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QUALIFIED OPPORTUNITY ZONES

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QUALIFIED OPPORTUNITY ZONES

I. INTRODUCTION

A. Terminology

Before discussing qualified opportunity zones, the tax benefits for investing in them, and how to obtain those benefits, we need to introduce the following key terms:

- Qualified Opportunity Zone (“**QOZ**”)¹, defined below in Part I.C, the low-income census tracts from which the benefits discussed below in Part II arise provided that investment is made as described below in Part III;
- Qualified Opportunity Fund (“**QOF**”)², defined below in Part IV, are the investment vehicles through which those investments in QOZs must be made to qualify for those benefits;
- Qualified Opportunity Zone Business Property (“**QOZBP**”), defined below in Part V, the property located in a QOZ which constitutes a QOF’s investment in that QOZ; and
- Qualified Opportunity Zone Business (“**QOZB**”)³, defined below in Part VI, a subsidiary business through which a QOF may invest in QOZs and QOZBP.

B. Sources of Law

The concept of QOZs and their benefits were created by Pub. L. 115-97, formerly known as the “Tax Cuts and Jobs Act.”⁴ Section 13823(a) of Title I of that act created Sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code of 1988, as amended (“**IRC**”). IRC § 1400Z-1 defines QOZs and their designation by state authorities. IRC § 1400Z-2 defines the benefits of investing in a QOZ and how to obtain them (by investing in the QOZ through a QOF). In doing so, it defines the requirements and qualification of a QOF and a QOZB, as well as the QOZBP that the QOF or QOZB must invest in. These materials will concentrate on IRC§ 1400Z-2 and the proposed regulations that implement it.

Unfortunately, IRC § 1400Z-2 contains several drafting errors and left many necessary concepts either un- or under-defined. For example, in defining what gain may be deferred by investing in a QOF (see below in III.C for more on this topic), the title of IRC§ 1400Z-2 referenced

¹ QOZ is often pronounced “OZ,” as in the fictional land created by L. Frank Baum and visited by Judy Garland (also, another term for Australia).

² QOF is often pronounced “quaff,” as in to drink deeply.

³ QOZB is often pronounced “quazbee,” which rhymes with “Crosby” as in the singer-songwriter member of The Byrds and Crosby, Stills, Nash & Young and writer of Bob Dylan’s first number one hit, “Mr. Tambourine Man.” The Authors wish to thank Fleetwood Wynne McNabb Cunningham (Univ. of Texas J.D. ‘06) for educating her husband, co-Author Christopher Alan Cunningham, on all things classic rock. Thank you, Sweetie!

⁴ Section 13823(a), Title I, Pub. L. 115-97, 131 Stat. 2054 (Dec. 22, 2017). The name “Tax Cuts and Jobs Act” originally appeared in Senate version but was removed during the Conference process as part of resolving the differences between the House and Senate versions of the bill.

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