Qualified Opportunity Zones: Tax Efficient Investing & Revitalizing the Community

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What is a Qualified Opportunity Zone?
What is a Qualified Opportunity Zone?

• Created as part of the Tax Cuts and Jobs Act

• Identified as low-income communities by law
  o Nominated by the State
  o Approved by the Department of Treasury

Zones are located throughout all 50 states:

https://www.cims.cdfifund.gov/preparation/?config=config_nmtc.xml
What is the Purpose of Opportunity Zones?

Opportunity Zones are an economic development tool; they are designed to spur economic development and job creation in distressed communities.
How do Opportunity Zones spur economic development?

Opportunity Zones are designed to spur economic development by providing tax benefits to investors.

1. Investors can defer tax on any prior gains invested in a Qualified Opportunity Fund (QOF) until the earlier of the date on which the investment in a QOF is sold or exchanged, or December 31, 2026. If the QOF investment is held for longer than 5 years, there is a 10% exclusion of the deferred gain. If held for more than 7 years, the 10% becomes 15%.

2. If the investor holds the investment in the Opportunity Fund for at least ten years, the investor is eligible for an increase in basis of the QOF investment equal to its fair market value on the date that the QOF investment is sold or exchanged.
Deferred Like-Kind Exchanges vs. QOZ Investments

Gains from Deferred Like-Kind Exchanges (LKEs)

- All proceeds from the original sale must be reinvested within 180 days of the sale
- Deferred gain is recognized upon taxable sale of the new property
- Basis in the new property is equal to the basis in the original property exchanged (assuming no additional amounts beyond sales proceeds)
- Future LKEs may be applied

- Domestic LKE property may be located anywhere in the US
- There is now basis step-up or gain reduction as a result of holding the new property for a period of time
- Generally, exchanges may offer between related parties (subject to anti-abuse rules)
- Under Tax Act, Section 1031 only applies to real property exchanges
Deferred Like-Kind Exchanges vs. QOZ Investments

QOZ Deferred Gains

- Any gains elected to be deferred must be reinvested in a Q Fund within 180 days of the sale or exchange of the asset.
- The deferred gain is recognized the earlier of the sale or exchange of Q Fund interest or December 31, 2026.
- Initial basis in the Q fund investment is zero.
- No future gain deferrals are allowed after the first deferral election.
- QOZ property must be located in the designated QOZs.

- A basis step-up of 10% occurs if the interest in the Q fund is held for at least 5 years and another 5% if the interest in the Q fund is held for at least 7 years. After 10 years, the basis in the Q Fund is equal to the FMV when sold or exchanged.
- Only the gain on the sale or exchange with and unrelated person are qualifying gains.
- Qualified gains are gains from any property held by the taxpayer.
Qualified Opportunity Zone Property

**QOZ Stock:**
Stock in domestic corp.
Acquired after 12/31/17 at original issue, solely for cash
QOZ business when stock issued & during substantially all of QOF’s holding period

**QOZ Partnership Interest:**
Capital or profits interest in domestic partnership.
Acquired after 12/31/17 at original issue, solely for cash
QOZ business when interest issued & during substantially all of QOF’s holding period

**QOZ Business Property:**
Tangible property used in trade/business of QOF
Acquired after 12/31/17 by purchase
Original use commences with, or substantially improved by QOF
Substantially all property use in QOZ for substantially all of holding period
Qualified Opportunity Zone Stock and Partnership Interest

Stock or Partnership Requirements

- Equity interest acquired after December 31, 2017 at original issues solely in exchange for cash
- Entity invests in Qualified Opportunity Zone Business Property
Qualified Opportunity Zone Business

Trade or business in which:

• Substantially all of the tangible property owned or leased is QOZ business property
• At least 50% of total gross income is derived from active conduct of a business
• Substantial portion of intangible property is used in active conduct of such business
• <5% of the average of aggregate adjusted basis of property attributed to nonqualified financial property
• No portion of investment is to be used in so called “sin business”
Qualified Opportunity Zone Business Property

Opportunity Zone Business/Business Property

- Any property acquired after December 31, 2017
- Property must either have:
  - Original use beginning with investment, OR
  - Be substantially improved if property purchased with pre-existing asset(s)
Qualified Opportunity Zone Business Property

What is Substantially Improved?

- Improvement costs must equal or exceed acquisition price, excluding land
- Must meet improvement cost requirements within 30 months (2 ½ years)
- Land is not required to be improved!
Qualified Opportunity Zone Business Property

What is Substantially Improved?

Example:

• Land and Building acquired 1/1/2018 by a fund for $800,000.

• Assume 60% of the purchase is attributable to Land. The remaining 40% is attributable to the building.

• 40% X $800,000 = $320,000 (Value of the building at date of purchase)

Result:

• An additional $320,000 must be spent on improvements within 30 months of the property being acquired.
Prohibited QOZ Businesses, §144(c)(6)(B)

- Private or commercial golf course
- Country club
- Massage parlor
- Hot tub facility
- Suntan facility
- Racetrack
- Other facility used for gambling
Is Cannabis Business Excluded?

Not so far!

• But it could be a “sin” business.

• Excellent product for this business given that owners cannot get loans.
Other rules

Pitfalls to Avoid!

- Related party sales **Do Not** qualify for gain deferral
- No other election may be made on the sale or purchase of eligible property
  - Ex. - You cannot 1031 exchange from one building to another
Example of QOZ Property: Lake in the Woods

- Property in QOZ in Washington
- Owners $2.3 million Basis
- Owners contribute property to QOZ entity for Class A membership interests
- Create QOF to raise improvement money to build rental homes
  - Develop remaining lots
  - Hold all for 10 years to sell
The current approved plan for Lake Willa has 75 lots (each ~16,000 sq. ft.) covering all the property. They eliminate much of the beauty of the forested lake. The large lots also require adding infrastructure south of the lake. Lots that do not directly back on the lake are heavily devalued.

- Laurence Qamar Architecture & Town Planning Corp. Portland, Oregon
- R &R Land Development LLC Portland, Oregon
Camp Willa Lake by Bay Center

Willa Lake is located on a peninsula in the Willappa Bay near the small fishing village of Bay Center.

- The swimming lake, forest preserve, and broad open fields provide recreation on the Camp Willa Lake property as well as access to boating, and tidal flats surrounding the peninsula.

- Laurence Qamar Architecture & Town Planning Corp. Portland, Oregon

- R &R Land Development LLC Portland, Oregon
A new vision for Willa Lake locates all 75 lots (~ 5K sq. ft. each) on the existing Phase I street, preserves the forest as a park around and south of the lake, and arranges all lots to either face the lake or step out to greenways leading to the lake. The 50 ft. wide forested lake edge preserve is public.

- Laurence Qamar Architecture & Town Planning Corp. Portland, Oregon
- R &R Land Development LLC Portland, Oregon
Lake in the Woods QOF Structure

OOF
Manager managed – Class A & Class C Managers
Priority Returns
1. Class A & B Capital + 5% returns
2. Class A 40%, Class B 40%, Class C 20%

Seller Fred Rathbone, 2.3m basis

Investor Funds Pay Off Debt
Lake in the Woods QOF Structure

- Must improve
- Build rental units
- Develop remaining lots and build rental units
- Hold for 10 years
- Investors receive benefits
- Rathbone Group no tax benefits because not using capital gains
Where are the Qualified Opportunity Zones?
Oregon Opportunity Zones
Washington Opportunity Zones
What is a Qualified Opportunity Zone?
What is a Qualified Opportunity Zone?
What is a Qualified Opportunity Zone?
Tax Incentives for Investing in a Qualified Opportunity Fund
Why Invest in Qualified Opportunity Zones?

Gain Deferral

Basis Step-Up

Gain Exclusion

There are 3 major tax benefits
Gain Deferral

Up to 100% of gains eligible for deferral

Only capital gains are eligible (no ordinary income)

180 day reinvestment requirement

Deferral period ends the earlier of Dec. 31, 2026 or when sold
Incentive 1: Temporary Deferral of Gain Recognition

Gain realized from sale of investment is deferred when:
1. Some or all of the gain portion of proceeds is reinvested in a qualified opportunity fund ("QOF") within 180 days of the sale or exchange; and
2. An election to defer recognition of gain is timely made with the filing of tax return for the year of sale

Gain deferred is recognized upon the earlier of:
• The date that the investment in the QOF is sold; or
• December 31, 2026

No gains can be deferred after December 31, 2026
Gain Deferral

The opportunity to defer 100% of gain from the sale or exchange of any asset subject to capital gains.

The types of assets sold that could qualify include but not limited to:

• Stock
• Bonds
• Partnership Interest
• Real Property
• Tangible Property used in a trade or business
• Does **NOT** include property held as inventory
Incentive 2: Permanent Reduction of Deferred Gain (by additions to basis)

10% of the original gain deferred, if investment in QOF is held at least 5 years before gain recognized

Additional 5% of the original gain deferred, if investment in QOF is held at least 7 years before gain recognized

Note: to maximize 15% reduction – deferred gains must be invested in QOF by December 30, 2019

Basis of investment in QOF will be increased by the amount of deferred gain recognized on 12/31/2026
Basis Step-up

- 10% basis step up in gain if investment held for 5 years
- Additional 5% basis step up in gain if investment held for 7 years
- Years held requirement must be met prior to 12/31/2026 to qualify
Incentive 3:
Exemption from Realized Gain

For investment in QOF held at least 10 years:

• Taxpayer may elect to report basis equal to FMV of investment on date sold or exchanged -> no gain recognized and no tax on sale

• Only the “deferred gain” QOF investment is eligible for this permanent gain exclusion

• Similar to incentives 1 and 2, other amounts invested in QOF are not eligible for this gain exclusion
Gain Exclusion

• Once you have held the investment for at least 10 years, the appreciation on the investment is **TAX FREE*** once sold!

• To receive the tax free appreciation, you must sell by the end of 2047

* Only eligible on the portion of an investment made with tax deferred gains. Non tax deferred cash/property invested into the fund is treated as a separate tax lot & is not qualified to receive benefits
Timeline of Events for Qualified Opportunity Zone Investments

- 1/1/2018 – Eligible investment begins
- 12/31/2021 – Cutoff for 5 year 10% step-up
- 10 years after initial investment – Tax Free Appreciation
- 12/31/2019 – Cutoff for 7 year 5% step-up
- 12/31/2026 – End of Deferral Period
- 12/31/2047 – Sale-by date for Tax Free Appreciation
How do I Invest in a Qualified Opportunity Fund?
Qualified Opportunity Fund ("QOF")

- Investment vehicle organized as a corporation or partnership for purpose of investing in Qualified Opportunity Zone ("QOZ") property
- QOF must hold at least 90% of their assets in QOZ property (computed by based on average amounts held as of June 30th and December 31st each year)
- QOF must be self-certified by taxpayer by submitting a form that is expected to be released in the near future.
Other Rules

**Electing to become a fund**

To become a Fund, the entity will be able to elect on New IRS Form

The form will be filed annually

- Elect fund status year 1 by checking a box
- Annual filing to show 90% minimum investment requirement in Qualified Property

If you fail the 90% test, you may incur penalties!
QOF a Security or Not?

Same Securities Rules Apply

It *is* a security if it is:
- An investment contract
- Investment of money into a common enterprise with an expectation of profit
- Based solely or primarily on the efforts of others

It *is not* a security if it is:
A fund based on an individual property and investor
QOF Not a Security

- Member Managed LLC
- Joe and Wife Members
- Buy land for the $1m and get debt for improvements
QOF that IS a Security
Investment Examples
Example 1

Facts:

• Sold capital gain assets on 1/1/2018 for $1,000,000 gain.
• Reinvested the $1,000,000 gain into qualified opportunity fund same day
• At the end of a 10 year holding period, the property is now worth $3,000,000
• Assume all other relevant requirements are applicable
## Example 1

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
<th>Total Taxable Gain</th>
<th>Capital Gains Tax</th>
<th>Tax Recognized</th>
<th>Basis in Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Investment</td>
<td>1/1/2018</td>
<td>$1,000,000</td>
<td>$238,000</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>5 Year Basis Step-up</td>
<td>1/1/2023</td>
<td>$(100,000)</td>
<td>$(23,800)</td>
<td>$ -</td>
<td>$100,000</td>
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<tr>
<td></td>
<td></td>
<td>$900,000</td>
<td>$214,200</td>
<td>$ -</td>
<td>$100,000</td>
</tr>
<tr>
<td>7 Year Basis Step-up</td>
<td>1/1/2025</td>
<td>$(50,000)</td>
<td>$(11,900)</td>
<td>$ -</td>
<td>$50,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$850,000</td>
<td>$202,300</td>
<td>$ -</td>
<td>$150,000</td>
</tr>
<tr>
<td>End of Deferral</td>
<td>12/31/20</td>
<td>$850,000</td>
<td>$202,300</td>
<td>$202,300</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>
### Example 1

#### 10 Year Gain Exclusion

<table>
<thead>
<tr>
<th>Sold at 10 Year Mark</th>
<th>1/1/2028</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FMV</strong> <em>(1)</em></td>
<td>$3,000,000</td>
</tr>
<tr>
<td><strong>Adjusted Basis</strong></td>
<td>$1,000,000</td>
</tr>
<tr>
<td><strong>Basis Step up to FMV</strong></td>
<td>+ $2,000,000</td>
</tr>
<tr>
<td><strong>Basis at Time of Sale</strong> <em>(2)</em></td>
<td>$3,000,000</td>
</tr>
<tr>
<td><strong>Gain</strong> <em>(1) − (2)</em></td>
<td>$ -</td>
</tr>
<tr>
<td><strong>Tax on Sale</strong></td>
<td>$ -</td>
</tr>
</tbody>
</table>
Example 2

Facts: Similar to Example 1

• Sold capital gain assets on 1/1/2018 for $1,000,000 gain.
  • $1,500,000 Sales Price
  • $ 500,000 Basis
• Reinvested the entire $1,500,000 of cash received into fund same day
• At the end of a 10 year holding period, the property is now worth $3,000,000
• Assume all other relevant requirements are applicable
## Example 2

<table>
<thead>
<tr>
<th>Event</th>
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<tr>
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<td>$850,000</td>
<td>$202,300</td>
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</tr>
<tr>
<td><strong>End of Deferral</strong></td>
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<td>$850,000</td>
<td>$202,300</td>
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Example 2
10 Year Gain Exclusion

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<tr>
<td>Adjusted Basis</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Basis Step up to FMV* + $1,000,000*</td>
<td></td>
</tr>
<tr>
<td>Basis at Time of Sale (2)</td>
<td>$2,500,000</td>
</tr>
<tr>
<td>Gain (1) – (2)</td>
<td>$500,000</td>
</tr>
<tr>
<td><strong>Tax on Sale</strong></td>
<td><strong>$119,000</strong></td>
</tr>
</tbody>
</table>

*Only deferred gains are eligible for basis step up. In this case, $1,000,000 of a $1,500,000 (2/3) investment was eligible to receive a basis step-up. 2/3 of $3,000,000 is $2,000,000. The $2,000,000 plus the $500,000 of original basis results in $2,500,000 basis at time of sale. Therefore the basis step up is limited to $1,000,000 (expected basis of 2,500,000 less existing basis of $1,500,000)
Jonathan McGuire, CPA, MT

Jonathan has more than eight years of experience providing strategic tax planning and compliance expertise to private middle-market clients. He has a deep focus as a real estate accountant, working with investors, developers, realtors, property managers, and other professional service providers in real estate. He works with a wide range of property types ranging from single and multi-family residential to commercial properties.

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Thank you!
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Coni Rathbone is a remarkable negotiator who focuses her deal-making skills in the areas of real estate, tenant-in-common (TIC) workouts, corporate and securities law, mergers and acquisitions, and general business transactions. She is a member of Dunn Carney’s Real Estate and Business Teams and one Portland’s top speakers in Opportunity Zones.

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Viewpoint: Why Opportunity Zones are not a tax giveaway to wealthy developers

Mar 6, 2019, 5:30pm PST Updated: Mar 7, 2019, 2:32pm PST

You have recently seen many articles or may have taken classes on Qualified Opportunity Zones. There is much discussion about whether the program will truly spur economic development or whether it is simply more tax breaks for wealthy developers. Much of the information we have read is confusing and sometimes inaccurate.

The QOZ program was an element of the Tax Reform and Jobs Act of 2017. It is designed to provide Americans who have capital gains built into assets they own some incentive to sell those assets and put their gains to work on economic development projects in the QOZs — low-income areas designated as in need of new development. There are presently more than $6 trillion in capital gains sitting on the sidelines in America. These gains are essentially trapped in the assets: The owners won’t sell the assets because they don’t want to pay tax on the gains.

This program is not a tax break for developers. It is a tax incentive for individual American investors. In fact, because developers typically deal with “dealer property” or “inventory,” they rarely have capital gains.

This program applies to investors across the board. It applies to the mom and pop who started a family business years ago but who now hesitate to sell because of the tax hit. It also applies to anyone who owns stocks or bonds who want to sell but refrain because of the taxes they’d face.

As a result, a massive amount of potential revenue sits on the sideline and is not productive.

How it works

There are three incentives in the program. The benefits to the investor apply if a person sells an asset for which there will be a long-term or short-term capital gain (such as stocks, bonds, businesses, partnerships, equipment or real property). The benefits also apply if the person reinvests the gain portion of the sales proceeds into a Qualified Opportunity Fund within 180 days, the QOF does business in a QOZ and the QOF spends the funds acquiring and improving the property within 30 months.

Of course, there are many more bells and whistles related to the program, but if these four elements are met, the following benefits come into play:

1) A deferral of the payment of tax on the capital gains until Dec. 31, 2026. This is not a waiver of the tax, it is a delay of the tax.
2) If the property is held for seven years, the investor receives a step up in basis for determining the amount of tax to be paid in 2026.

3) There is no tax on any gain accrued during the investment hold period if it’s held for a minimum of 10 years.

Versatility is key

One of the most important things about the QOZ program is just how versatile it can be. It applies to a husband and wife who want to buy property and build a building in an Opportunity Zone. It equally applies to the several-hundred-million-dollar funds that are being created all over the United States to acquire and improve or develop major improvements in QOZs.

Here’s an example scenario of the former:

A husband and wife bought technology stock for $10,000 some 20 years ago. The stock is now worth just over $1 million. They find a property in Bend that is in an Opportunity Zone and would like to build a duplex on it. The couple sell their stock and have a $1 million gain. They put their gain into a QOF they create for themselves.

The QOF buys the land for $200,000 and builds the duplex for $800,000, all within 30 months. They refinance the property, distribute the refinance proceeds and pay tax on $850,000 on Dec. 31, 2026 — about $202,000. Eleven years later, they sell the duplex for $2 million and don’t have to pay any tax on the $1 million in value that accumulated over the 11 years.

Without the Opportunity Zone program, the couple might not have sold the stock, the seller in Bend might not have sold their property, the duplex would not have been built and the original $1 million would not have been invested to create economic development in the community.

Of course, it can be more complicated. Often a QOF structure will be a security. It is a security if it is an “investment contract.” This means an investment of money, into a common enterprise, with the expectation of profit, based solely or primarily on the efforts of others. Many of the funds we’ve seen in the market, such as the $330 million QOF that Sturgeon Development Partners launched in December, are securities.

Making gains

The Opportunity Zone program has been criticized by some as “being just another one of the “Trump tax cuts.” Not true. This program was conceived in 2015 by the Economic Innovation Group with the help of Facebook’s Sean Parker and former Obama administration senior economic advisor Steve Glickman.

The resulting early 2017 legislation was first proposed in the bipartisan Investing in Opportunity Act, which was introduced in the House and Senate with nearly 100 bipartisan congressional supporters. The support was not only politically diverse, but regionally diverse as well. Because it did not move forward, it was simply packaged into the Trump tax reform act.

Some have also proposed that this program will deny the states substantial tax revenue. However, if the capital gains are never triggered because the owners of the assets refuse to sell, then the gains would never result in revenue to the states.

The QOZ program allows the revenue from the gains to be put to work improving our communities.
Creating a performing asset inside a zone will increase the tax base through new or improved businesses and properties. There will be income from operations that will be taxed. There will be increased property values, thus increasing real property taxes. The jobs created from the construction of assets and employment within the zone will increase the income tax base or even increase wages. Why keep investing in Walmart, Google and other equities when you can physically direct how your investment dollars are used and invest with purpose in your community?
Opportunity Zone Cheat Sheet

1) This program only applies to the investment of “Capital Gains” into a Qualified Opportunity Fund (“QOF”), which is doing business as required in a Qualified Opportunity Zone (“QOZ”). Investing a return of your basis in an asset sale does not result in the tax benefits. You can invest both the basis and the Capital Gain, but you will only get the tax benefits for the Capital Gain portion

2) All investments must be through a QOF. Benefits to investors of investing Capital Gains into a QOF
   a. Defer tax on Capital Gains invested in a QOF until December 31, 2026
   b. 10% step up in basis on payment of those taxes if hold for 5 years, additional 5% step up in basis if hold for 7 years, for total of 15% step up in basis, in December 31, 2026, only pay tax on 85% of the Capital Gains invested
   c. If the investor hold the investment for 10 years, there is NO TAX on any gain generated during the hold period whether 10 years, 20, 30 or any other period

3) Capital Gains can be from any source, sale of business, real property, stock, bonds etc. If it is a short term or long term Capital Gain it can be invested to get the above tax benefits

4) Capital Gains must be invested within 180 days after the date the gain is realized, if an individual sells real property, the Capital Gains must be invested within 180 days of closing. If Capital Gains come from an LLC or other entity, the 180 days doesn’t begin until the end of the tax year when the asset was sold, because that is when the member’s gain is realized

5) There is no 45 day identification requirement and no “like kind” exchange requirement, no accommodator is required

6) Investors can hold their Capital Gains until invested, there is no tracing of dollars, so an investor could loan out their Capital Gains for 160 days, and then receive repayment and invest in the QOF within the 180 days

7) The Program can be used to purchase stock or partnership interests, or Opportunity Zone business property, ie real estate. Cannot be used to purchase or create a “sin business”

8) You cannot pair this tax benefit with any other

9) To qualify, the QOF must “substantially improve” the property. For real estate, that means investing at least enough to equal the value of the improvements (excluding land), for a $5m property, $1m allocable to land, $4m allocable to improvements, the QOF must invest another $4m into the project. There is no guidance yet on a substantial improvement threshold for bare land

10) The QOF must deploy the capital within 30 months of the date of the investment, the improvement does not have to be completed, but the investments must be deployed, if there is QOF investments and a loan, the QOF would use the investors funds before the loan funds

11) There are related party prohibitions both at the asset sale and investment levels
# OPPORTUNITY ZONE vs. 1031 EXCHANGE

<table>
<thead>
<tr>
<th></th>
<th>1031 Exchange</th>
<th>Opportunity Zone</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General</strong></td>
<td>Only business or investment use real property qualifies</td>
<td>Allows for any type of asset that holder sells and incurs a long-term or short-term capital gain: real property, stocks, bonds, partnership, corporations, equipment.</td>
</tr>
<tr>
<td></td>
<td>Must be ‘held for investment purposes’.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Like-kind requirement.</td>
<td>No Like-kind requirement.</td>
</tr>
<tr>
<td></td>
<td>Tax deferral indefinite.</td>
<td>Tax deferral until 2026, with 15% basis reduction if held for 7 years</td>
</tr>
<tr>
<td></td>
<td>Identify within 45 days, purchase within 180 days.</td>
<td>Must deposit gains into a Qualified Opportunity Fund within 180 calendar days after gain is triggered. Triggered on date of sale for individual, end of year for pass-through entity.</td>
</tr>
<tr>
<td></td>
<td>Must purchase replacement asset for equal or greater value to defer capital gains, must replace debt.</td>
<td>May purchase replacement asset with taxable gain proceeds only, no need to replace basis or debt.</td>
</tr>
<tr>
<td></td>
<td>No geographic restrictions.</td>
<td>Must invest through a Qualified Opportunity Fund (OF)</td>
</tr>
<tr>
<td></td>
<td>Typically use an accommodator.</td>
<td>Only invest through a Qualified Opportunity Zone/.</td>
</tr>
<tr>
<td><strong>Qualified Assets</strong></td>
<td>Real estate only can qualify for a 1031 Exchange.</td>
<td>Capital gains from sale of real estate or any other asset can qualify for an Opportunity Fund.</td>
</tr>
<tr>
<td><strong>Investment Structure</strong></td>
<td>This is designed for single asset swaps. Multiple properties can be supported through certain structures, but this option usually comes with high costs, fees, and general inflexibility.</td>
<td>This can support a pooled fund that invests in multiple assets but will be subject to Reg. D requirements.</td>
</tr>
<tr>
<td><strong>Capital Gains Tax Deferral</strong></td>
<td>Not a security.</td>
<td>May be a security.</td>
</tr>
<tr>
<td><strong>Capital Gains Tax Reduction</strong></td>
<td>No capital gains reduction is available except through a step up in basis upon death.</td>
<td>Basis of the initial investment is reduced by 10% after 5 years and by another 5% after 7 years. In total, a 15% reduction is possible (as long as an investor invests by December 31, 2019).</td>
</tr>
<tr>
<td><strong>Capital Gains Tax on Final Sale</strong></td>
<td>An investor owes capital gains tax on final sale of the asset that is not an exchange.</td>
<td>If the investment is held for a period between 10 and 30 years, there is no tax on any appreciation attributable to the Hold period.</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td>No generally suitable for development as development must be completed within 180 days of disposition of exchanged property.</td>
<td>Must substantially improve the property.</td>
</tr>
<tr>
<td></td>
<td>No use restrictions.</td>
<td>Cannot invest in &quot;sin business.&quot;</td>
</tr>
</tbody>
</table>
Coni S. Rathbone, Partner

503.417.5366
crathbone@dunncarney.com

Coni Rathbone focuses on real estate, opportunity zones, tenant-in-common ("TIC") workouts, corporate and securities law, mergers and acquisitions, and general business transactions. She regularly helps clients in the purchase, development and sale of commercial property. Coni has significant expertise in representing TIC investors and sponsors. Coni works on securities transactions including private placements, focusing on real estate securities. She does significant work in corporate and limited liability company formation. She also serves as general counsel for several Oregon corporations.

Coni is a remarkable negotiator and dealmaker. Bringing together seven years of management and financing experience prior to law school, Coni utilizes her negotiation skills to accomplish her clients' goals with a minimum of conflict. Coni's expertise helps her clients purchase, develop and sell commercial property as well as navigate securities transactions, including private placements of securities.

Business Experience

Coni ran businesses for seven years before law school. She handled the presales for two health club facilities and managed one of those facilities for three years. Coni also managed a mobile home sales lot and over 30 multi-family residential units.

Practice Highlights

Real Estate Leasing

Clearwire Corporation, LLC - national leasing counsel negotiating multiple office and retail leases all over the country.

Wind Technology Company - negotiate offices leases for client with unique business needs, as world's leading supplier of wind-power solutions.

Telecommunications Company - national leasing counsel for office space across the United States. Drafted and negotiated complex office leases, subleases and telecommunications license agreements.

Tenant-in-Common ("TIC") Work

For the past 12 years, Coni has worked in the TIC industry. For the last 7 years, she has devoted a large part of her practice to representing TIC owner groups in efforts to save their properties in a bad economic climate. She has represented over 3,000 owners of TIC properties helping the
owners to save their property from foreclosure, sell their property, refinance their loans, or negotiate to put new property managers in place. Coni is one of only a handful of attorneys in the country who has significant experience in TIC workouts.

**Real Estate Securities**

Sturgeon Development - Assisted real estate development client with the creation of a securities offering for a Qualified Opportunity Fund to pursue investments in Opportunity Zones with a maximum offering amount of $330 million dollars. The work involved preparing the Private Placement Memorandum and all other offering documents, creating applicable entities, real estate acquisition and development work.

Mereté Hotel Management Group – Assisted client with multiple securities offerings to fund the acquisition and development of hotels. Work included preparing Private Placement Memorandums and all offering documents.

American Equities - represented issuer in multiple Series 506 private placements involving mortgage participation securities. Work included: structuring complicated offering involving the issuance of promissory notes and membership interests in entities holding pools of real estate mortgages in the United States and Mexico; securities compliance; due diligence; investigation and drafting disclosures on Mexican real estate law; continuing general counsel relationship.

Represent issuers in creating financing vehicles through securities transactions to fund real estate acquisitions and developments.


American Development - represented developer in securities offerings and creating entities to acquire, develop, and resell a 19-unit condominium project in Vancouver, Washington, and a 40-lot subdivision in Woodland, Washington Prepared all disclosure documents, offering memorandum, subscription agreements, state and federal securities filings and all other securities documents; negotiated construction contracts, property acquisition documents and development agreements; created condominium, including CC&Rs and other state-required documents; land use and entity formation. ($5 million) Continuing general counsel relationship.

Represented Issuer in DST Syndication.

**Corporate & Entities**

Springs Commerce I – Assisted TIC owners with evaluating options of property, including potential refinance or sale. Assisted TIC owners in securing offer for the property, evaluating multiple offers for the property, negotiating improved offers and additional options for owners; coordinating due diligence for potential purchasers. Prepared closing documents

Summit at Southpoint – Represented TIC owner group at a time after the asset manager was preparing to roll the tenants-in-common into an LLC in connection with a loan to fund tenant improvements and leasing commissions. This would have created an adverse tax result for the owners. Identified a third party lender and structured a creative transaction to enable the owners to borrow the money they needed while retaining their tenants-in-common ownership structure. Subsequent representation to extend loan and to sell the property. In 2018, assisted with a transaction to sell the property. Prepared governing documents to authorize the sale, negotiated amendments to the PSA, and prepared closing documents for the sale. Assisted with the ultimate closing of the sale of property by TIC owners in a closing involving 40 parties.

USA IRR2 LLC – Represented members of the limited liability company, who had sold their property to a REIT, in forcing their underperforming manager to account for all distributions, to pay any unpaid distributions, and to remove him as manager. Worked cooperatively with the managers of the parent entity in stopping distributions temporarily. Prepared documents for member vote to remove the manager, and to install a new manager chosen by the members.

Snack Alliance – represented Canadian private-label snack manufacturer as general counsel in numerous acquisition and operational transactions. Work included: company strategic and tax planning; entity formations; corporate compliance; negotiating distribution agreements nationally and in Mexico; and negotiating manufacturing agreements nationally and in Mexico. Continuing general counsel relationship.

Selected Experience Acquisition and Development

City Bible Church - acquisition and development of church campus. Drafted and negotiated acquisition documents; due diligence; land use. Continuing general counsel relationship.

Acquisition of Facilities

Snack Alliance, Inc. - represented Canadian private label snack manufacturer in acquisition of three manufacturing facilities in Oregon, Utah and Virginia. Negotiated acquisition documents; due diligence; land use. Continuing general counsel relationship.

Acquisition of Land

Governmental entity - acquisition of land from bankruptcy estate in lieu of condemnation. Negotiated complicated transaction documents with hostile seller.

Acquisition of Property

Tokyo Electron of Oregon - acquisition of 48 acres of real property to site a multimillion-dollar semiconductor production equipment manufacturing facility. Investigated and negotiated tax incentives; real property acquisition; due diligence; land use; public and governmental relations. ($6.1 million) Continuing general counsel relationship.

Matsushita Electronics - acquisition of real property for development of multi-million dollar manufacturing facility. Work included real property acquisition, due diligence, and land use.
Condo Development

Represented owner in developing a condominium complex. Drafted covenants, conditions and restrictions for condominium; project management; entity formation; regulatory compliance; due diligence; land use.

Creation of Subdivision

7 Ranges, Inc. - represented client regarding Montana rural subdivision and tax advantaged structuring for conveyance. Negotiated all documents regarding conveyance to development company; land use; tax structuring; project management; selection of consultants. ($13.5 million) Continuing general counsel relationship.

BFG, Inc. - Represented client in the creation of numerous subdivisions. Drafted complicated covenants, conditions and restrictions for various classes of planned communities; land use; formed homeowners associations; advised client regarding responsibilities (cumulative $14 million). Continuing general counsel relationship.

Financing

New Beginnings Christian Center, Inc. – represented client in series of transactions to obtain bond financing and sell existing facility. Advised client regarding bond financing; negotiated with underwriters; coordinated security interests; negotiated facility sale agreement and seller financing documents; due diligence. ($8.2 million).

Golf Course Development

Represented owner in developing a golf and recreation facility in Medford, Oregon. Drafted and negotiated 99-year ground lease; public and governmental relations; land use.

Represented owner in developing an 18-hole golf course in Myrtle Creek, Oregon. Handled property tax matters.

D.S. Parklane Development, Inc. - represented owner in developing a golf course development with two 18-hole championship courses. Negotiated numerous contracts with the community and easement agreements; project management; major land use issues; environmental matters; drafted and negotiated numerous construction, consultant and infrastructure contracts; public and governmental relations; prepared all golf membership and promotion materials; negotiated bank financing; entity formation and employment agreements. ($24 million) Continuing general counsel relationship.

Mixed-use Development

Represented owner in developing a major mixed-use development; one million square feet of space on eight acres. Created declarations and condominiums; project management; due diligence; land use; complex structuring of development; reviewed commercial leases and negotiated complex services agreements. ($150 million).

REIT

Represented buyer in purchase of shopping center and apartments. Negotiated property acquisition and handled due diligence. ($15.5 million).

Real Estate Finance
Bible Temple - represented owner in obtaining financing for facility expansion via taxable church bonds. Negotiated complex trust indenture and other bond documents; complicated real estate sale; major due diligence; security interest issues and securities matters. ($3 million) Continuing general counsel relationship.

Real Estate Matters

Healthfirst Properties, LLC - represented managed health care organization in real estate matters. Created entities; created forms and negotiated leases for four major medical office buildings; provided strategic and tax structuring and guidance; drafted sale documents and negotiated sale transactions for four medical office buildings; advised managing board. ($15,735,000).

Real Estate/Siting

Photronics Oregon, Inc. - represented owner in siting photomask manufacturing facility. Drafted and negotiated 99-year ground lease and option to purchase to accommodate yet uncompleted subdivision; project management; due diligence; land use; prepared and negotiated construction contract; drafted covenants, conditions and restrictions for subdivision; public and governmental relations. ($50 million).

SGL Carbon Corporation - represented owner in siting carbon manufacturing facility. Drafted and negotiated 99-year ground lease and option to purchase in order to accommodate a yet uncompleted subdivision; project management; due diligence; land use; prepared and negotiated construction contract; drafted covenants, conditions and restrictions for subdivision; public and governmental relations. ($13 million).

WaferTech, LLC - represented owner in siting a major wafer manufacturing facility. Investigated and negotiated tax incentives; real estate acquisition; due diligence; environmental investigation; land use; public and governmental relations. Continuing general counsel relationship.

Shimadzu U.S.A. Manufacturing, Inc. - represented owner in siting a diagnostic testing equipment assembly facility. Prepared and negotiated construction contract and infrastructure agreement; investigated and negotiated tax incentive; project management; real property acquisition of 15 acres for $1.05 million; due diligence; environmental investigation; land use; public and governmental relations ($10 million). Reengaged to represent owner to double the size of the facility.

Sumitomo Sitix Corp. - represented owner in pursuing siting for a silicon wafer fabrication facility. Work included project management; strategic investments program application and other tax incentives investigations and negotiations; public and governmental relations; real property acquisition; environmental investigation; due diligence; land use; infrastructure development agreements; employee search activities; entity formation; building development permit applications and negotiations and energy analysis and negotiation. ($1 billion).

Sale of Property
7 Ranges, Inc. - sale of 715 acres of developed property in Bozeman, Mont. Negotiated purchase agreements and addenda; negotiated and drafted complex easement arrangements and closing. ($9,750,000).

Advisories

Oregon Supreme Court: Measure 37 Rights Extinguished Under Measure 49: Common law vested rights remain; further court decisions needed, May 13, 2008

Potential Impact of Ballot Measure 49 on Existing Measure 37 Claimants, August 13, 2007


Books & Publications

"Come to the Table Prepared, 3 Rules for More Effective Negotiation", The Portland Business Journal, April 9, 2018


Crowdfunding Your Real Estate Deal, The Portland Business Journal, February 27, 2014


“Are TIC Workouts Working Out??”, REISA, November, 2010

“Possible New Direction of the NAR Exemption - Bifurcation,” CCIM Newsletter, August 2008


24, 2007


**Professional Recognition**


Winner of CREW Network’s National “Entrepreneurial Spirit” Award, 2013


**Community Activities**

Board Member of the Oregon Real Estate Board

Counselors of Real Estate (CRE), Oregon Chapter

CREW, Oregon Chapter

Board Member of Portland State University (PSU) Center for Real Estate

Former Long-term Secretary and Board Member of Homestead Capital

Oregon State Bar Association

Advisory Board and Affiliate Member, CCIM, Oregon Chapter

**Education**

J.D., Willamette University College of Law

B.S., Business, University of Idaho, cum laude

**Admissions**

Oregon, 1988

**Work History**

Dunn Carney LLP April 2018 - present

Rathbone Law (FKA Zupancic Rathbone Law, Rathbone Barton Olsen) 2010-April 2018
Coni Rathbone

Nationally known Tenant in Common ("TIC") Owner group legal counsel. Has represented over 150 groups since 2007. One of the top three firms in the country for this work. Coni Rathbone is a prominent national speaker and writer in this area. Three to five new TIC groups contact Ms. Rathbone each week seeking assistance. This work includes protecting Tenant in Common owner groups from predatory asset managers or consultants in the industry and assisting the groups with loan modifications and manager changes to ultimately save their investments.

- Counselors of Real Estate (CRE), Oregon Chapter
- Crew National Entrepreneur Spirit Award 2013
• Super Lawyers, 2006-2015
• Portland Business Journal “2013 Women of Influence”
• Chambers, 2006-Present
• “BV” rating - Martindale Hubbell Attorney Rating Service
• PSU Graduate Real Estate Program, Adjunct Professor for seminar on Negotiations
• Advisory Board Member of Portland State University (PSU) Center for Real Estate
• Advisory Board Member of the Oregon Real Estate Agency
• Advisory Board and Affiliate Member, CCIM, Oregon Chapter, regular Continuing Education speaker.
• CREW, Oregon Chapter
• Oregon State Bar Association