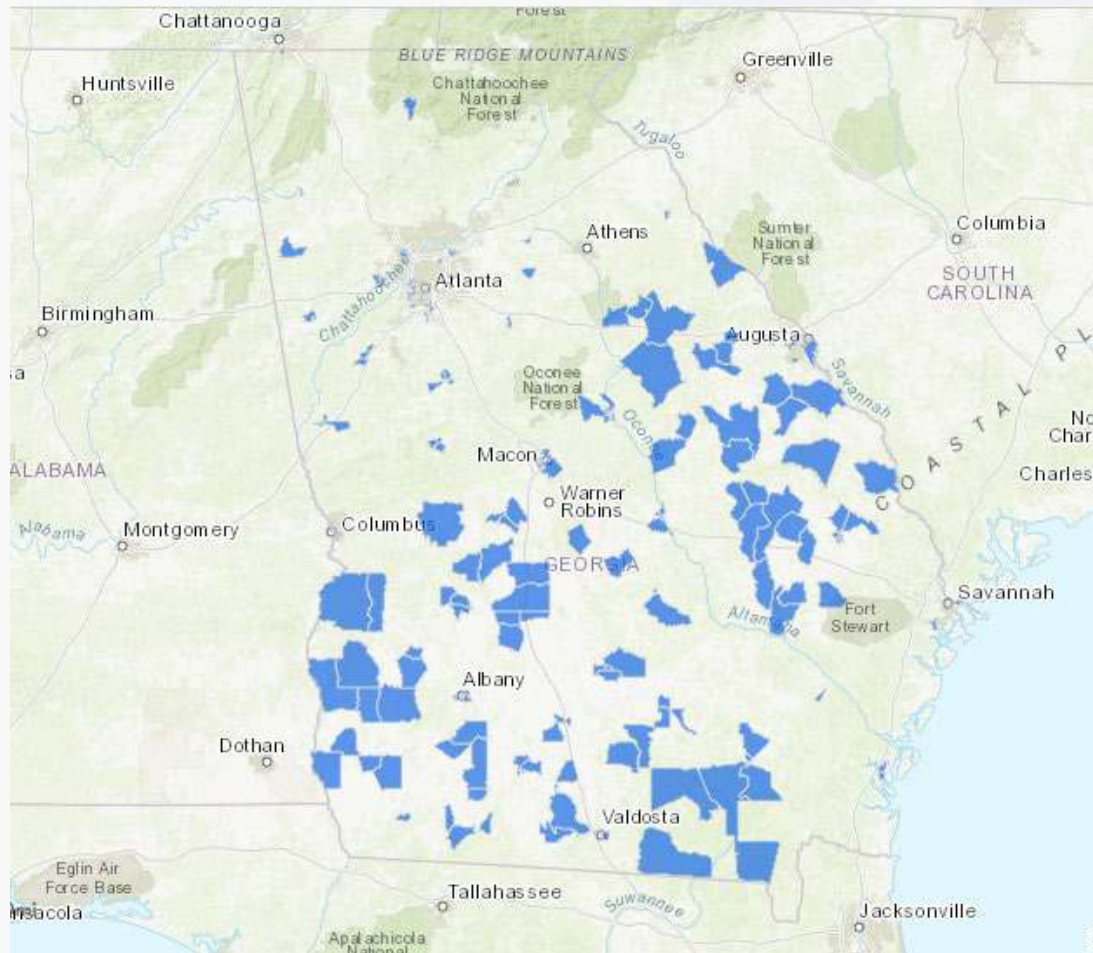
GA Opportunity Zones

- Gov. Deal states “...both rural and urban communities that experienced a slower economic recovery in the last few years, these tax incentives represent another step forward in their economic revitalization.”
- DCA Commissioner **Christopher Nunn**
“This designation will enable some of our state’s struggling communities to attract much-needed private sector investment, by giving an economic ‘shot in the arm’ to these communities, our goal is to boost investment where it’s most urgently needed.”

– georgia.gov – ‘Deal: Department of the Treasury designated Qualified Opportunity Zones in Georgia’

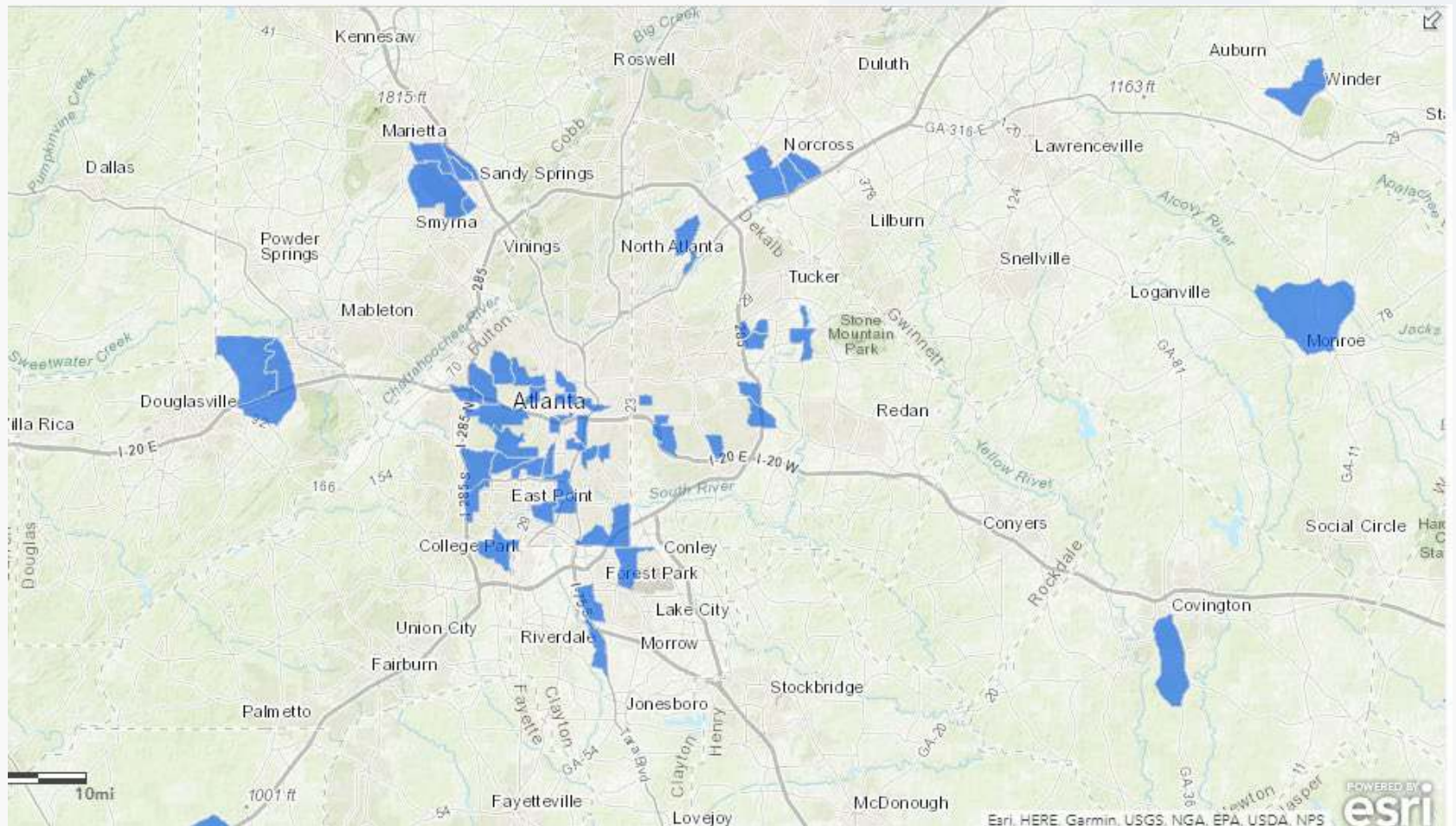


Opportunity Zones in GA



WINDHAM BRANNON
offering more

Opportunity Zones in Atlanta



WINDHAM BRANNON
offering more



Investor Benefits

What Am I Investing In?

“Don’t let the tax tail wag the dog!”



3 Main Incentives

Temporary
deferral of
current
capital
gains (up to
8 years)

Step up in
basis of
capital gain
(up to 15%)

Permanent
exclusion
on
opportunity
zone
investment
gains

What Can Be Invested

- Code Sec. 1400Z-2(a)(1)
 - “gain from sale to, or exchange with, an unrelated person of any property held by the taxpayer, at the election of the taxpayer.”
 - Amount of gain invested will not be included in income for tax year
 - Gain must be reinvested within 180 days of sale
 - Sale must take place before 12/31/2026
- No max to amount that can be invested in a Qualified Opportunity Fund (QOF)

Treasury Guidance Update Proposed Regulations

What is Gain?

- Capital Gains: The proposed regulations state that a gain is eligible for deferral if it is treated as a capital gain for federal income tax purposes
- Gains from Pass-Through
 - Partnership or partner can elect to defer gain
 - Partners 180 days starts at the partnerships year end
- Attributes of the deferred gain are preserved

Treasury Guidance Update Proposed Regulations

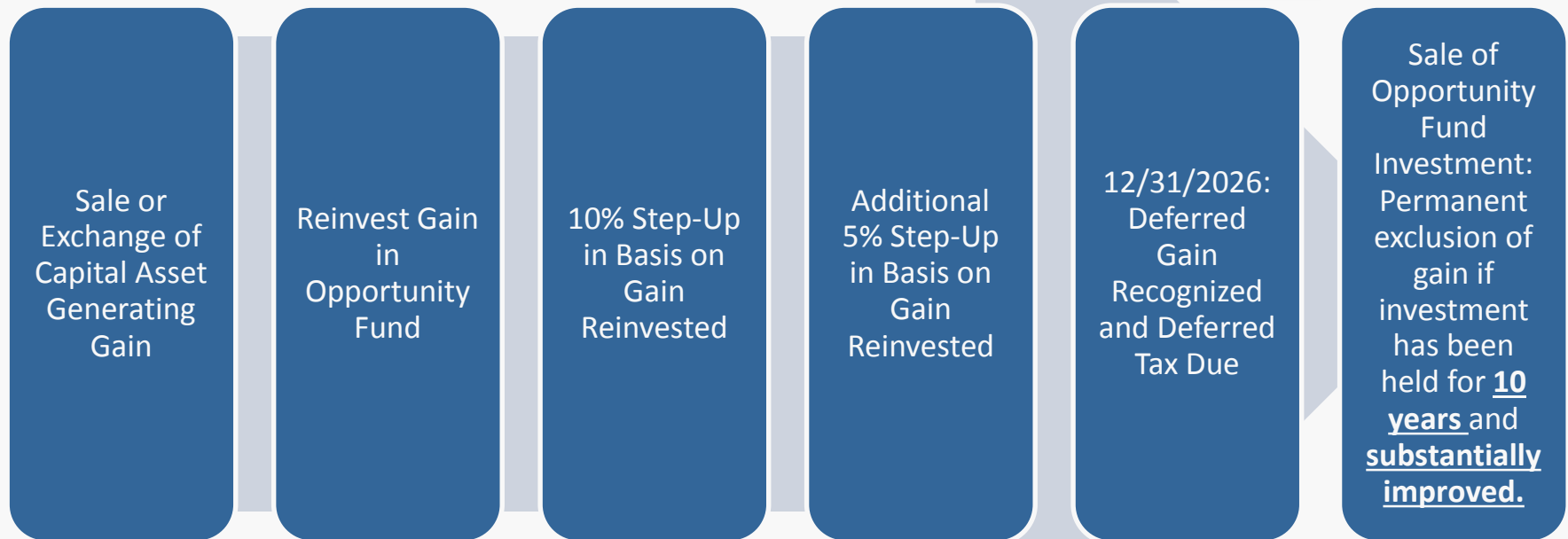
Eligible Taxpayers

- Individuals
- Corporations (including RICs and REITs)
- Partnerships
- Common trust funds under Section 584
- Qualified settlement funds
- Disputed ownership funds
- Other entities taxable under Section 1.468B

“Mixed-Funds”

- Taxpayers may also invest mixed funds.
- Treated as two separate investments
 - Re-invested gains
 - Additional capital contributed
- Only re-invested gains will receive the tax benefits found in investing in an QOF

Timeline of Recognition



180 days

5 years

7 years

*Gain must be recognized on 12/31/2026 – no additional Step-Up following this date

Investment Comparison

TRADITIONAL PORTFOLIO INVESTMENT		QOF INVESTMENT	
Original Gain: \$200,000 LTCG Tax Rate of 20% 10% Annual Appreciation		Original Gain \$200,000 LTCG Tax Rate of 20% 10% Annual Appreciation	
Original gain	\$200,000	Original gain	\$200,000
Tax on gain in year of sale	20%	Tax on gain in year of sale	0%
Tax paid on original gain	(40,000)	Amount Reinvested	\$200,000
Amount Reinvested	\$160,000	Value after 10 years	\$518,750
Value after 10 years	\$415,000	Less tax on deferred gain*	(34,000)
Less tax on appreciation	(51,000)	Less tax on appreciation	0
Net Return	\$364,000	Net Return	\$484,750
		<i>*After 15% Step-Up in Basis not adjusted for TMV of \$.</i>	
ROI – 82%		ROI – 142%	

Treatment of Losses

- Despite being sold at a loss, there is still potential benefit if the investment is sold after a 5-7 year period (Step-Up in basis has occurred.)
 - (See example on next slide)

Loss Benefit Example

Original gain of \$1 million
invested in Opportunity Fund

Opportunity Fund
investment is sold for
\$700,000 before 2026

Held for 5 Years:

$\$700,000 - (\$1,000,000 * 10\%) =$
\$600,000 Gain Recognized

Held for 7 Years:

$\$700,000 - (\$1,000,000 * 15\%) =$
\$550,000 Gain Recognized

1031 Exchange vs. OZ

	Section 1031	OZ Fund
Property Type	real assets	any assets
Investment Timing	Within 180 days	Within 180 days
Step-Up in Basis	Only upon death due heirs get step-up to market value	-10% step-up on re-invested gain after 5 years -additional 5% step-up after 7 years
Gain Recognition	Deferred Gain – fully taxable upon sale	-Reduction in original gain (due to step-up in basis depending on holding period) -0 capital gain recognized on gain from OZ fund, if held for 10 years
Intermediary Required	Yes	No

What is a Qualified Opportunity Fund?

What is a Qualified Opportunity Fund?

Although funds can accommodate a wide variety of businesses, an opportunity fund is well suited for certain types of real estate development projects, infrastructure, and energy projects.



What is a Qualified Opportunity Fund?

- An investment vehicle (partnership / corporation) in which 90% of its assets are invested in Qualified OZ property.
- Measured at six and twelve month intervals on the tax year.
- OZ Property can be **Stock, Partnership Interest or Business Property.**
- OZ Property can be self administrated

What is Qualified OZ Property?

Opportunity Zone Property

OZ Stock

- Stock in domestic corp. acquired after 12/31/17
- Corp is a QOZ Business at time of stock issuance
- During Funds holding period, stock remained qualified as a QOZ Business

OZ Partnership Interest

- Capital or profits in interest after 12/31/17
- Partnership is or being organized as a OZ Business.
- During Funds holding period, partnership remained qualified as a QOZ Business

OZ Property

- Tangible property used in trade or business purchased by fund after 12/31/17
- QOF substantially improves the property
- During Funds holding period the use of the property remains in the OZ.

Substantially Improved Property

- Code Sec. 1400Z-2(d)(2)(D)(ii)

“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.”



Treasury Guidance Update

Revenue Ruling 2018-29

Land and Building Substantial Improvement

Clarifies that the substantial improvement to the purchase of an existing building is measured by the additions to the adjusted basis of the building excluding the land.

Form 8996

Form **8996**
(December 2018)
Department of the Treasury
Internal Revenue Service

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**

Name

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		

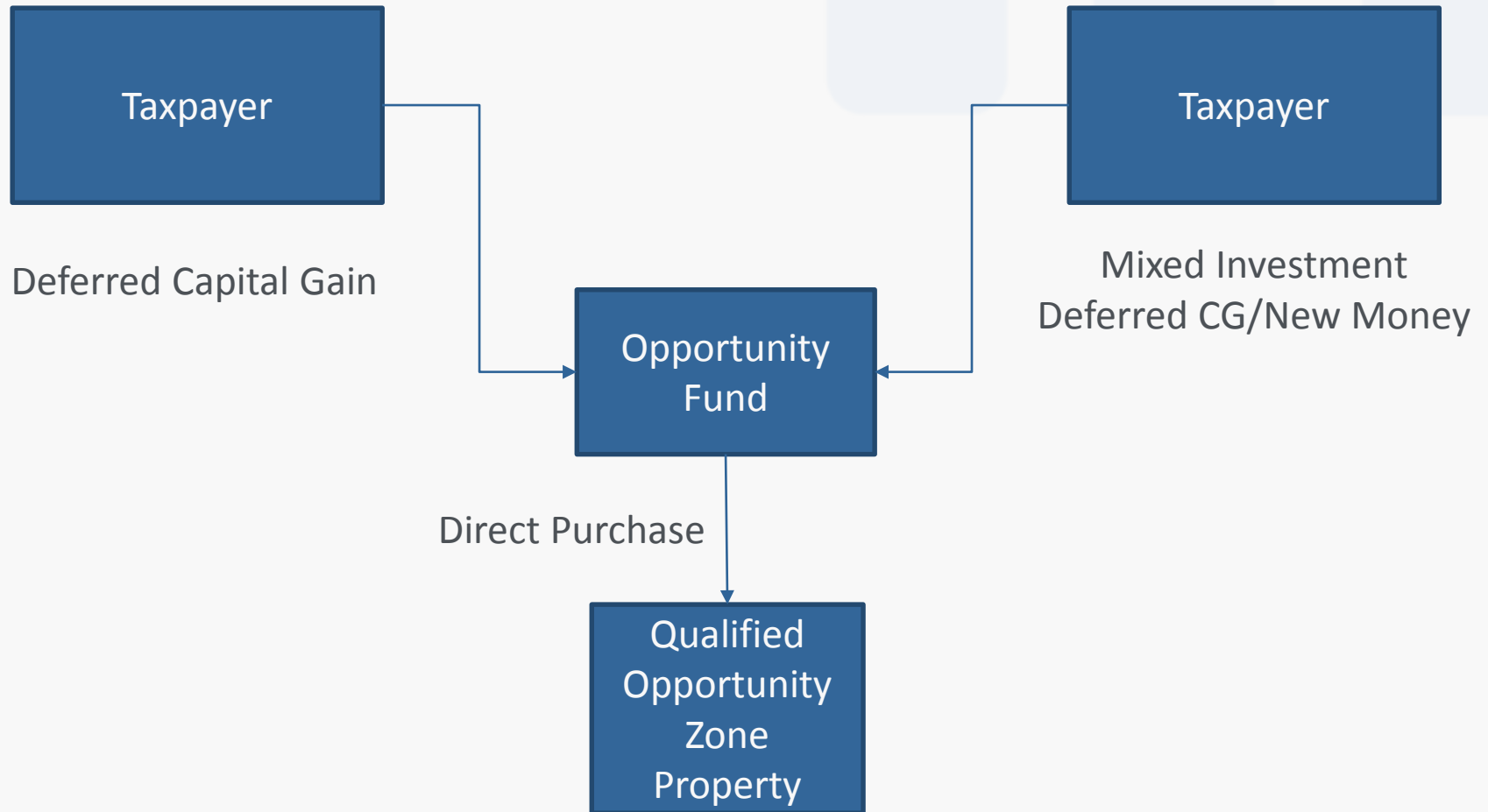
Part III Qualified Opportunity Fund Average and Penalty

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		

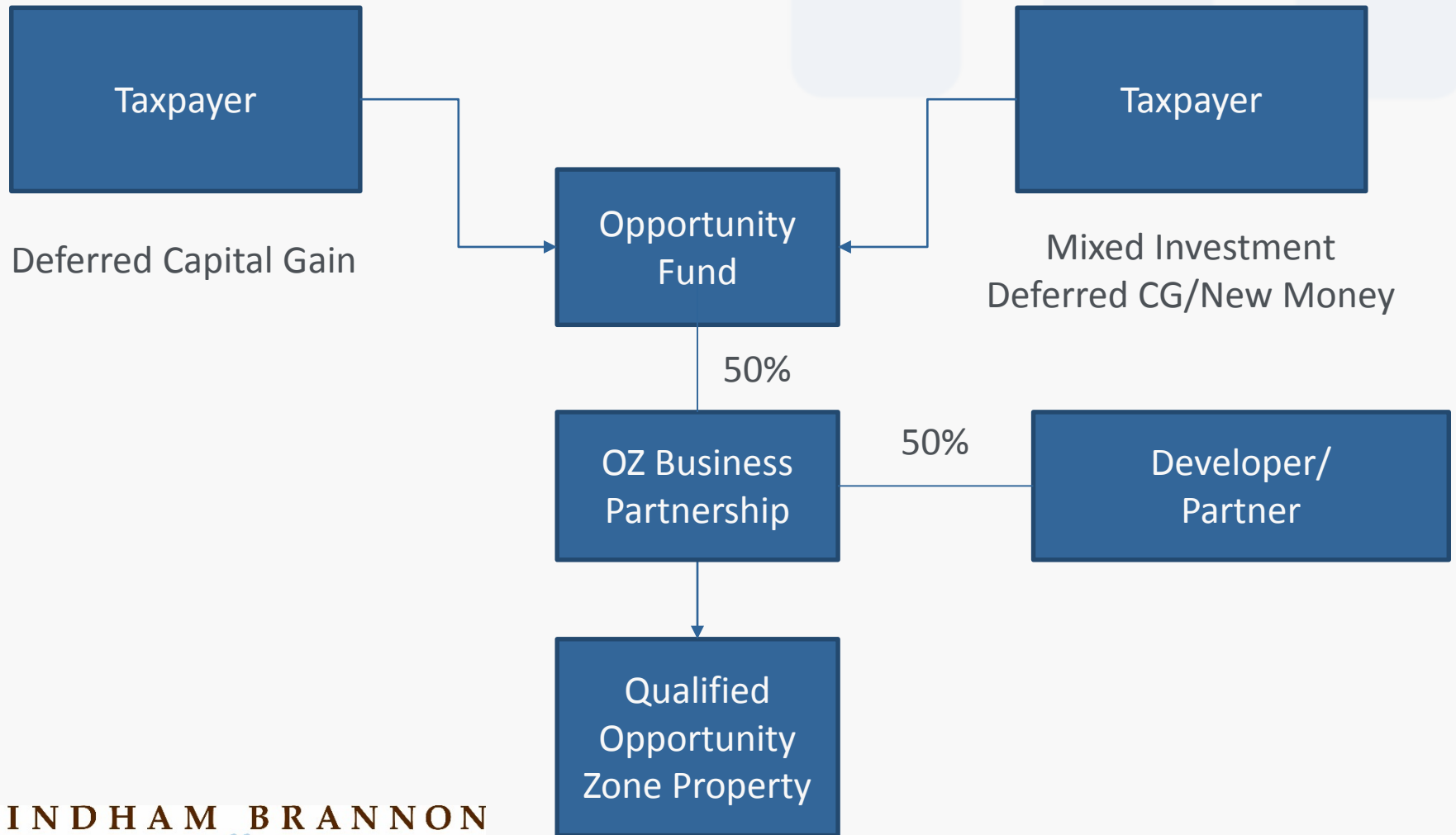
Cat. No. 37820G

Form **8996** (12-2018)

Opportunity Zone Structures



Opportunity Zone Structures



What Doesn't Qualify

- A trade or business will not qualify as an QOZ business if it is engaged in owning or operating any:
 - 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 (i.e., liquor store).



Current Funds

Fund Name	Target Fund Size	Region
Sixty West Access Opportunity Fund	\$200M	National and Southeast
Strategic Opportunity Zone Fund	\$500M	National
Piedmont Private Equity	\$10M - \$200M	Southeast
Fundrise Opportunity Fund	\$500M	National
Garnett Station Partners Opportunity Fund	\$250M	Southeast



How can Windham Brannon Help?

- A planning opportunity to save clients tax on large capital gains and diversify into specific real estate deals.
- Help in setting up a private Opportunity Fund with self-certification process.
- Introduction to fund managers that we have spoken with regarding their OZ Funds.

Contact Us!



Laura Berry, CPA
678-510-2790
lberry@windhambrannon.com



Gary Gruner, CPA
678-510-2887
ggruner@windhambrannon.com



Questions