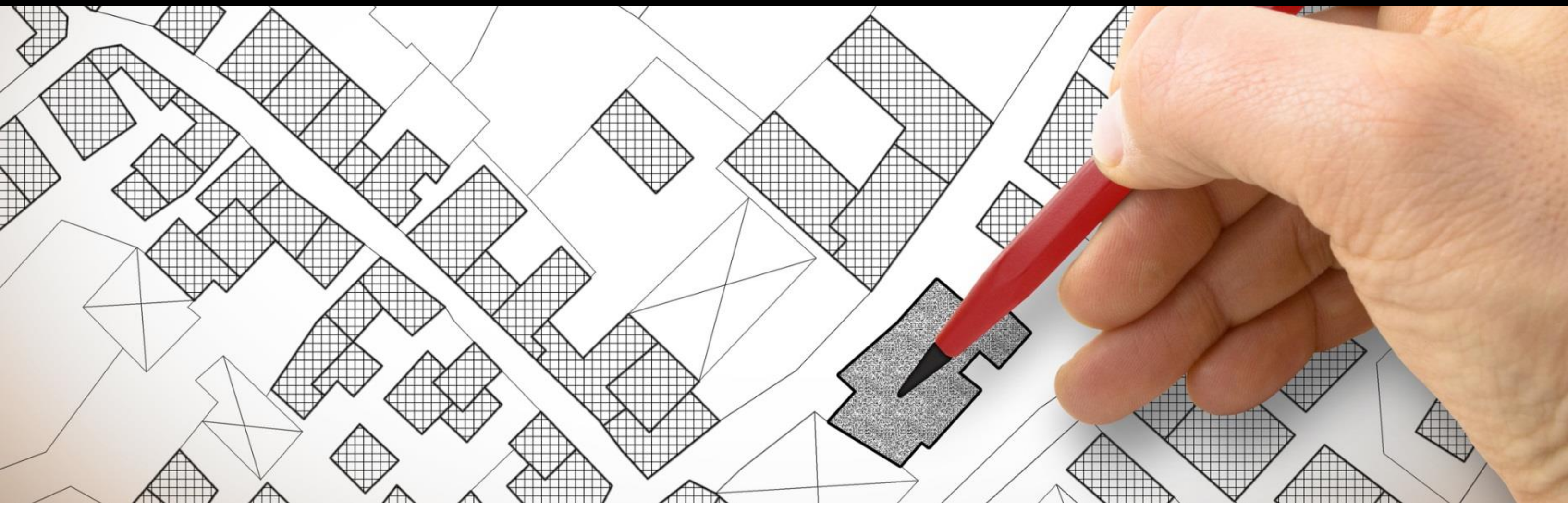
OPPORTUNITY ZONES FOR CANNABIS-RELATED VENTURES



INTRODUCTION

We would like to call your attention to an important new set of federal tax incentives that will make it significantly easier to raise capital for cannabis-related ventures depending on their location. The Tax Cuts and Jobs Act passed last year contains an important new set of tax-advantaged investment incentives – Opportunity Zones. Although estimates vary, Opportunity Zones are projected to attract at least $10 billion in investments annually for the program's 10-year life.

The main idea is to promote economic activity in Opportunity Zones through investment in Qualified Opportunity Funds (QOFs). **If a cannabis-related enterprise is located in an opportunity zone, its facilities and equipment are eligible for investment by QOFs.** The significant tax advantages of QOF investments helps raise funds with a lower cost of capital.

If a capital gain is invested in a QOF, the tax due on the gain is deferred until the earlier of the sale of the QOF or 12/31/26. If the investment is held for at least 5 years, the amount of the gain to be taxed will be reduced by 10%, and if the investment is held for at least 7 years, the amount of the gain to be taxed will be reduced by an additional 5%.

If the QOF is held for 10 years, the taxpayer's basis in the QOF is stepped up to the fair market value of the QOF at the time of its sale. In other words, any appreciation in value of the QOF is tax exempt. This benefit is separate from the capital gains deferral – the tax on deferred capital gains will be due by 12/31/26 at the latest even if the investment in the QOF is being held past that date in order to qualify for the 10-year exemption.

Taxpayers that can use QOFs to defer gain include individuals, C corporations (including RICs and REITs), partnerships, S corporations and other pass-through entities (trusts and decedents' estates). Any eligible taxpayer can form a QOF – it can be any size and the process is self-certifying so no government approvals are needed.

OPPORTUNITY ZONES

LOCATION OF OPPORTUNITY ZONES

Opportunity Zones are census tracts in low-income communities (or adjacent in certain circumstances) designated by the governor of each state – there are designated tracts in every state plus PR and some of the territories. The Community Development Financial Institutions Fund of the Treasury Department provides resources on Opportunity Zones. Click here to view the map of the opportunity zones and a state-by-state spreadsheet list.

There is a map link on that page – follow the instructions there by clicking on the "Layers" tab on the menu on the right side of the screen, select "Opportunity Zone Tract" and unselect "2011-2015 LIC Census Tract" and zoom in to a specific area on the map. The Opportunity Zones will appear in blue.

The definition of low-income community is one with a poverty rate of at least 20% or median family income that does not exceed 80% of the greater of statewide median family income or metropolitan area median family. The Opportunity Zone designation is for 10 years – all current OZ designations will expire on 12/31/28.

QOF STRUCTURE

A QOF can be either a partnership or a corporation. The QOF must invest in one of 3 ways:

- Investment in a partnership (or LLC)
- Investment in a corporation
- Investment in tangible property

The investment in a QOF must be an equity interest, including preferred stock or a partnership interest with special allocations.

The partnership or corporation must be organized to operate in an Opportunity Zone. Tangible property must be used by the QOF in an Opportunity Zone.

To be a Qualified Opportunity Zone (QOZ) business, substantially all of the tangible property owned or leased by the taxpayer must be QOZ business property. QOZ business property must be acquired after 12/31/17, the original use of the property begins with the QOF or the QOF substantially improves the property, and substantially all of the use of the property is in a QOZ during the holding period.

"Substantially improves" means if during any 30-month period beginning after the date of the acquisition of the property, additions to basis of property are greater than the adjusted basis of the property at the beginning of the period. The adjusted basis of the property refers only to tangible property (including any existing building and other improvements) – land is excluded from the calculation.

CONCLUSION

Greenspoon Marder is currently forming QOFs for its clients, and we are happy to answer questions you may have about the process.

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