

Agenda

- Welcome and SKR+CO overview
- Brief overview of Qualified Opportunity Zone program
- Operating a Qualified Opportunity Fund
- Potential scenarios in QOZBs (indirect structure)
- Q+A
- OEDIT Accelerator Program
- Pikes Peak Regional Updates on Opportunity Zones

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A TOPACCOUNTING FIRM, MOUNTAIN REGION

Accounting Today 2017,2018,2019,2020

- Business + Individual Tax
- Audit + Assurance
- Bookkeeping + QuickBooks
- Interim CFO Services
- Estate + Trust Planning
- Litigation Support
- Business Advising
- Business Valuations

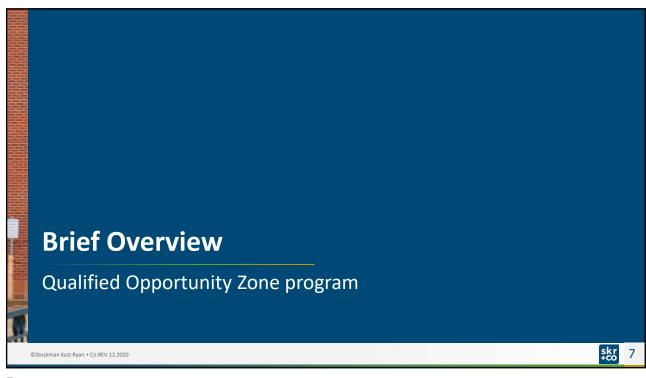
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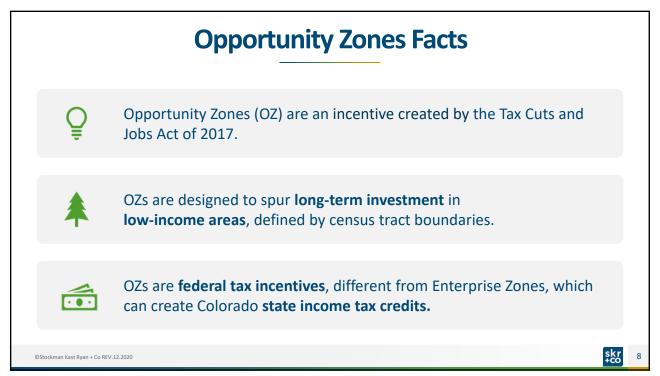


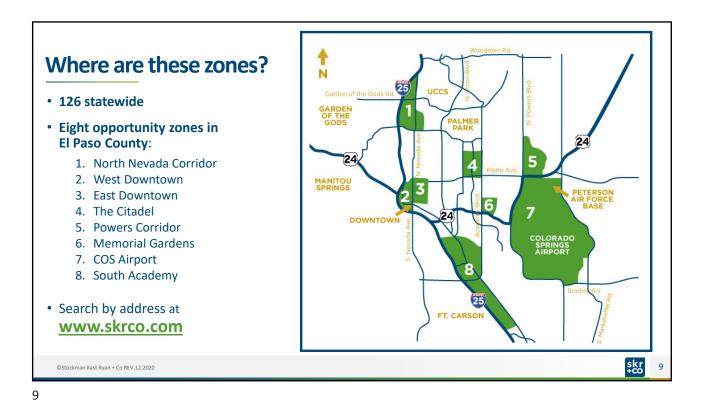
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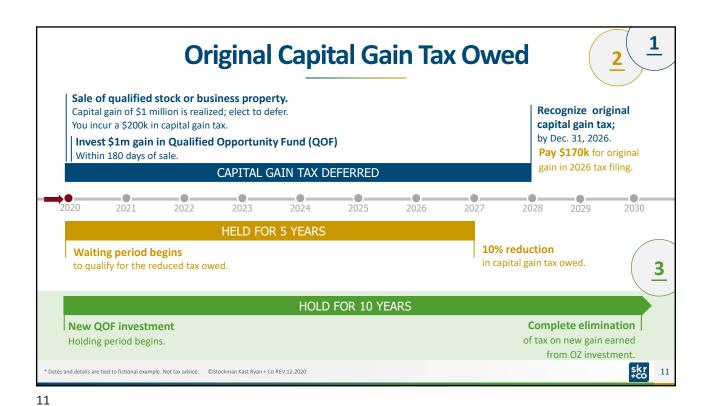


Today's Presenters Trinity Bradley-Anderson Jared Usrey Chelsea Gaylord Jack Tiebout Tax Partner **Supervising Senior** Opportunity Zone Senior Economic Tax Consultant Program Manager **Development Specialist** COLORADO Office of Economic Dev & International Trade COLORADO SPRINGS OLYMPIC CITY USA skr +co ©Stockman Kast Ryan + Co REV.12.2020













Deferral Timing

Win 1 Defer



- Must invest in OZ fund within 180 days of:
 - Direct sales date of sale
 - Partners last day of partnership's taxable year, partner may choose the date of sale or partner may elect to use the due date of the pass-through return (not including extensions)
 - Partnership date of sale
 - REIT/RIC dividends received date dividend received. Undistributed dividends – last day of RIC or REIT's tax year
 - No other deferrals allowed (i.e., like-kind exchange)

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Operations/Interim Gains

- Operating Income and Loss: treated the same as other investments.
 - Income is taxed; loss is subject to basis limitations, active/passive limitations.
- Sale of QOZBP (stock or property) before end of 10 year holding period is a taxable event.
 - Example: If QOF or subsidiary has three buildings and sells one in year 8, the sale will be taxed.
- Reinvest: QOF will have 12 months to reinvest the QOZBP sale proceeds in other QOZBP.
 - If the proceeds are held in cash and cash equivalents during the 12 month period, the excess cash will meet the 90% test.

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Disposal of QOF assets

Win 3 **Eliminate**

HELD FOR 10 YEARS

- After a minimum of 10 years, an election can be made to set basis to the fair market value at the time of sale.
- Appreciation beyond 10 years is eligible for elimination until 2047.
- Interest in QOF must be disposed of by the end of 2047

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State Tax Implication



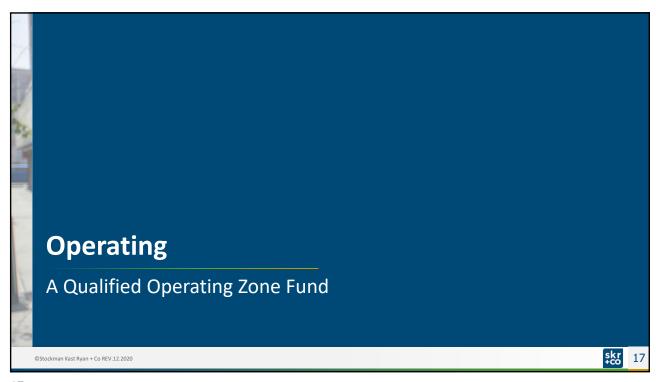
State Tax Code Conformity – Corporate <u>Income</u>

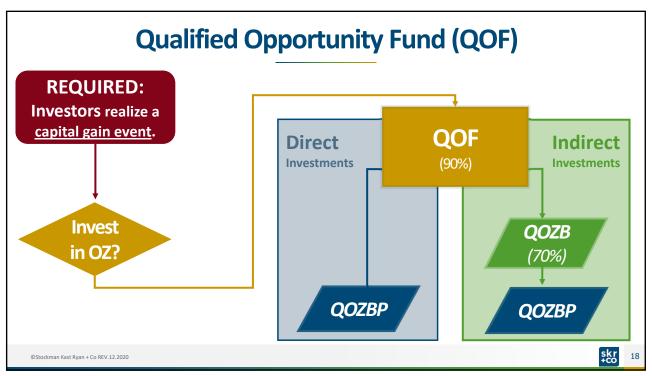
State Tax Code Conformity -Personal Income

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- Colorado conforms to Federal law
- Non-Colorado Opportunity Zone property may be taxed depending on each state's rules
- In general consider:
 - State where gain was realized
 - State(s) where the OZ fund has nexus, or sufficient physical presence
 - State or residency of the taxpayer

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Qualified Opportunity Fund (QOF)

- **Intermediary between** investors and the investments in the Opportunity Zone.
- Statutory Requirements:
 - Organized as a Corporation or Partnership.
 - An investment vehicle organized for the purpose of investing in Opportunity Zone Property.
 - Investors must purchase interest in QOF for OZ benefits to apply.
- 90% of assets must be QOZBP.
- Penalty imposed for noncompliance.

QOF Self-Certification

- A taxpayer completes Form-8996.
- Completed form is attached to the taxpayer's federal income tax return for the taxable year the capital gain event occurred.
- The return must be filed timely, taking extensions into account.
- Does not appear to be a cap on the number of QOFs or the amounts to be invested in the QOF.



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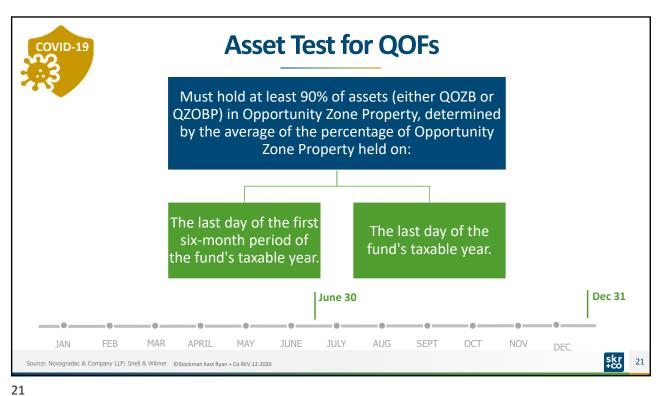
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Direct v. Indirect OZ Investments

Direct Investment (QOF directly owns QOZBP and operates business)	Indirect Investment – Preferred Method (QOF owns QOZB, which in turn owns QOZBP and operates business)
90/10 Test 90% of QOF assets must be Qualified Opportunity Zone Business Property (QOZBP).	70/30 Test 70% of QOZB assets must be Qualified Opportunity Zone Business Property (QOZBP).
No working capital safe harbor; absent further guidance, all cash would be counted toward the 5% financial property of assets that can be non-QOZBP.	Working Capital Safe Harbor applies to allow unlimited amount of cash as long as entity substantially complies with a written plan of deployment of a trade or business including acquisition, construction and/or rehabilitation of property or development of an operating business.
No active conduct standard.	50% gross income from active conduct of trade or business.
"Sin businesses" allowed.	"Sin businesses" not allowed.

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There is a **monthly penalty** for noncompliance



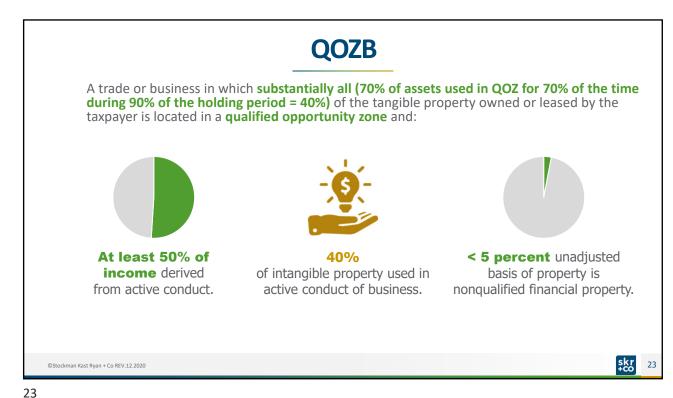
% Shortfall Monthly penalty **X** Underpayment Rate

Underpayment rate = Federal short-term rate plus 3%, **Currently 5%**

- No penalty if failure is due to reasonable cause
- Penalty QOF Partnerships: Penalty imposed upon the Partners

Note: QOF can elect to ignore un-deployed capital contributed within prior 6 months for purposes of the 90% test





Indirect Investment: QOZB - Stock and Partnership Interests



- The investment must be acquired after December 31, 2017 in exchange for cash
- Must be a qualified opportunity zone business, or is being organized for the purpose of being a qualified opportunity zone business
- Must remain a qualified opportunity zone business for substantially all of the qualified opportunity fund's holding period

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50% Active Conduct of a Trade or Business

QOZB

- Includes leasing OZ property as long as the entire property is not leased as a triple-net (NNN) lease
- Safe harbor test for Operating Business:
 - At least 50% of hours spent by employees and independent contractors are within the QOZ. (e.g., If all employees are within the QOZ, the location of customers is irrelevant) OR
 - At least 50% of amount paid by a business to employees and independent contractors are for services performed within QOZ. (e.g., highly compensated employees are located in QOZ vs. larger number of employees outside of QOZ) OR
 - The tangible property located in QOZ and the management operations functions performed in the QOZ are each necessary for the generation of at least 50% of the gross income

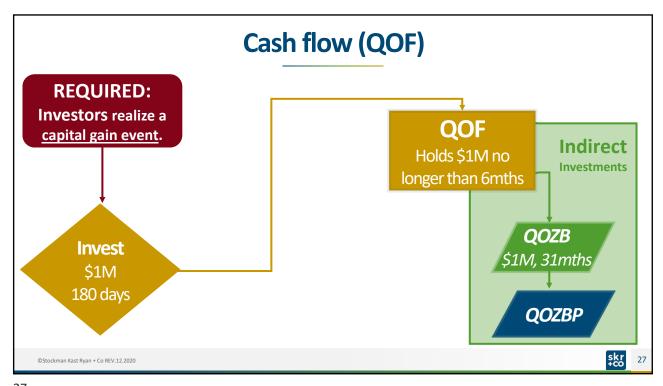
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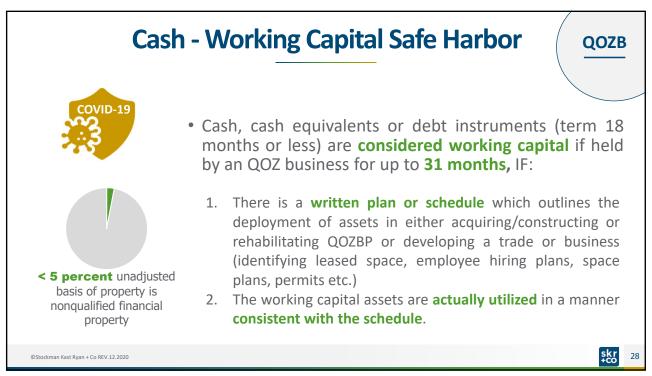


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Cash - Working Capital Safe Harbor

QOZB



- QOZBs can use multiple working capital safe harbors for each cash infusion not to exceed **62 months** from the initial working capital safe harbor
 - Each cash infusion will have its own 31-month working capital safe harbor
 - Each safe harbor is required to have its own written plan and the cash must be used in manner consistent with the schedule

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Important: Working with QOF "Cash"

QOZB

- Cash can be held in interest bearing accounts like money markets and CD's.
- Excess cash CANNOT be invested in securities, including bonds.
- · Ideally, the QOF should only hold enough cash to pay for its own operating expenses including legal, accounting and management fees.
- QOF cash should be less than 5% of its total assets including investment in QOZB.
- QOF should transfer investor capital/cash to the QOZB within 6 months of receipt.



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90% or 70% Asset Test

QOZBP



QOZ business property (QOZBP) is tangible property meeting the following requirements:

- 1. Acquired or leased after December 31, 2017
- 2. The "original use" commences with the QOF or the QOF has "substantially improved" the property
- 3. Substantially all of the use of the property is within a QOZ

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Acquired and Original Use

QOZBP

Purchase used equipment outside a QOZ. then move it into the QOZ, to qualify it as **QOZBP** without requiring substantial

- Property must be purchased by the QOF/QOZB from a non-related party
- Property contributed to the QOF is eligible for the deferral election but NOT the acquisition provision
- Tangible property "Original use" initial use for depreciation or amortization purposes in the QOZ must begin with the QOF.
- Buildings vacant for at least three years purchased by a QOF/QOZB qualify.
 - If property was vacant for at least a year at the time the zones were designated, then property must be vacant only for one-year post designation.
 - Considered "vacant" if more than 80% of the square footage of useable space is not currently being used.

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improvement.



Acquired and Original Use

QOZBP

- Buildings acquired directly from the government through bankruptcies or tax sales do not have to be substantially improved.
- Brownfield certified sites satisfy the original use requirement if investments are made within a reasonable period to ensure that the entire site meets basic safety standards for both human health and the environment.
- Vacant land purchased by a QOF/QOZB qualifies as original use. If the land is unimproved or minimally improved, the land must be substantially improved. Unimproved land fails to be QOZ business property if it was purchased with an expectation that it would not be improved by more than an insubstantial amount.

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Real Estate: Substantial Improvement

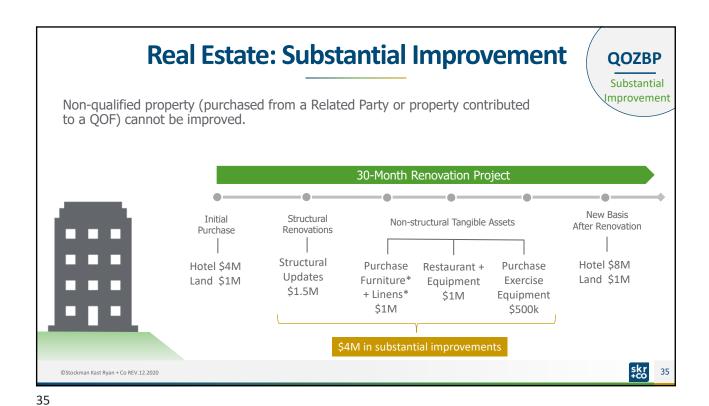
QOZBP Substantial



- Substantial improvement to an existing building within the OZ occurs if within 30 months after acquisition, additions to basis in the BUILDING (not Land) exceed the building's basis.
- Non-qualified property (purchased from a Related Party or property contributed to a QOF) cannot be improved. If a building is constructed on contributed land, the building will be QOZB, the land remains non-qualified.

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Substantial Improvement, cont.

QOZBP Substantial mprovement

- If land is unimproved or minimally improved, the land must be substantially improved. Unimproved land fails to be QOZ business property if it was purchased with an expectation that it would not be improved by more than an insubstantial amount.
- Tangible personal property is treated as substantially improved if the equivalent of its basis is expended within 30 months on an aggregated basis and the new property improves the functionality of original non-qualified assets.

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Two Examples of Equipment Requirements

QOZBP Substantial

mprovement

Example One

- Small manufacturer owns \$500k of equipment
- Purchases \$525k of new equipment that expands product line.
- The new asset functionally improves the nonqualified assets.

Example Two

- QOF acquires existing company outside the QOZ
- Then moves into a QOZ
- Post move: All assets qualify as QOZBP.

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Leased Property

QOZBP

- Lease must be initiated after December 31, 2017 at market value rate
- Lease does NOT need to satisfy original use
- QOF or QOZB is NOT required to substantially improve leased property
- Related party leases are allowed with additional requirements:
 - No prepayments of more than 12 months of lease payments
 - Leased tangible PERSONAL property (e.g., equipment, furniture and fixture)
 - · Must either satisfy the original use requirement OR
 - · QOF/ QOZB must acquire OTHER tangible property of equal value within 30 months of the lease
 - Leased RP Real Estate property qualifies if there is no plan or expectation that the property would be purchased from less than FMV or the lease will not qualify as QOZBP

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QOF Contributions – Important Caveats



- **Service contributions** (i.e., carried interest, profit interests, "promotes")
- Mixed-fund investments include contributions that are eligible and ineligible for OZ tax benefits
- A capital gain interest with a disproportionate allocation of profits creates a mixed-fund investment where the service component is taxed

Example: 25% of capital invested with 35% profit allocation. What qualifies for OZ tax benefit?

- 25% capital invested qualifies.
- 10% profit interest is taxed.

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Partnership Basis in QOF

- Initial contribution of deferred gains creates **ZERO** basis in QOF investment
- Zero basis may affect investor ability to take operating losses
- Distributions in excess of basis can result in recognition of deferred gain
- Debt-financed distributions after 2 years are generally allowed

- Basis increased by 4 events:
 - 1. Income from a QOZB.
- original investment in QOF after 5year hold.

2. 10% of

- **3.** Add'l 5% increase of original investment after 7-year hold.
- 4. Allocation of debt in a QOF partnership.

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Sale of Interest vs Sale of Assets

Win 3 Eliminate

HELD FOR 10 YEARS

Sale of Interest

• Excludes **ALL** gain from income.

Sale of Assets

- Exclude gain on sale of all assets other than inventory.
- Gain on inventory is taxable. (developed lots, condo units are inventory)
- No recapture of ordinary or real property depreciation.

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COVID-19 and Notice 2020-39

Notice 2020-39 provided the following relief to QOFs and their investors in response to the COVID-19 pandemic:

- 180-day Investment Requirement If a taxpayer's 180th-day investment requirement falls between 4/1/2020 and 12/31/2020, the taxpayer now has until 12/31/2020, to invest that gain into a QOF.
- Reasonable Cause Exception A QOF's failure to pass the 90% test on any semiannual testing dates from 4/1/2020 through 12/31/2020, will automatically be considered due to reasonable cause. The penalty will not be imposed or the QOF disqualified.
- Substantial Improvement the 30-month period beginning after the date of acquisition is suspended for the period 4/1/2020 to 12/31/2020. In effect, adding an extra 9 months to the improvement period.

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COVID-19 and Notice 2020-39

- Working Capital Safe Harbor Since all 50 states are declared Federal Disaster zones because of COVID-19, all QOZB's holding cash intended to be covered under the safe harbor (written plan detailing deployment of assets within 31 months) before 12/31/2020 will receive an additional 24 months to deploy the cash as long as the QOZB meets the safe harbor.
- 12 Month Reinvestment Period If a QOF sells a property or has a return of capital, it has 12 months to reinvest the proceeds in a QOZ qualifying investment without impacting the 90% investment standard. The Federal Disaster Zone declarations trigger provisions allowing an additional 12 months for reinvestment if any of the QOF's 12-month reinvestment period includes 1/20/2020 (the date of the disaster identified in the Major Disaster Declarations related to COVID-19).

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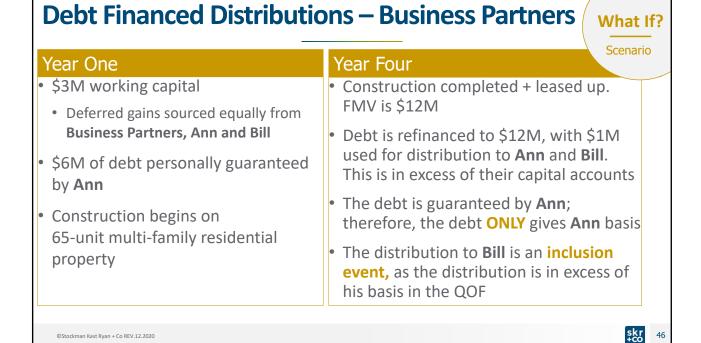


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Potential Scenarios QOZBs (indirect structure)





Debt Financed Distributions – Business Partners

What If? Scenario

REMEMBER: Deferred gains have zero tax basis.

- What if the loan had been personally guaranteed by both **Ann** and **Bill**?
- What if the distributions occurred in Year 2 instead of Year 4?
- What if the distributions occurred in Year 2 AND the distribution was not in excess of the Business Partner's capital account?

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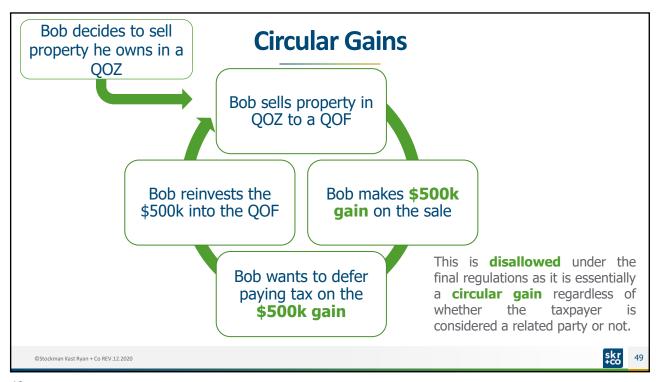


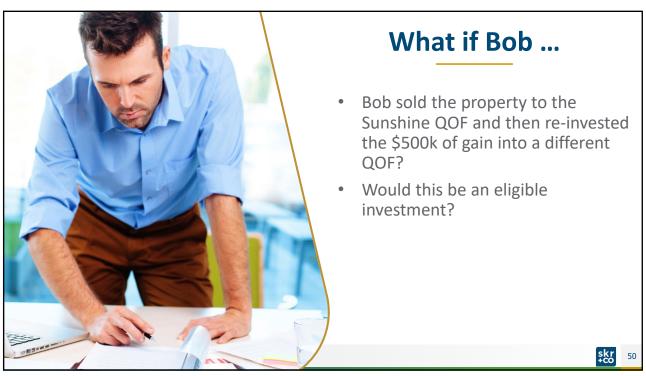
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Meet Bob

- Bob has owned a property located in a QOZ since 03/15/18
- Bob generates a \$500k capital gain from selling the property to the Sunshine QOF on 04/15/21
- Bob owes capital gain tax on the \$500k.
- Bob wants to defer paying taxes owed from the property sale by investing the \$500k back into the Sunshine QOF.







Meet JT Holdings QOF



- After only an 8-year hold, JT Holdings QOF sells its interest in Zinger Commercial QOZB, a downtown office complex.
- JT Holdings QOF then purchases Family Landing QOZB, a multi-family residential complex, to defer capital gain tax owed from the sale of the downtown office complex, **Zinger Commercial QOZB.**

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Tax on Interim Gains

- The sale of the downtown office complex **before fulfilling the 10-year** hold requirement falls under regular tax rules and JT Holdings QOF will have to recognize the gain on the sale.
- JT Holdings QOF's purchase of Family Landing QOZB within 12 months of selling the downtown office complex satisfies the asset test for JT Holdings QOF.
- If JT Holdings QOF maintains its investment in Family Landing QOZB, for an additional two years, the QOF will have fulfilled the overarching 10-year hold requirement.

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What if JT Holdings ...



- What if **JT Holdings QOF** attempts to dispose of the Zinger Commercial QOZB property by preforming a 1031 exchange?
 - Original Use Test
 - Substantial Improvement
 - 70% Asset Test (QOZB)
 - 90% Asset Test (QOF)

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QOZB Operating Business – Manufacturing

Year One

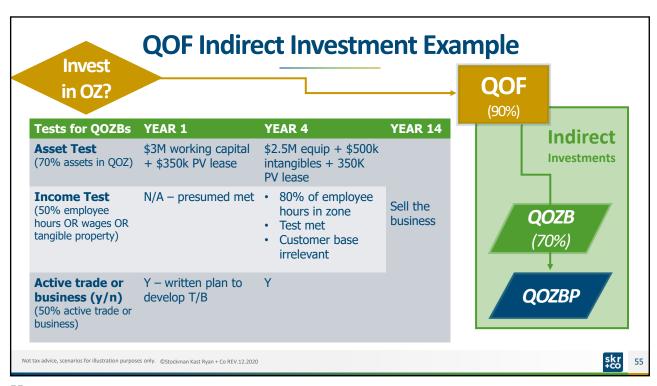
- \$3M working capital
 - · Sourced from deferred gains
- Written business plan
 - 31-month implementation schedule
 - \$1M in equipment
 - \$800k in salaries
 - \$1.2M in operating costs including lease payments
 - Present value (PV) of 5-year lease \$350k

Year Four

- \$2M capital infusion
 - Must be deferred capital gain, extends 10year timeline
 - \$1.5M equipment
 - \$500k intangible purchase
- Worldwide customer base
- 10 employees
- Eight in QOZ; two work remotely
- Manufacturing occurs 100% in QOZ

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"What-if" - Manufacturing Example



What happens if:

- Incredible growth forces move out of QOZ?
- Thinly capitalized?
- Additional capital not capital gain deferred.
- Operators cannot restructure in year 14?
- No sale before 2047?

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Planning ideas: QOFs



- **Debt** can be a powerful tool within a QOF:
 - Debt allocated in a partnership QOF gives rise to basis for loss deductions.
 - Debt financed distributions are allowed two years after capital is contributed.
- Partnerships are the structure with the most flexibility for a QOF, especially for a real estate holding.
- Consider a land lease with land held prior to 12/31/17.
- No triple-net leases; use a gross lease. NNN's are also harder to qualify under 20% QBI deduction.

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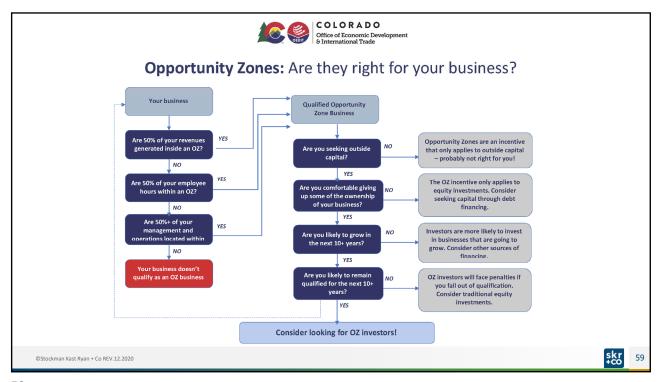
Planning ideas: Operating Business

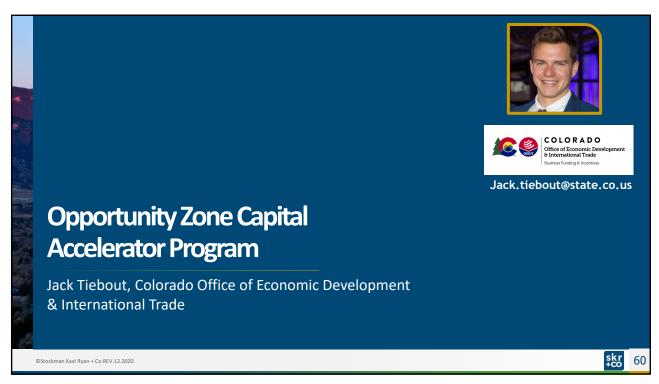


- All assets of an existing business are considered in asset tests.
- Difficult for an existing business to meet the QOZB requirements unless the business is geared for growth and a significant capital spend or a new capital lease.
- Leased premises within the OZ help increase QOZBP base.
- Inventory is included in Asset tests.

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OEDIT's OZ program

The Mission: Position Colorado as a leading destination nationally for capital investment in Opportunity Zones, and use this investment to benefit distressed communities

Nomination

Education

Community

Support

Investment

Facilitation

- Designating 126 Opportunity Zones across the state
 Most zones designated are rural
- Spreading the word to investors, community leaders, developers and other stakeholders
- Investor summits, stakeholder meetings, statewide webinars, pitch events
- Empowering communities to understand how Opportunity Zones work and how they can benefit
 OZ Technical Support and Mini-Grant
- Helping capital and projects find each other
 - Co-Invest, OZ Capital Accelerator Program



Why OZCAP?

- Operating business deals less common than real estate, but potentially more beneficial for residents in designated OZs
- Investors and businesses alike need more examples to follow
- COVID recovery: new businesses will drive recovery, need access to equity investment







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OZ Capital Accelerator Program

Goal: To facilitate OZ equity investment into operating businesses across Colorado, serving as an example other Colorado businesses and investors can follow

How it works:

- Businesses located in or (open to relocating into) OZs apply
- Those demonstrating investment readiness and strong community benefits are most strongly considered
- Accepted businesses receive free training and capital campaign support from Colorado Center for Investment in Community Capital (CC4ICC)
- → Services from CC4ICC include legal structuring, pro forma and pitch deck development, connecting with investors, and finalizing investment



Our first cohort



SIX RECIPIENTS SELECTED FOR PREMIERE OPPORTUNITY ZONE CAPITAL ACCELERATOR PROGRAM

- Companies represent wide variety of sectors, including ed tech, environmental services, moving, a ghost kitchen, and a dog grooming
- Hail from Aurora, Brighton, Boulder, and Sterling
- Seeking \$100k to \$10 million, some early stage, some more mature



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Our second cohort



SIX RECIPIENTS SELECTED FOR SECOND COHORT OF OPPORTUNITY ZONE CAPITAL ACCELERATOR PROGRAM

- Businesses include a restaurant, campground, adventure center, co-working incubator, and child care center
- Hail from Craig, Estes Park, Fort Morgan, Gunnison, and Denver



Early results and lessons learned...

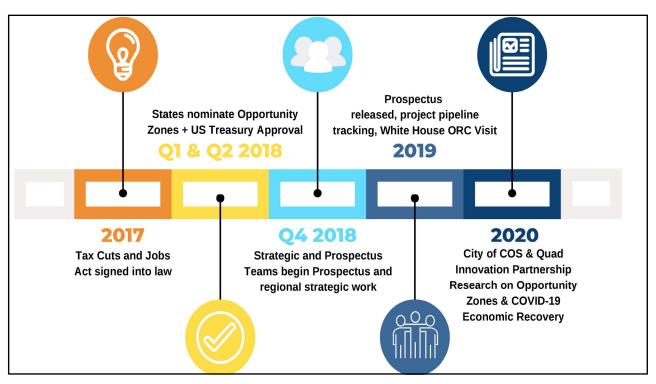
- \$2M raised so far, including \$1.2M in OZ equity
- Early stage businesses with tangible capital needs are best suited
- OZ hotspots attract relocating businesses
- Covid recovery trends: remote learning, ghost kitchens, child care, outdoor recreation
- Garnering some national attention, spinoffs possible
- . Cohort 3 in 2021?



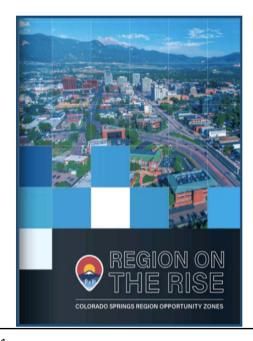
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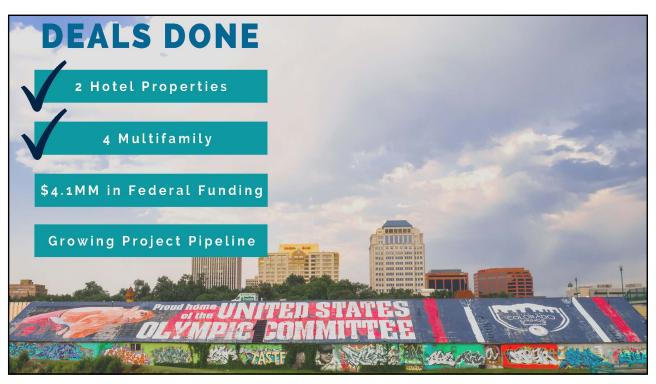


INVESTMENT PROSPECTUS



- Overview of the financial and social benefits of investing in the Colorado Springs region's Opportunity Zones
- Find spotlights of each OZ: key sectors, active investment, and opportunities
- www.ColoradoSpringsOpportunityZones.com

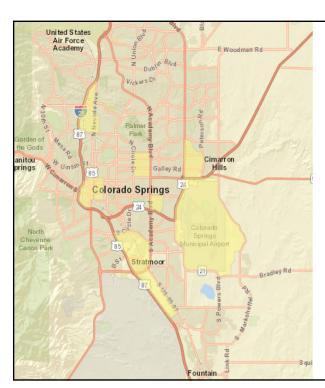
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Quad Research

- Project scope: Inform City Economic Development strategy around OZ program to support COVID-19 economic recovery
- Understand who is taking advantage of OZs nationwide & structures for success, and identify local business and investor needs
- Results
 - 63 interviews conducted in October & November 2020
 - 5 recommendation themes with actionable steps

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RESOURCES & SUPPORT

- Rapid Response Team
- Issue Resolution
- Tools & Incentives
- Connection to Regional Partners and Assistance

Get Started:
Chelsea Gaylord
City of Colorado Springs
Senior Economic Development Specialist
chelsea.gaylord@coloradosprings.gov
719-385-6803

