OPINION

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THE 123'S OF OPPORTUNITY ZONES

The primary purpose of the Opportunity Zones program is to attract investment to designated areas. Therefore, Qualified Opportunity Funds ("QOF") must maintain at least 90% of the assets contributed by investors in qualified opportunity zone property ("QOZP"). QOZP is defined as:

• shares of corporations, issued after December 31, 2017, operating a business in the area,
• participations on partnerships, issued after December 31, 2017, operating a business in the area or in tangible property used in a business operating in the area.

Today we will discuss the requirements established by federal regulations for a business to qualify as a business in the area. Remember, we need to understand the concepts established at the federal level as they serve as the basis for local incentives.

The first requirement that the business has to be an active business. For these purposes, the rent of property will also be considered an active business. However, leases known as "triple net leases" where the tenant is responsible for all costs (insurance, maintenance and taxes) related to the property in addition to the rent, are not considered a active business. Once we determine that the business conducts an active business, it must meet the following requirements:

• Not considered a "sin business",
• The business meets the following tests:
 ▪ at least 50% of its gross income is generated in a QOZ
 ▪ at least 40% of intangible assets are used in a QOZ
 ▪ less tan 5% of its assets are non qualified financial assets, and
• Substantially all (70%) of the tangible property ***owned*** or ***leased*** by the trade or business is QOZBP

The activity carried out by the business cannot be one of the following known as sin businesses:

• public or private golf course
• country club
• massage parlor
• hot tub facilities
• tanning facilities
• racetracks or betting facilities
•selling alcoholic beverages for consumption outside the business.

To satisfy the rule of generating at least 50% of gross income from an active business in an area, you can use one of the following tests:

• at least 50% of the hours related to the services provided by the business are incurred in an area,

• at least 50% of the fees paid for services for the business are performed in an area,

the assets of the business located in the area and the management or operational functions carried out in the area are necessary to generate

• at least 50% of the gross income of the business, or

• based on the facts and circumstances, at least 50% of the business is generated from a commercial activity in an area.

An important exception to the financial assets rule (investments, bonds, etc.) is that the business can maintain a reasonable amount of working capital (cash or investments with terms of 18 months or less) as long as the business has a formal plan to use them within 31 months of their contribution to the business.

The following are the requirements for the assets to constitute qualified property:

• Property ***purchased*** from an unrelated person after 12/31/2017,
• Property ***leased*** from an unrelated person after 12/31/2017, or from a related person at arm's length market rates,
• ***Original use*** of the property commences with the QOF ***or*** when the QOF substantially improves the property, and
• During substantially all (90%) of the QOF's holding period of the tangible property, substantially all (70%) of the use of the tangible property was in a QOZ

Original use is determined when the property is put into service for the first-time for depreciation or amortization purposes within a zone. A property that has been used outside the area qualify for original use in the area if it meets the rest of the requirements (e.g. purchased after 12/31/17). If the property has been unused or vacant for at least 5 years, it will be treated as original use when purchased by the qualified business or the QOF. If the property has been used within the area previously but it hasn't been vacant for at least 5 years, it could be considered a qualified property if the business or the fund perform substantial improvements within 30 months of acquisition. Improvements should be at least in an amount similar to the cost of the property without including land.