



# Aldrich Real Estate Day



# Tax Planning:

*Build Back Better*

# Build Back Better

*"We estimate that the House bill would reduce long-run economic output by nearly 0.4 percent and eliminate about 107,000 full-time equivalent jobs in the United States. It would also reduce average after-tax incomes for the top 80 percent of taxpayers over the long run."*



- Tax Foundation, Details & Analysis of the House Build Back Better Act Tax Provisions 11/5/2021

## Individual Tax Rates

- **Current Law:** Seven tax brackets (10%, 12%, 22%, 24%, 32%, 35%, 37%)
- **Proposed Changes:**
  - Add 5% surcharge on incomes exceeding \$10 million
  - Add an additional 3% surcharge on incomes exceeding \$25 million.
  - The above surtax's would also apply to trusts at \$200,000 and \$500,000 respectively

## 3.8% Medicare Tax for All Trade or Business Income of High-Income Taxpayers

- *Current Law*: Partners/S Corp Shareholders are only subject to the 3.8% on Net Investment Income (portfolio, passive, etc.)
- *Proposed Law*: ALL income from Pass-Through entities would be subject if exceeding \$400,000 of taxable income at the individual level.
  - Sales of Goods and Services
  - Rents
  - Sale of fixed assets and intangibles used in a trade or business

## Itemized Deductions

- Raise the cap on the state and local tax (SALT) deduction from \$10,000 to \$80,000 through 2030.
- The \$80,000 SALT cap amount would also apply to the 2021 tax year.

## Excess Business Losses

- Passed as part of TCJA in 2017, losses are generally limited up to \$500,000 net of all business income
  - Applies to Non-Corporate Taxpayers
  - Excess losses are Carried Forward as a Net Operating Loss
- Scheduled to sunset in 2026, Build Back Better plans to make this limitation permanent. Also treatment as NOL would be eliminated making it a separate carryforward



- Loss Limitations
  - (Business Interest)
  - Basis
  - At-Risk
  - Passive
  - Excess Business Loss
- Consider the impact of Loss Limitations – Be Strategic

## Corporate Tax Rates

- **Current Law:** 21%
- **Proposed Change:** 15% Minimum Tax on companies with >\$1 Billion in worldwide book income

- Solar and Wind Credits expanded
- Electric Vehicle purchases receive expanded credits
- Neighborhood Homes Tax Credit
  - Single-Family Homes in low income areas
  - Consider packaging with other tax incentives such as QOZ, NMTC for “planned revitalization districts”

- Dropped proposals include:
  - Corporate income tax hike
  - Top individual rate increase
  - Top capital gains rate increase
  - Bank reporting requirements
  - Wealth tax on unrealized gains

# Oregon: SALT Limitation Workaround

# Oregon SALT Credit for Pass-Through Income

- Elective entity-level pass-through business alternative income tax
  - Pay the tax at the entity level
  - Up to \$250,000 of income at 9%
  - \$250,000+ taxed at 9.9%
- Upon payment of tax, owners of pass-through entities receive state tax credit
- The tax is deductible on the entity's tax return for Federal purposes, without limitation
- Only available for 2022 and 2023 currently

# Washington: Newly imposed State Capital Gains Tax

A dark blue silhouette map of Washington State is positioned on the left side of the slide. The title 'Washington State Capital Gains Tax' is overlaid on the map in white text.

# Washington State Capital Gains Tax

- 7% Tax on Long-Term capital gains realized in Washington State.
- Effective beginning January 1, 2022
- Two Lawsuits have been filed challenging the legality of the tax. (WA has a constitutional statement effectively disallowing income tax)
- \$250,000 exclusion for single or married taxpayers (\$125,000 MFS)
- \$100,000 Charitable deduction
- Real Estate generally excluded however!



# Local Taxes: Wait, There's MORE

## New Metro Tax for Individuals (includes most of Multnomah, Washington, and Clackamas Counties)

## New Metro Tax for Businesses

## Multnomah County Pre- School Tax





*We exist to improve the lives of our people,  
our clients and our communities.*

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# INDUSTRIAL



CAP RATES

4.5 -6.0% =



AVG RENTS

\$0.75-0.95/mo. ↑



VACANCY

4.45% ↓



CONSTRUCTION

2,000,000 SF ↓



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# APARTMENT



CAP RATES

5.0-5.30% =



AVG \$/Unit

\$244,000 ↑



VACANCY

4.20% ↓



CONSTRUCTION

- 45% annual ↓



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# RETAIL



CAP RATES

5.9 – 6.5% =



AVG RENTS

\$20.00/yr =



VACANCY

3.10% =



CONSTRUCTION

454,000 SF ↑



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# OFFICE



CAP RATES

6.0-6.5% =



AVG RENTS

\$28.00/FS =



VACANCY

16.20% ↑



CONSTRUCTION

833,000 SF ↓



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# OFFICE

## BAROMETER THIS WEEK

# 32.5%

10 CITY AVERAGE  
OCCUPANCY



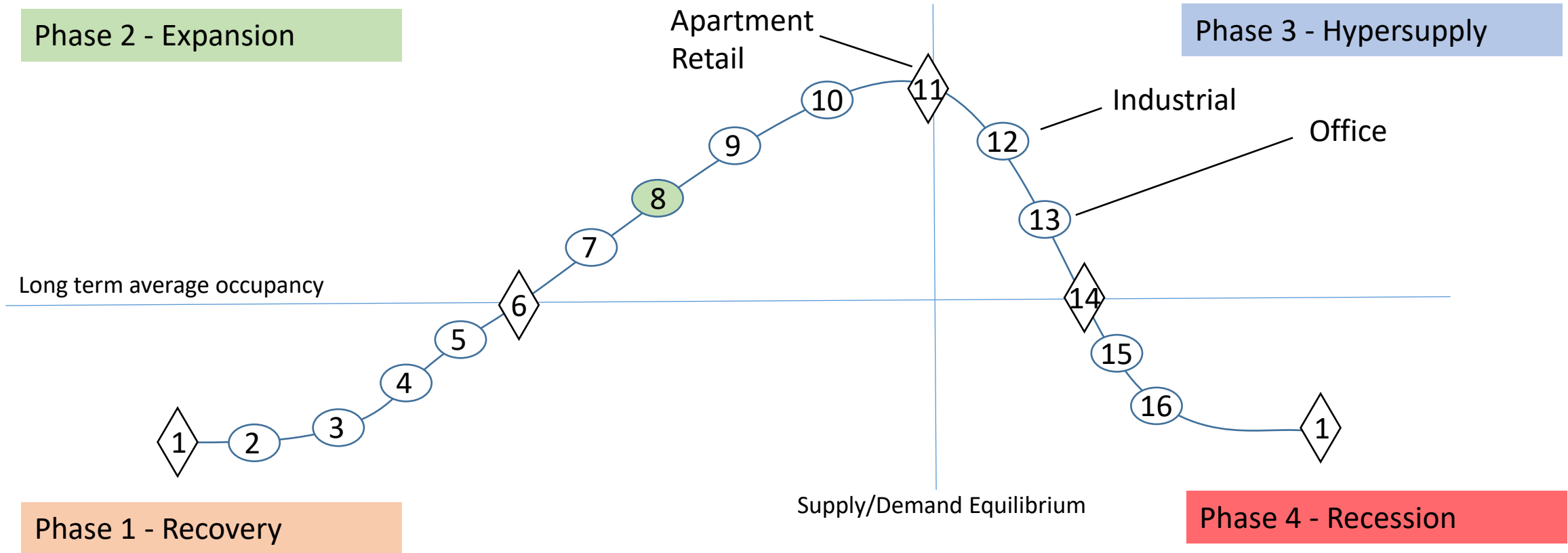
	Wed 11/17	Wed 11/24	% Change
Houston metro	51.8%	42.0%	9.9% ▼
Austin metro	55.6%	46.0%	9.6% ▼
Dallas metro	49.0%	41.6%	7.5% ▼
New York metro	34.7%	28.3%	6.4% ▼
<b>Average of 10</b>	<b>38.8%</b>	<b>32.5%</b>	<b>6.3% ▼</b>
Chicago metro	33.5%	27.6%	5.9% ▼
Washington D.C. metro	34.5%	28.7%	5.8% ▼
San Francisco metro	26.7%	21.8%	4.9% ▼
San Jose metro	29.4%	24.9%	4.5% ▼
Philadelphia metro	36.8%	32.4%	4.3% ▼
Los Angeles metro	35.5%	31.7%	3.8% ▼



## DUCKRIDGE REALTY ADVISORS



# Portland Metro



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# Workforce

## Year-Over-Year Employment Trend Analysis

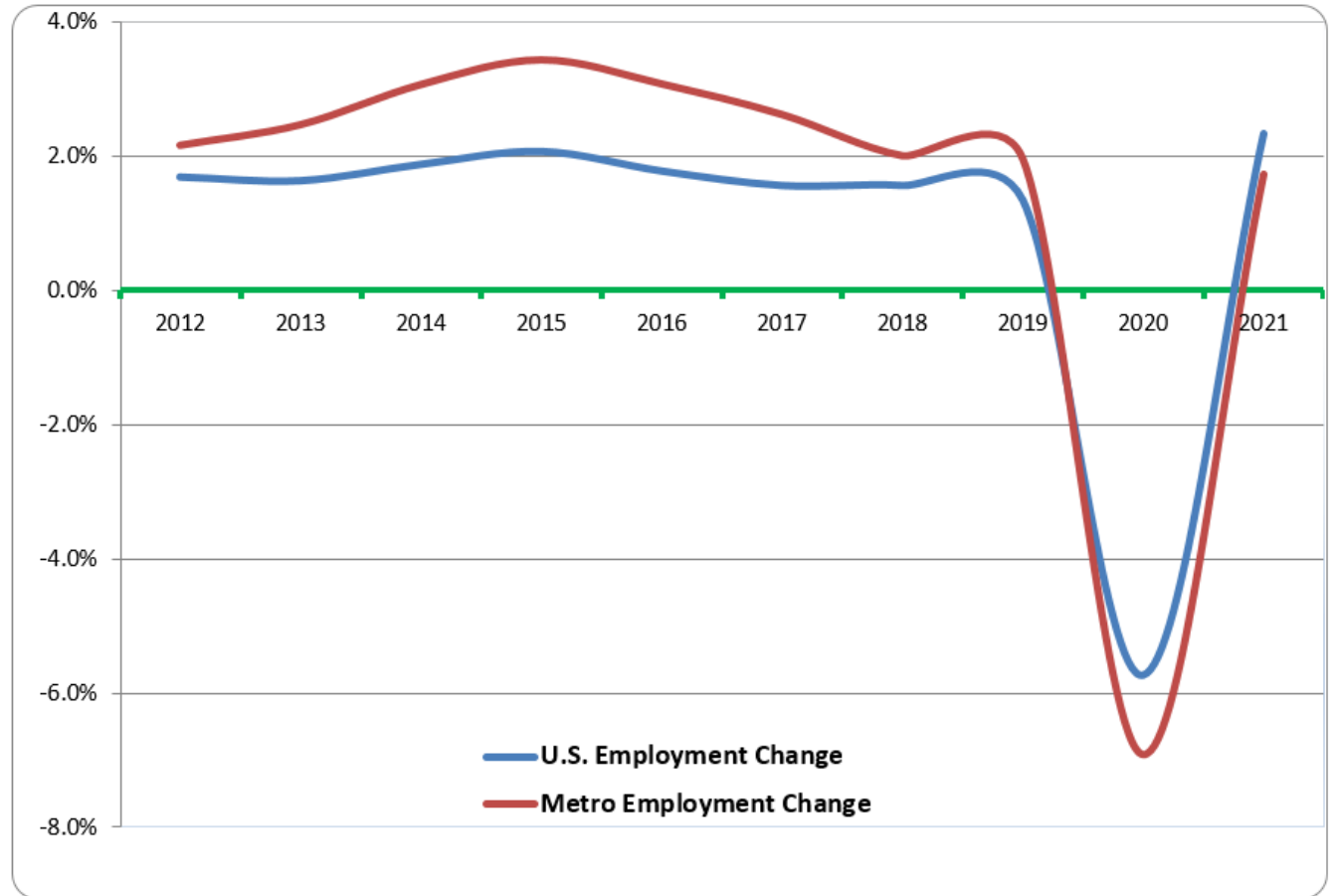
### Total nonfarm Portland-Vancouver-Hillsboro, OR-WA

#### Total Nonfarm

All Employees, (Annual Averages in Thousands)

Year	U.S. Emp.	Metro Emp.	U.S. % Chg.	Metro % Chg.
2011	131,921.7	1,001.0		
2012	134,156.6	1,022.6	1.7%	2.2%
2013	136,355.7	1,047.7	1.6%	2.5%
2014	138,922.3	1,079.7	1.9%	3.1%
2015	141,804.3	1,116.7	2.1%	3.4%
2016	144,332.8	1,151.0	1.8%	3.1%
2017	146,594.7	1,181.0	1.6%	2.6%
2018	148,892.8	1,204.6	1.6%	2.0%
2019	150,900.1	1,228.1	1.3%	1.9%
2020	142,252.4	1,143.1	-5.7%	-6.9%
2021	145,580.9	1,162.8	2.3%	1.7%

10-Year Growth Rate	1.0%	1.5%
Standard Deviation	2.4%	3.0%



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# Workforce

Portland metro area employment (number in thousands)	Sep. 2021	Change from Sep. 2020 to Sep. 2021	
		Number	Percent
Total nonfarm	1,186.6	55.8	4.9
Mining and logging	1.2	0.0	0.0
Construction	78.4	3.8	5.1
Manufacturing	121.9	2.2	1.8
Trade, transportation, and utilities	223.2	7.3	3.4
Information	25.7	0.6	2.4
Financial activities	73.1	0.6	0.8
Professional and business services	199.4	19.8	11.0
Education and health services	180.6	4.7	2.7
Leisure and hospitality	102.1	14.7	16.8
Other services	38.1	0.2	0.5
Government	142.9	1.9	1.3

Industrial

Office

Retail/Hotels

Source: U.S. BLS, Current Employment Statistics.

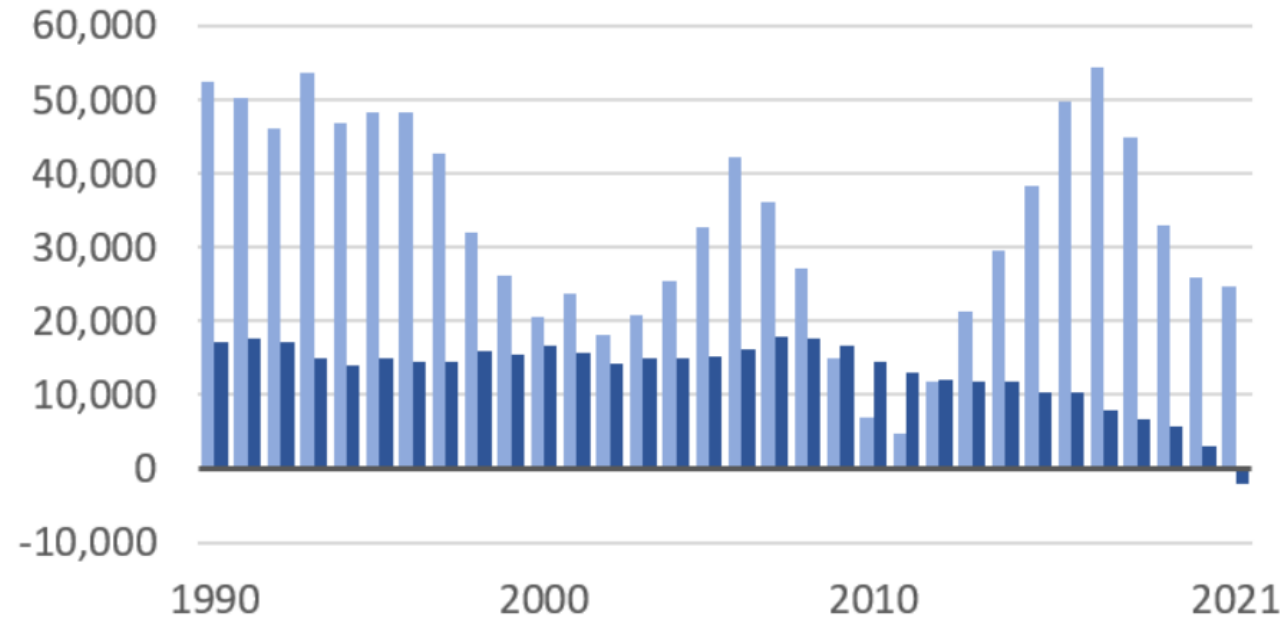


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# Population

## Oregon Population Growth

Natural Increase (Births minus Deaths) | Net Migration



Latest Data: 2021 | Source: Census, Portland State PRC, Oregon Office of Economic Analysis



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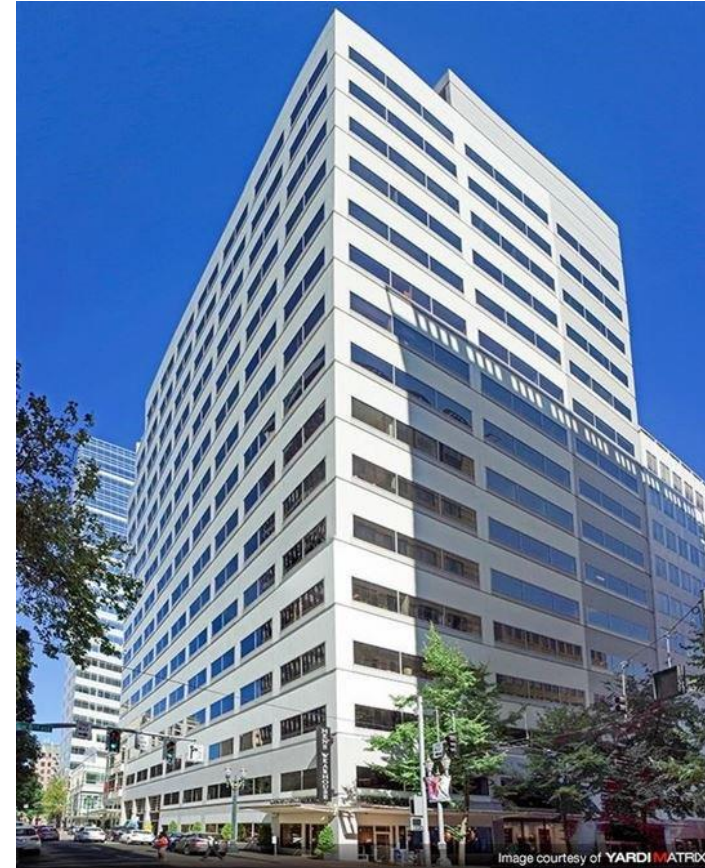
# Qualified Opportunity Zones:

*Tax Efficient Investing &  
Revitalizing the Community*

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Dunn Carney LLP  
*[crathbone@dunncarney.com](mailto:crathbone@dunncarney.com)*

# Leading Counsel for a Changing World

- Largest Real Estate Law practice in Oregon
- Full-service law firm; one of Oregon's largest
- Global reach through Meritas network
  - Meritas network includes 7,500 lawyers in 183 law firms across 242 global markets
- Counsel in real estate, business, litigation, estate planning and more
- Located in Portland, Oregon



# 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.

# 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, i.e. 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





# Why Invest in Qualified Opportunity Zones?

**Gain  
Deferral**

**Basis  
Step-Up**

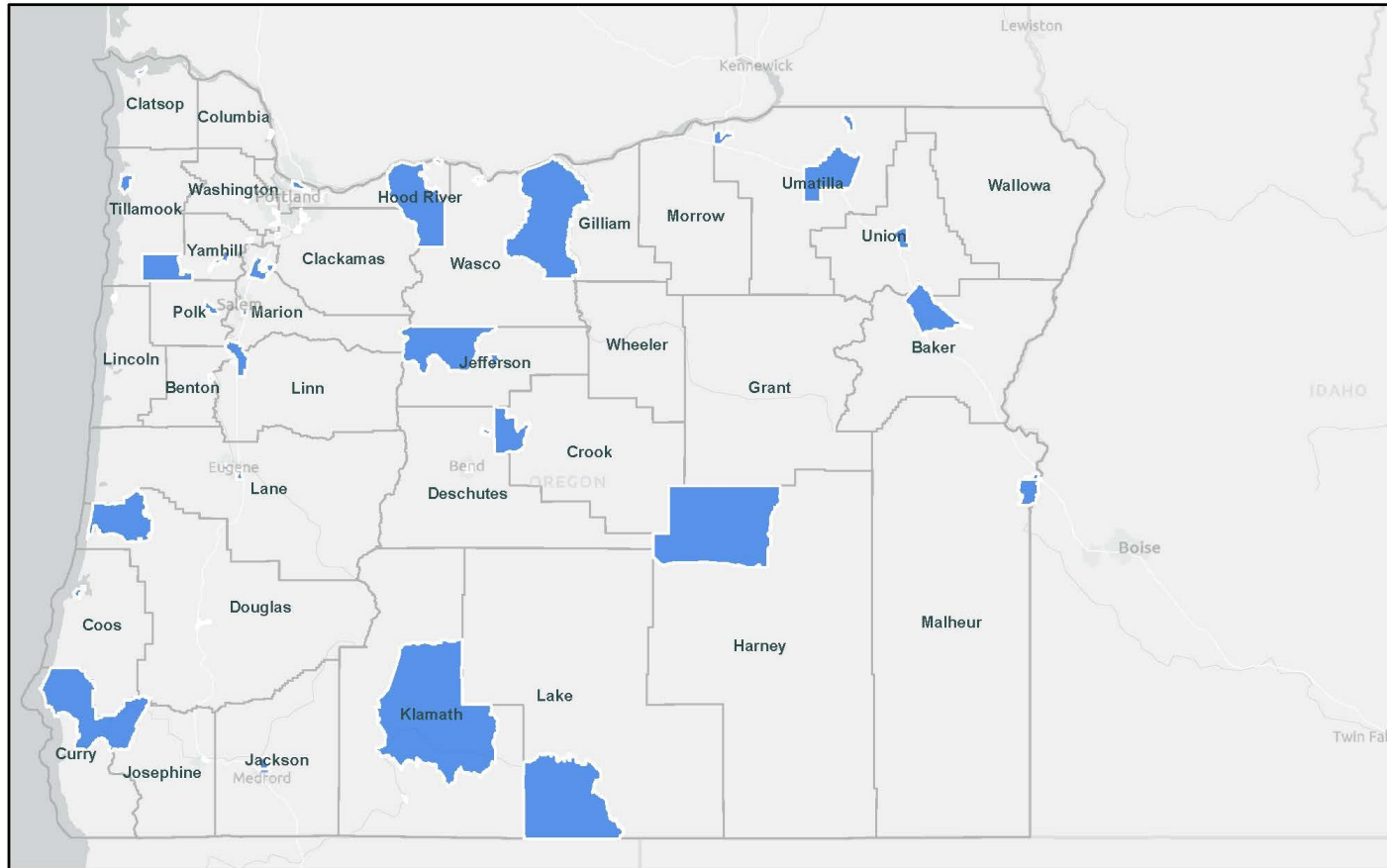
**Gain  
Exclusion**

There are 3 major tax benefits



# Where are the Qualified Opportunity Zones?

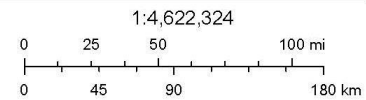


# Oregon Opportunity Zones

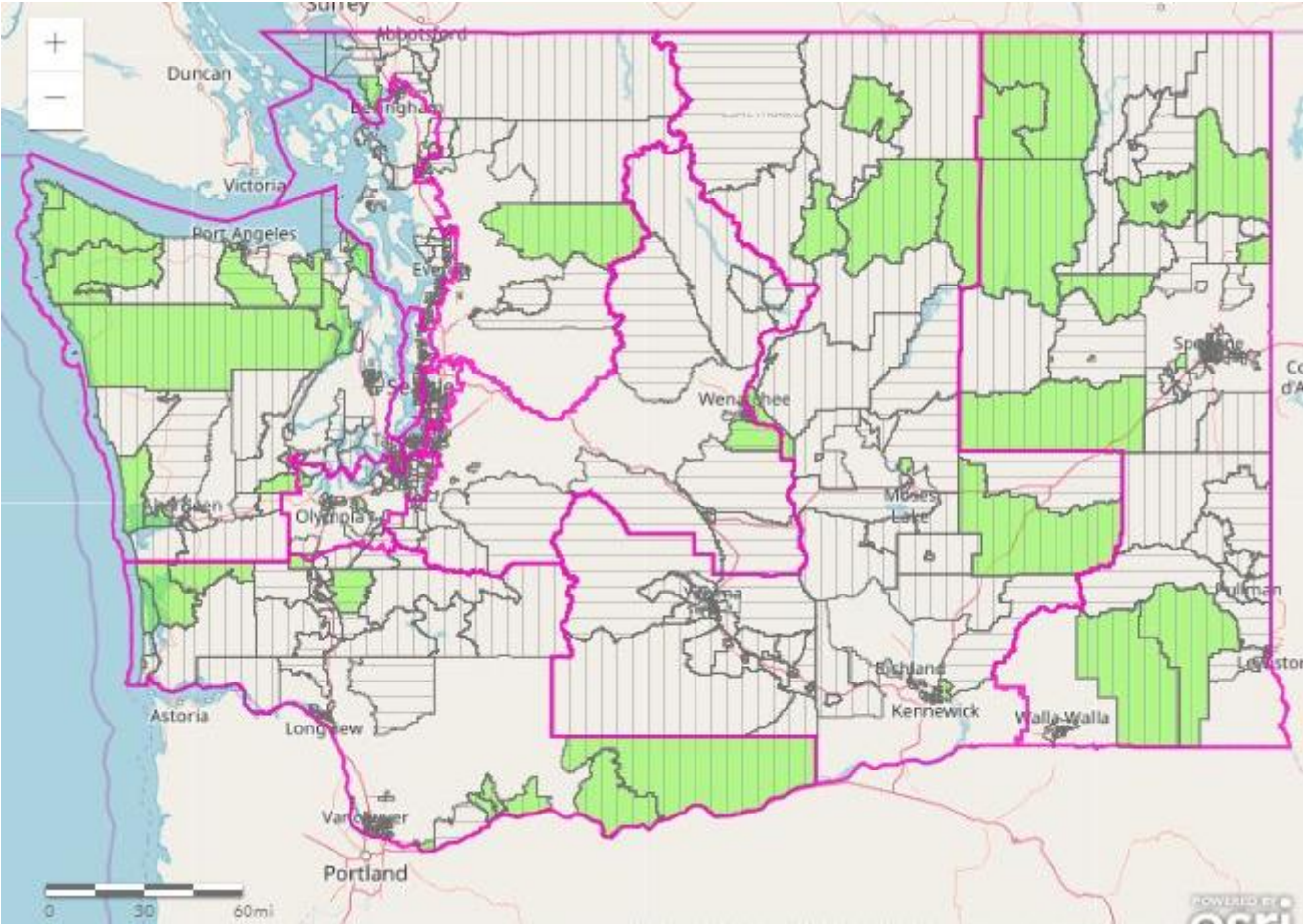


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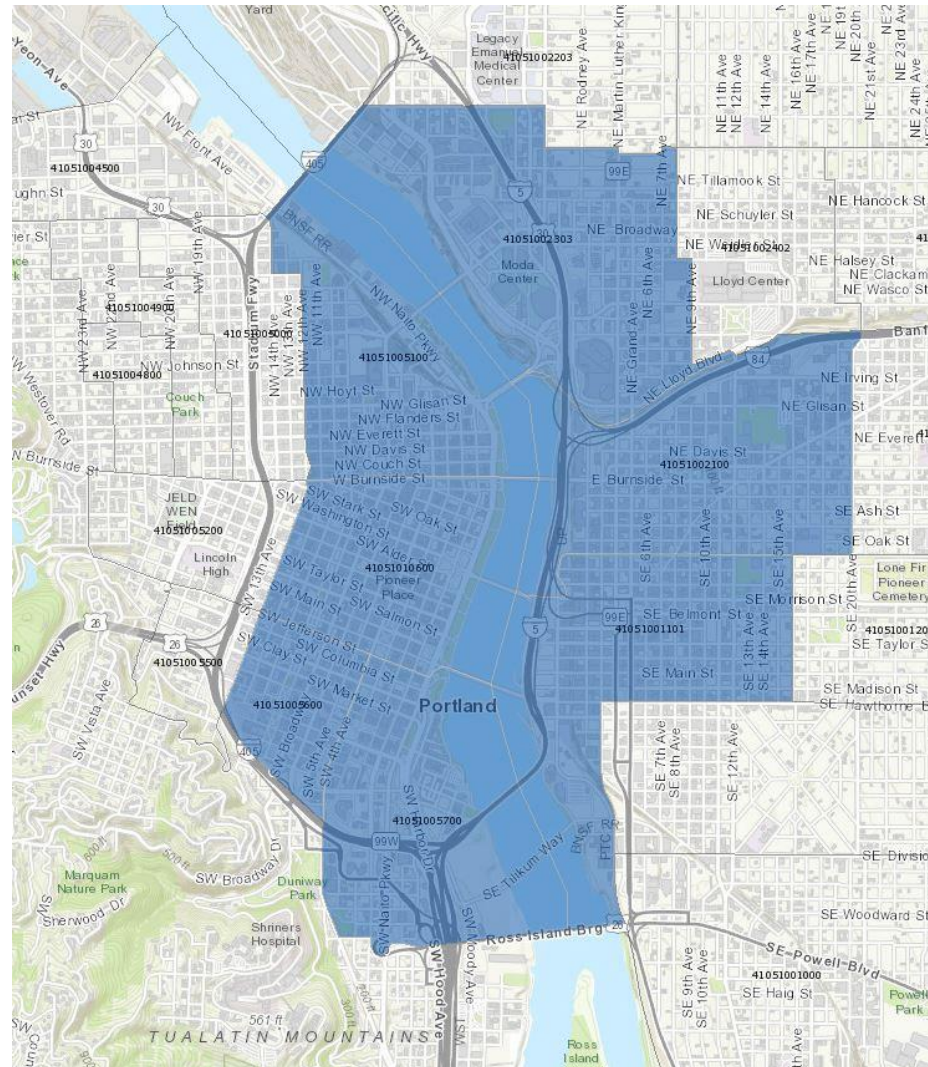
-  Opportunity Zones
-  Counties



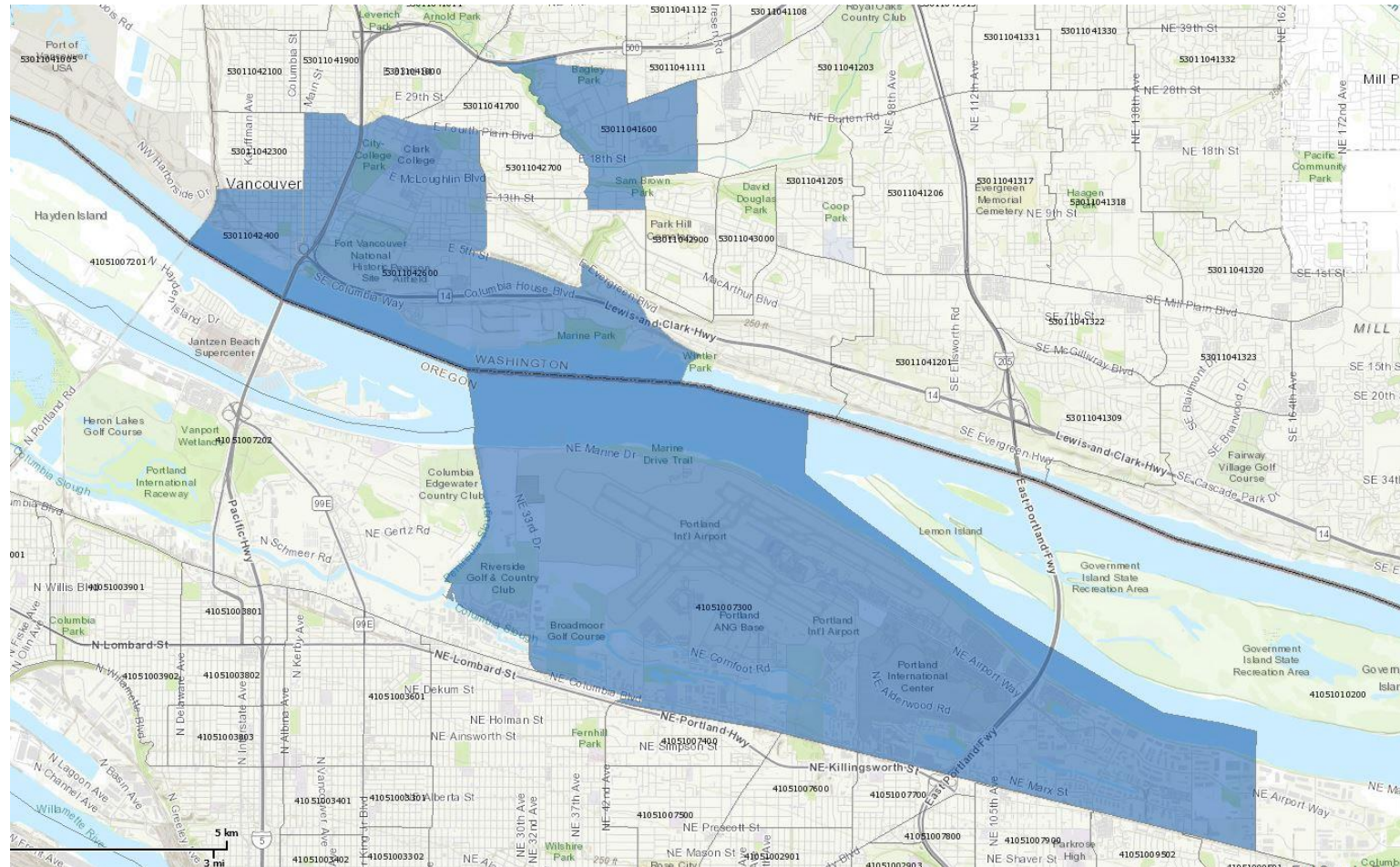
# Washington Opportunity Zones



# Downtown Portland Zone



# Portland International Airport Zone



# Timeline



# QOZ Overlay of Other Laws



**LLC Law**

**Securities  
Laws**

**Tax Laws**





# **How Do I Invest into 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.



# 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

# Breadth of Application

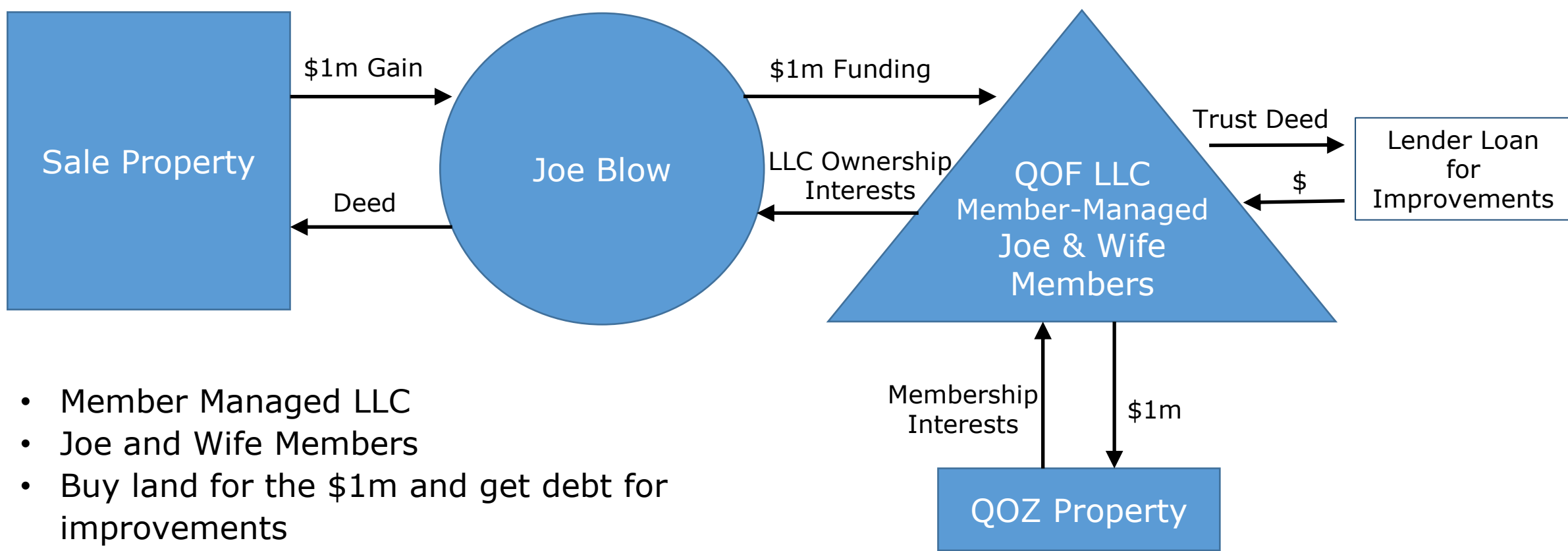


**Mom &  
Pop with  
\$10k  
Capital  
Gains**

**Vanessa  
\$330m  
Offering**

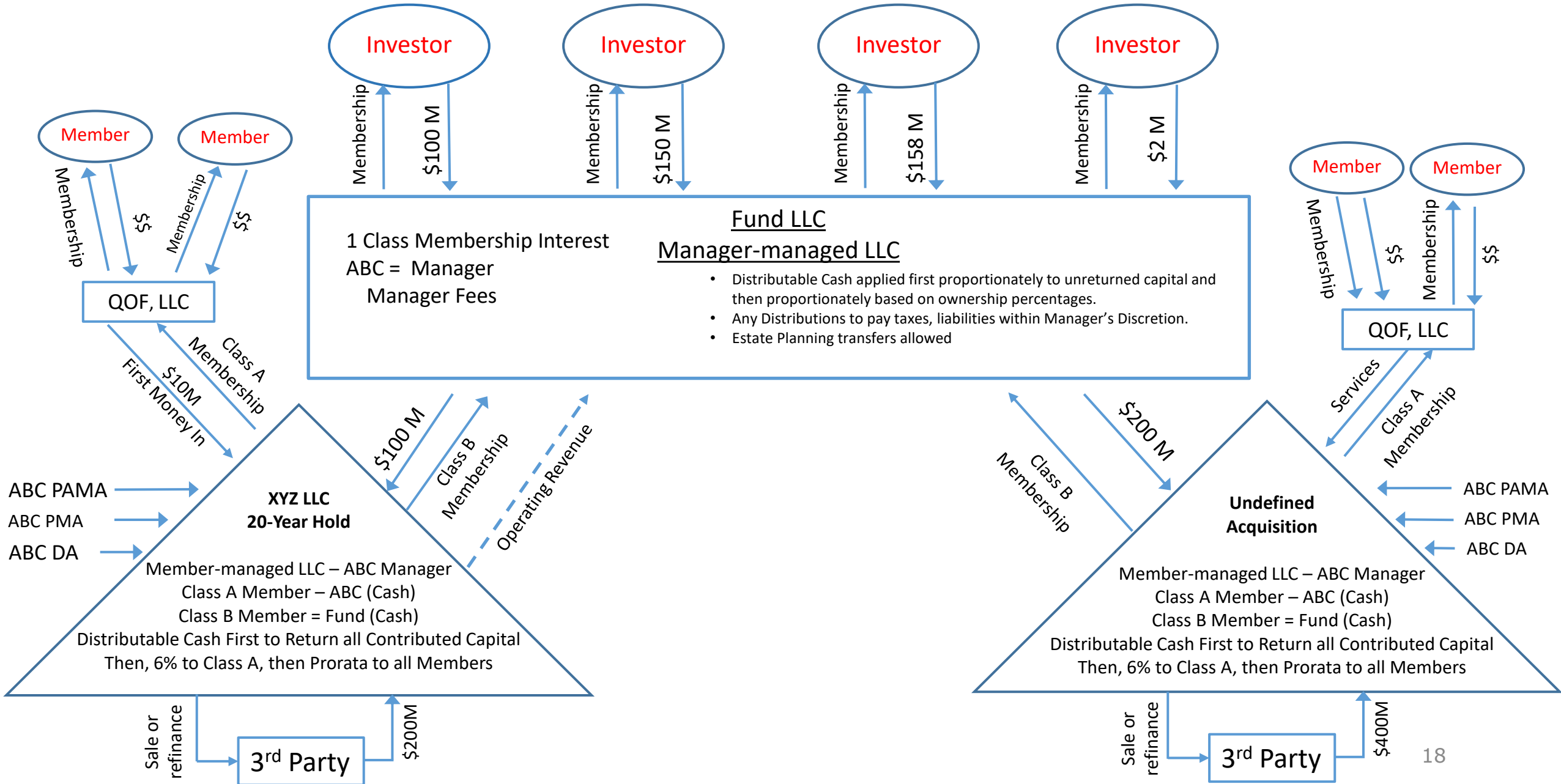


# QOF Not a Security

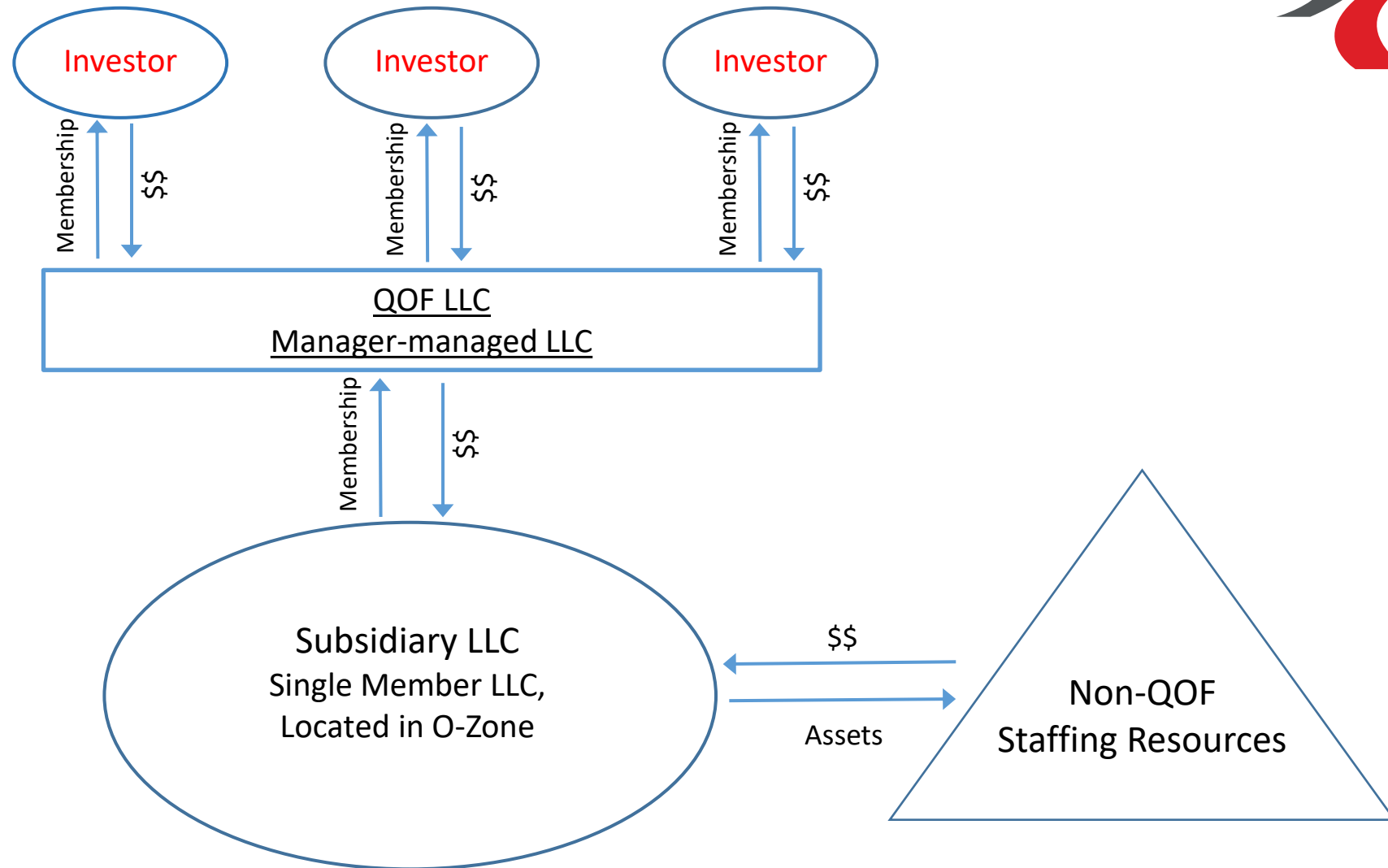


- Member Managed LLC
- Joe and Wife Members
- Buy land for the \$1m and get debt for improvements

# Sidecar Investment



# Creating or Relocating Business into QOZ





# 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



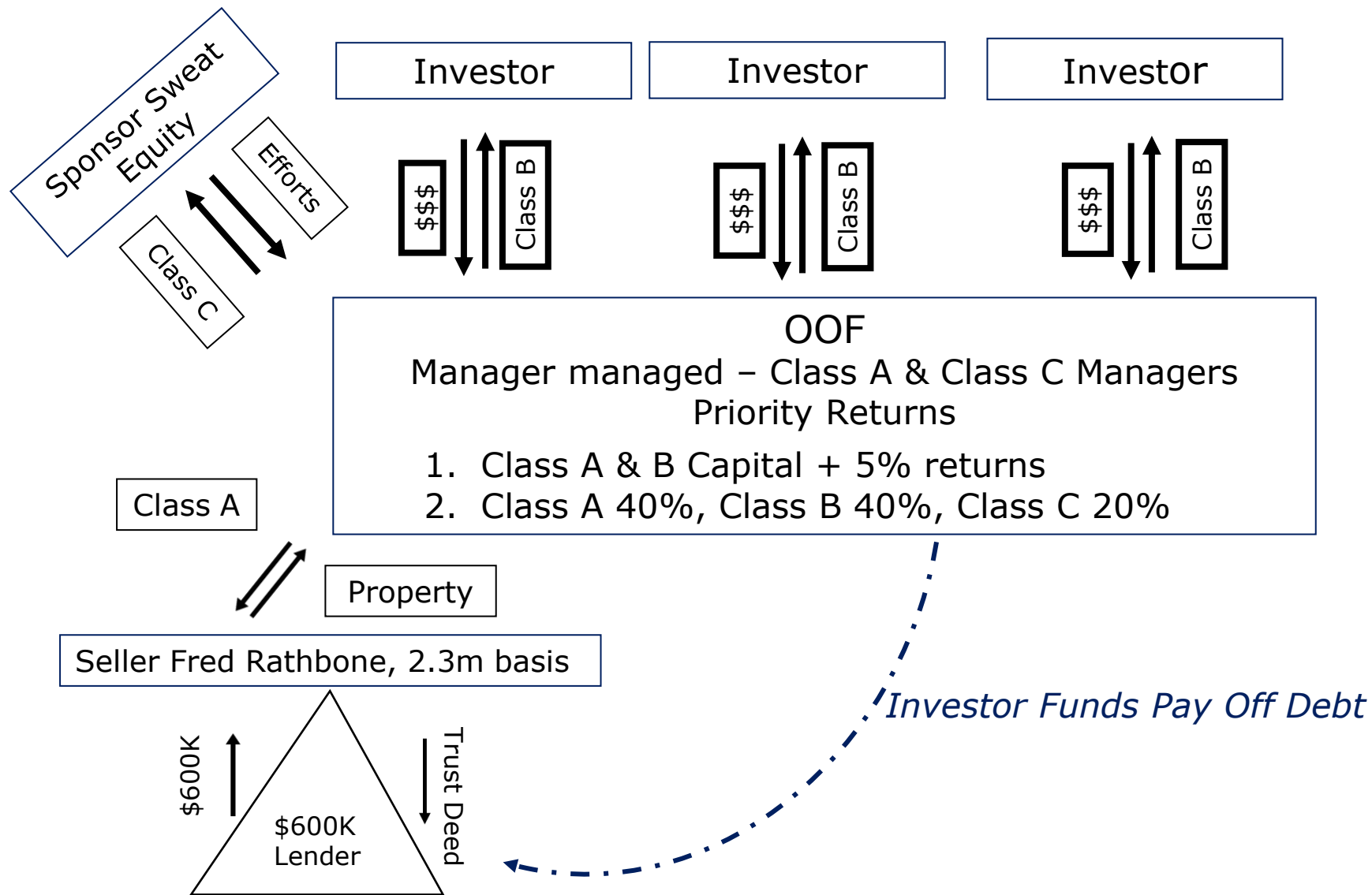


# Lake in the Woods QOF Structure

- 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



# Lake in the Woods QOF Structure



# Projects in Process

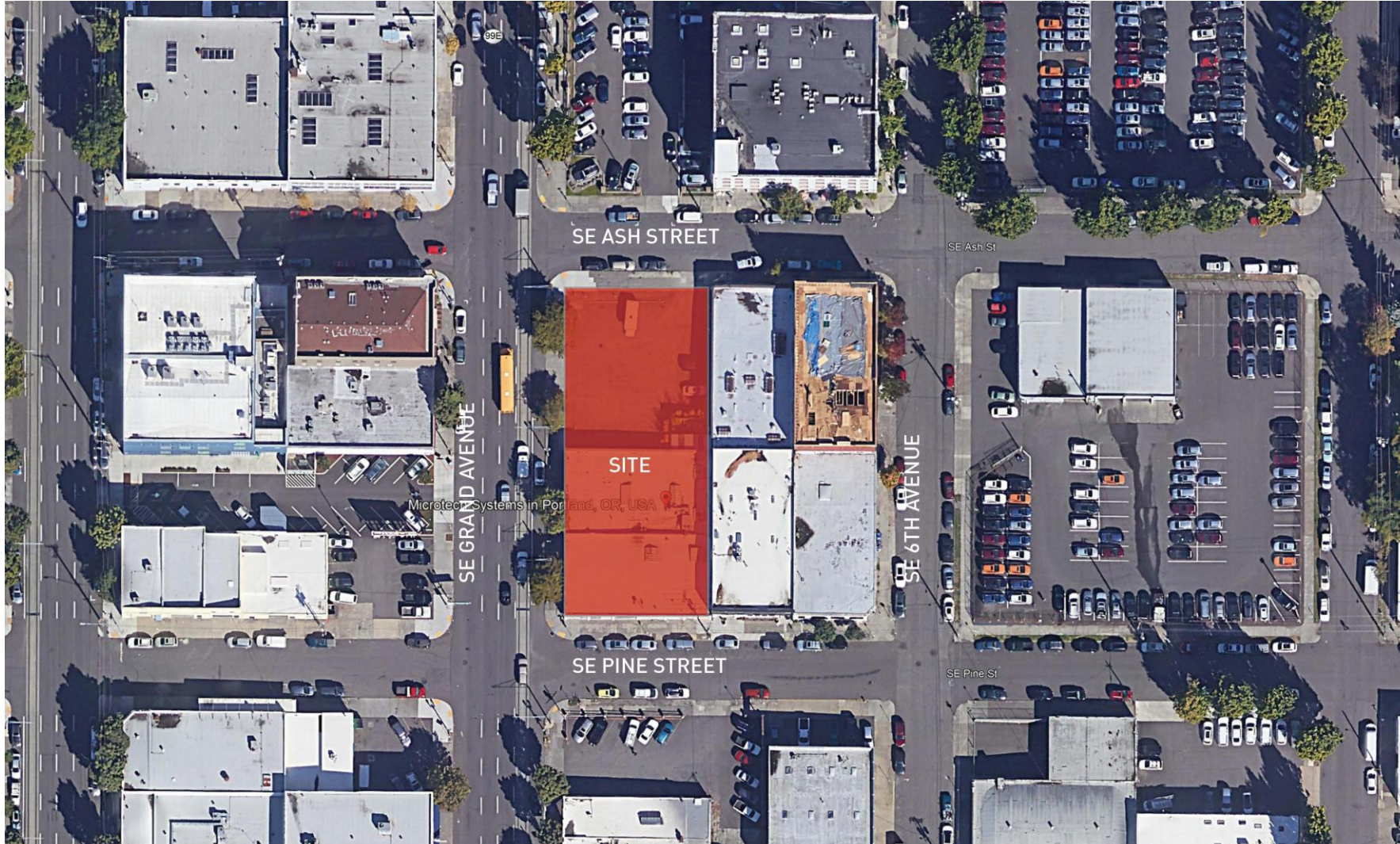


# SDP Grand



**SDP**  
Sturgeon Development Partners  
(503) 479-5733  
[www.sturgeondp.com](http://www.sturgeondp.com)

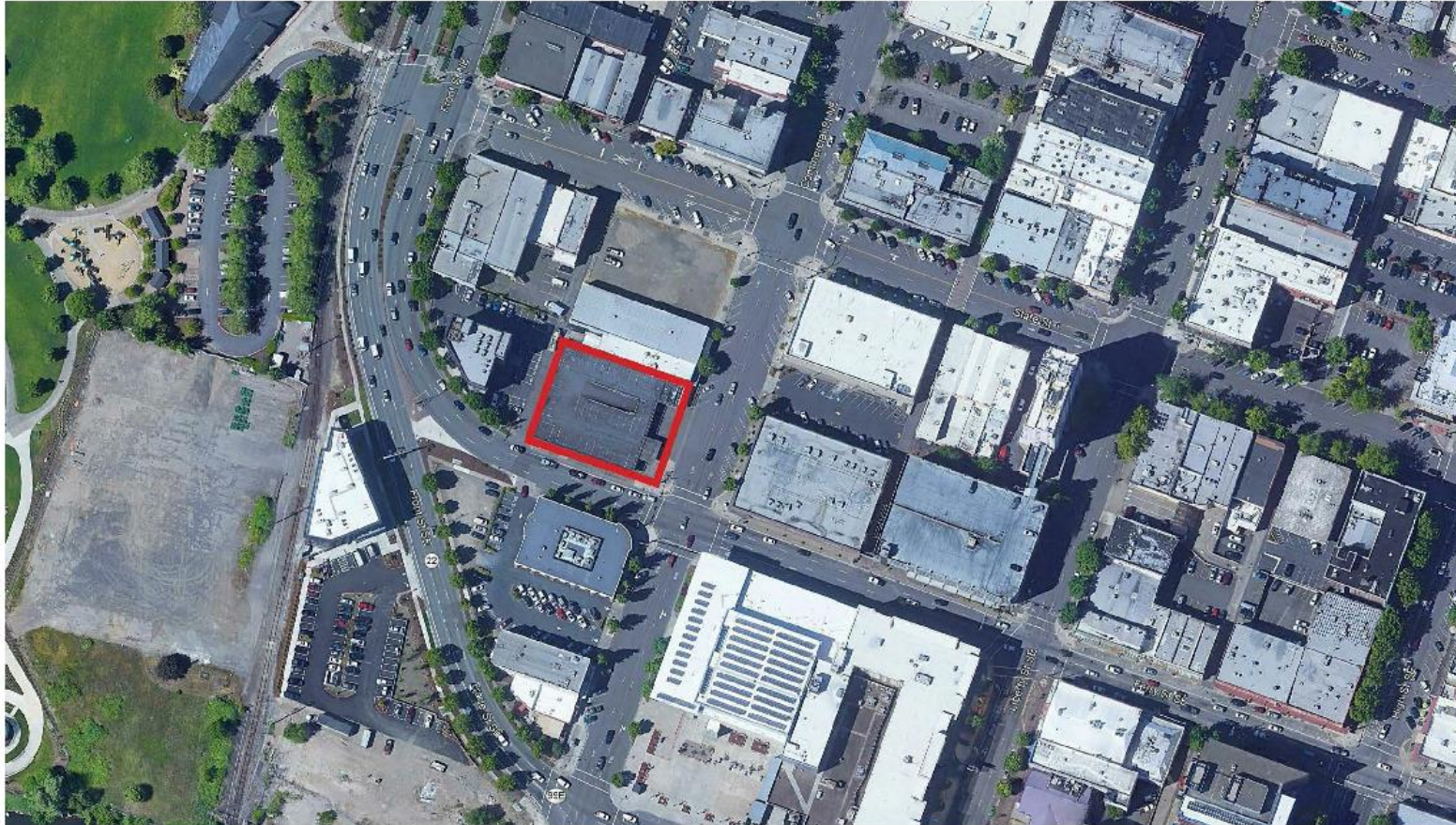
# SDP Grand



**SDP**

Sturgeon Development Partners  
(503) 479-5733  
[www.sturgeondp.com](http://www.sturgeondp.com)

# SDP Salem



**SDP**  
Sturgeon Development Partners  
(503) 479-5733  
[www.sturgeondp.com](http://www.sturgeondp.com)

# Goodman-Downtown Development Group



## Planned 24-story downtown building nets investment from Opportunity Zone fund

Nov 12, 2019, 3:08pm PST

A \$325 million fund has announced an investment in an opportunity zone project in downtown Portland.

Cresset Capital chose the Eleven West project, planned for 1116 S.W. Washington St., as one of three projects it will fund, according a news release Tuesday.

The building is a project by Downtown Development Group and Gerding Edlin and would have 24 stories with 222 apartments, 116,000 square feet of office space and 7,900 square feet of retail, according to Cresset's website.

The project is set to break ground in the first quarter of 2020, according to the Downtown Development Group, which is developing the many downtown properties owned by the Goodman family.

The announcement did not specify the amount of the investment.

The building site is within blocks of another Goodman development, a 35-story tower at Southwest Alder and 10th Street that will include a Ritz-Carlton hotel and is now under construction.

Cresset-Diversified QOZ Fund invests in real estate in major markets across the country, seeking returns from Opportunity Zone tax benefits, according to Cresset's news release.

The federal Opportunity Zone program offers tax incentives for projects in designated urban areas with high poverty rates. But the program has been criticized as a giveaway to real estate developers.

The Portland project will be "the tallest mixed-use building in the West End area of downtown," according to Cresset's announcement, and "will also offer unique, highly desirable office space."

Along with the Portland project, Cresset is investing in a multi-family, office and retail project in Nashville, Tennessee, and a multi-family and retail mixed-use develop in the central business district of Omaha, Neb.



The Cresset-Diversified QOZ Fund announced that it is investing in the Eleven West project in downtown Portland.

**Christopher Bjorke**  
Digital Producer/Associate Editor  
*Portland Business Journal*



# Coos Bay, Oregon



## EXAMPLE OF A SMALL PROJECT FOR LOCAL INVESTORS

- 8,200 s/f lot in the "Up and Coming" Empire Urban Renewal District of Coos Bay
- 900 s/f & 800 s/f buildings, both have been vacant for 3+ years
- Corner lot on the busiest road to Charleston and tourist beaches and attractions
- \$225K purchase price
- Owner Carry of \$150K
- OZ Fund is \$100K
- Bank/Private financing for TI's once tenant is secured.



**Robb Crocker – Principal**  
[www.opportas.com](http://www.opportas.com) – (503) 869-1998



# Reedsport, Oregon



## Welcome Hotel

9,000 sq/ft mixed use building, with ground floor retail space and apartment space upstairs.

Propose building out 10 new apartments, averaging 350 s/f in size with a B+ quality and finish.

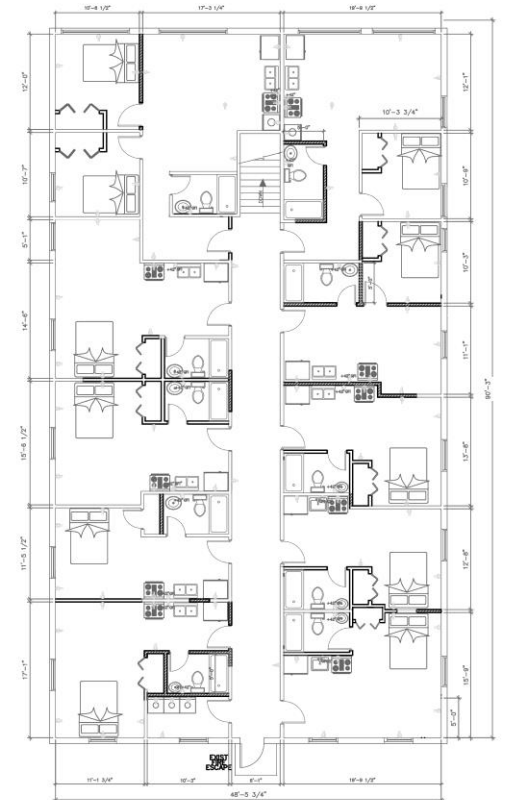
Proposal for \$400,000 Total Equity Investment

Hold for 10-Year Opportunity Zone Tax benefits

Generate 12%+ Cash on Cash Return until Refinance at 36 Months



**Robb Crocker – Principal**  
[www.opportas.com](http://www.opportas.com) – (503) 869-1998



November 4th, 2019 UPDATE

## Meridian Station - Meridian ID

### OVERVIEW

**This large-scale mixed-use development is transformative** to the City of Meridian and to the adjacent historic downtown urban core.

**Meridian is one of Idaho's largest markets** enjoying consistent, sustainable housing growth. Meridian Station will provide 400+ housing units of residential workforce and market rate housing to this community currently experiencing surging population growth. Key office tenants who want to be in the downtown Meridian area are looking elsewhere due to lack of options to locate in Downtown. Meridian in 2019 grew to 114,680 residents, up 7.21% increase from the previous year.



Units	<b>400+/- Residential Units (Rental)</b> <b>100,000SF retail and office space</b> <b>670+ stall Parking Structure</b>
Square Feet:	<b>500,000</b>
Entitlements	<b>12 months</b>
Construction Length:	<b>24 months</b>
Long Term Financing:	<b>60% Loan to Value Max</b>
Estimated Total Cost	<b>\$185MM</b>
Target IRR:	<b>18.5%</b>

## 160 Main Street – Twin Falls, ID

### OVERVIEW

**High Demand, Zero Supply Apartments**, in Twin Falls.

**Located in downtown**, this **6-story multi-family complex** will consist of 4,500 SF of first-floor retail use, 9,500 of second-floor office use, and 48 residential units.

**The site's location**, convenient to the central downtown district in Twin Falls, the City strongly supports the project for providing needed commercial and residential use in the urban core.



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Units	<b>48 Residential units, 14,000SF commercial space</b>
Square Feet:	<b>52,800</b>
Entitlements	<b>Construction start Q2/2020</b>
Construction Length:	<b>18 Months</b>
Construction Loan:	<b>70% Loan to Costs</b>
Long Term Financing:	<b>60% Loan to Value Max</b>
Estimated Total Cost	<b>\$12MM</b>
Target IRR:	<b>18.5%</b>



# QOF Community Benefits Example/Analytics



**LEVERAGE SOCIAL IMPACT**

# New Reporting Form

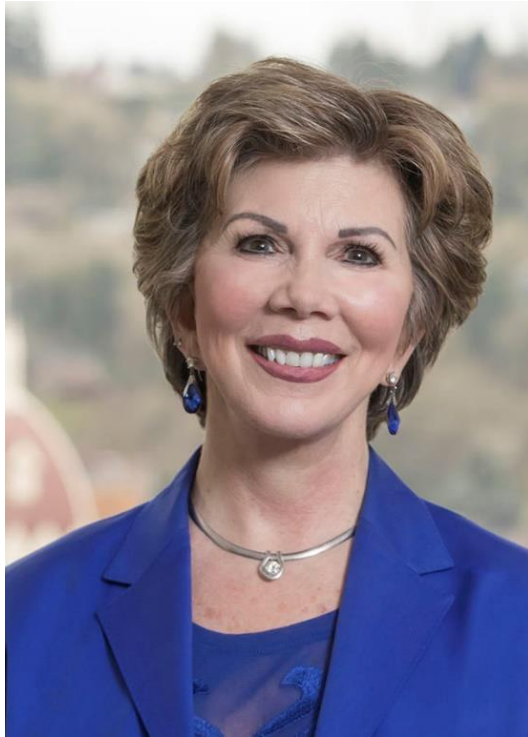


- **Much more accountability and Information required**

# Legislation

- HB4999 – Johnson of Georgia
  - 1) Local Governmental Advisory Board
  - 2) Investment Diversity
    - a) Push Away from cities
    - b) Women and Minority Businesses
    - c) Restricts market Drivers in the Economics of QOZ Deals
  - 3) If housing must have 20% low income
  
- Wyden SB
  - 1) More information Reporting
  - 2) Expands Prohibited Business
  - 3) Eliminates Some Zones
    - a) If happens, needs to grandfather

## **Coni S. Rathbone, J.D., CRE**



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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# 1031's FOR TODAY



*Prepared for*

***Aldrich Advisors***

*December 2021*

*You've Worked Hard for Your Money, We Work Hard to Keep it Yours!*

Presented by David Moore of Equity Advantage, Incorporated - [www.1031exchange.com](http://www.1031exchange.com)

IMPORTANT: Information presented here is provided only as a general resource. It is not intended to provide tax or legal advice for specific facts or particular circumstances. 1031 Exchanges are very complex with potential for serious tax implications. It is recommended you seek the advice of a certified tax professional or a lawyer before taking action





# IRC 1031

## **EXCHANGING CREATES WEALTH**

With roots back to 1921 the 1031 Exchange is an IRS-authorized process where like-kind investment property is exchanged without immediate tax liability to the property owner (Exchangor).

## **Nonrecognition of gain or loss from exchanges solely in kind**

### **In General**

No gain or loss shall be recognized on the exchange of **Real** property held for investment if such property is exchanged solely for **Real** property of like-kind which is to be held for investment.

### **Exception for REAL PROPERTY Held for Sale**

This subsection shall not apply to any exchange of real property held primarily for sale.

### **Application for Certain Partnerships**

For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.

### **Special Rules for Foreign Real Property**

Real Property located in the United States and Real Property located outside the United States are not property of a like kind



# EXCHANGE FALLACIES

1. Like Kind does not mean House for House, Land for Land. Refers to the Nature of Investment and not the Form.
2. Section 1031 does not require a Two-year Hold
3. There is NO limit to the number of properties Relinquished and/or Received.
4. You CAN Carry a Note or Land Sales Contract and still do a 1031!
5. You DO NOT have to Replace Debt in a 1031!
6. 1031 is not an ALL or Nothing affair; Defer as much as you want!



# WHAT are YOU SELLING?

	Section 121	Section 1031
Type of Property	Primary Residence	Any Investment Property or Property Used in Trade or Business
Requirements	Property Held As Primary Residence For An Aggregate Of 2 Of Preceding 5 Years	Any Real Property Held For Investment
Qualifications	Sell the Property	Exchange the Property
Time Period	None	45 Days, and 180 Days
The Money	Can Receive	Cannot Have Actual or Constructive Receipt (Either Cash, Check or Escrow)
Reinvestment	None, Exclusion	Property of At Least Equal Value
Equity	Not Relevant	Must Reinvest Net Equity
Loan	Not Relevant	Loan of At Least Equal Value* *Additional cash may offset a reduction in mortgage



# QUESTIONS to CONSIDER

1. Is the property a primary residence or an investment?
2. Are you going to reinvest the sale proceeds into other real estate?
3. Do you know whether taxes are due on the sale of your property?
4. Are you holding your property primarily for resale? (Dealer Property is not eligible for exchange.)

## **Section 121**

Allows an individual to sell his residence and receive a tax exemption on \$250,000 of the gain. A married couple receives an exemption of \$500,000 on the gain. Section 121 may only be applied to a residential home sale once every two years.

## **Section 1031**

Applies to the transfer of investment or business property and allows an investor to defer the payment of capital gains tax. When exchanging, an exchange facilitator is used. The exchange facilitator will make sure the process runs smoothly by coordinating with the escrow company, creating the “Exchange and Assignment Agreements,” and informing the client and their agent of any time requirements.

A single property can be both 121 and 1031 property. It is also possible to convert a property from one section to another.

If an investor exchanges into a property that is later converted to a primary residence, it is necessary to hold the property for no less than five years or the sale will be fully taxable.



# “SEASONING” HOW LONG is LONG ENOUGH?

In *Patrick A. Reesink et ux. v. Commissioner* (Patrick A. Reesink et ux. v. Commissioner; T.C. Memo. 2012-118; No. 2475-10), the taxpayer's attempt to rent a replacement property for several months before subsequently giving up, selling their personal residence, and finally moving into the replacement property satisfied the requisite intent to hold for productive use in a trade or business or for investment as requirement under IRC §1031.

The IRS does realize that people's circumstances may change; therefore, it is possible for a property to change in character over time. Your primary residence could become an investment property or a rental house may become a primary residence. It is possible that a property that was originally acquired to fix up and sell could later become a rental and therefore be considered investment property.

A non-related party exchange has NO required holding period though if asked I will typically state One-year would be nice. The reasons for the One-year answer are two fold; first, it's been proposed several times during my 30 years in the business and second, the break between short and long-term tax rates on investments has the break at One-year.

**The Taxpayer's intent is typically much more important than even the length of time the property is held.**

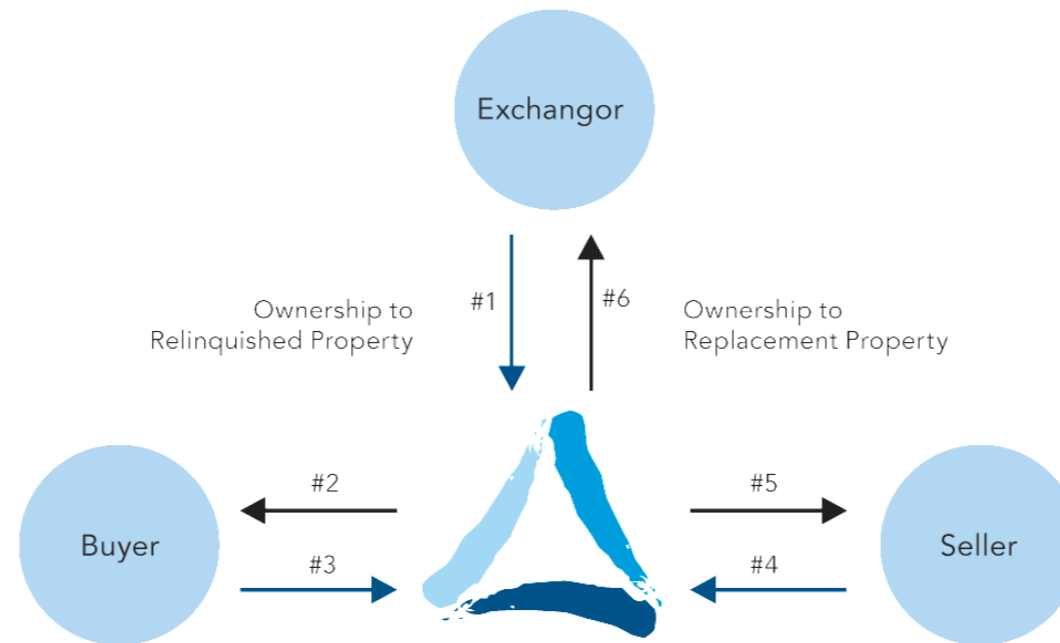


# EXCHANGE CORNERSTONES

## THE CORNERSTONES

1. It must be an exchange-something is given away and something is received
2. The items relinquished and received must be of like-kind
3. The Napkin Test must be satisfied
4. There must be Continuity of Vesting

# STEPS of a DELAYED EXCHANGE



## PHASE I

1. Ownership of the relinquished property is transferred to Equity Advantage.
2. Ownership is then immediately transferred to the buyer of your property.
3. Proceeds are wire-transferred from escrow to a bank designated by Equity Advantage.

## PHASE II

4. At replacement property closing, the exchange proceeds will be wired to escrow.
5. Ownership to the replacement property is transferred to Equity Advantage.
6. Ownership to the replacement property is transferred from Equity Advantage to the Exchangor.



# EXCHANGE TIMELINES



A “Delayed Exchange” contains strict timelines which must be met for an exchange to be valid.

## **The 45 day Identification Period**

Begins the day the Relinquished Property is transferred by the Exchangor, usually considered the closing of escrow. An Exchangor has 45 days to identify a replacement property.

## **180 day Exchange Period (180 days or the Due Date for the Tax Return)**

Also begins the day the Relinquished Property is transferred by the Exchangor. The Exchangor has 180 days to complete the exchange.

### ***Practice Tip:***

*When Beginning a 1031 late in a Tax Year it is critical the Exchange be completed before filing a return. If approaching a Tax Return Deadline before the Exchange is complete an Extension must be filed.*

***These timelines cannot be extended unless an investor’s exchange is effected by a Federally Declared Disaster.***





# PROPERTY IDENTIFICATION

The identification must be sent or delivered in writing by the Exchangor to someone involved in the exchange who is not a disqualified party. For an identification to be valid it must be received by a qualified party by midnight the 45th day. Identifications are usually made to the Facilitator.

Properties must be “unambiguously” identified by address or legal description.

The property received must be “substantially the same” as that identified.

The taxpayer may identify:

- a. Up to three properties of any value, or
- b. Any number of properties providing the total value of all the identified properties does not exceed 200% of the fair market value of all property relinquished.
- c. If more than three properties are identified and they exceed 200% of the relinquished property’s value, 95% of the aggregate value of the properties identified must be acquired.

**Each rule works independently of the other, only one option must be satisfied.**



# WHEN CAN I GET MY MONEY?

The Exchangor can withdraw funds only if he does not violate any of the safe-harbor requirements of IRC 1031 (referred to as the g(6) requirements) and the payment is pursuant to the written Exchange Agreement. **If an Exchangor has the right to withdraw funds, the safe-harbor protection is lost, whether or not funds are actually withdrawn.**

## **Payment Can Only be Made After:**

- ◆ The Identification Period, if no Replacement Property is identified **or**
- ◆ After receipt of all identified Replacement Property **or**
- ◆ At the end of the Exchange Period **or**
- ◆ After a major contingency relating to the exchange that is out of the control of the Exchangor (such as destruction of the property, a zoning change, or regulatory approval) that is provided for in the exchange agreement ("Major Contingency Requirement").



# OPPORTUNITY #1

## SITUATION

Homeowners have a primary residence with gains of roughly \$3 million. They do not want to pay the tax on such a gain and section 121, the Universal Exclusion only protects \$500k.

## SOLUTION

1. Move out of the home establishing it as an investment
2. After seasoning the property as an investment the property is put on the market.
3. Still satisfying section 121 \$500k is received at closing.
4. A 1031 exchange is utilized to defer the balance of the gain.
5. Twenty-four replacement properties were acquired.

The transaction deferred all taxes while still enabling the couple to take advantage of the \$500k exclusion they were entitled to.



# OPPORTUNITY #2

## **Situation**

Builder/Developer's Investment Land has fallen into foreclosure due to the Economic Downturn. The Builder does not want to lose the land and to make things worse the bank holding the loan is failing. If the bank fails, the property will be lost, all \$1.8M of Equity!

## **Solution:**

The solution was again a new Checkbook IRA for Dad and a second LLC for to jointly own the property and receive Dad's Checkbook IRA investment.

The New LLC is created and Son contributes the land and receives an Membership Interest attributable to the equity in the property while simultaneously his Father's IRA LLC makes a cash investment of roughly \$1.4M. The new LLC now owns the land and has the cash to pay it off. In the future the property is built out as an Apartment Building.



# OPPORTUNITY #3

## **SITUATION**

Apartment owner is nearing retirement and is interested in selling an apartment building. The terrible T's haven't taken their total and the taxpayer would like to take advantage of today's prices and acquire an investment home in the desert to someday retire into.

## **SOLUTION**

The taxpayer chooses to do an exchange out of his \$3M apartment building acquiring a new investment home in the desert for \$1M.

While still having some tax exposure the exchange deferred \$250k in taxes.

After seasoning the home as an investment, the home is converted to a residence for the Exchanger.



# OPPORTUNITY #4

## SITUATION

Exchangor owns a TIC that is being foreclosed. Even though all equity is being lost the, Exchangor will have tax exposure due to debt over basis triggered “phantom gain”.

The Exchangor has the following options:

1. Lose everything and pay tax to do it
2. Do a 1031 exchange

## SOLUTION

A 1031 Exchange is structured with the property being foreclosed transferred to the exchange facilitator prior to foreclosure.

The Exchangor has 180 days from the transfer date to acquire the replacement property.

The exchange was completed when the Exchangor spent the money that would have been paid in taxes as a down payment on the new investment,



# OPPORTUNITY #5

## **OPPORTUNITY**

A mobile home/RV park is available and the investors would like to acquire the park using their IRAs. They would also ideally like to manage the park while living in the manager's quarters and receive compensation.

## **SOLUTION**

Since IRAs prohibit any benefit to a prohibited party and the account owners are clearly prohibited parties an IRA will not work. The solution was a "Roll Over Business Startup" (ROBS). A new 401(k) plan was created along with a new C-Corporation. The plan bought the shares of the C-Corporation which then bought the Mobile Home Park.

**The investors were then employed by the new Corporation and have a new Investment, Business Job and Home!**



# Our Services Bring Opportunities

## ◆ [IRAadvantage.com](http://IRAadvantage.com) Self-directed Retirement Accounts

Using one of IRA Advantage's Checkbook Advantage IRAs or Solo 401(k)s it is possible to acquire notes, Real Estate and other REAL investments by simply writing a check... Besides being one of the world's oldest investments Real Estate has proven to be a great hedge against inflation! Take advantage of today's Real Estate opportunities.

## ◆ [post1031.com](http://post1031.com) Investment Property Offerings

Our property listing site offers the investment Real Estate community a place to post and browse investment property. It is also possible to simply post haves and wants. The website is aimed at making real estate move!

## ◆ [1031exchange.com](http://1031exchange.com) 1031 Exchanges

Through Equity Advantage we continue to offer the same great exchange services we have provided since 1991. Take advantage of our consultants whether working to get a listing or to find solutions to that difficult transaction, we are here to help you get the deal done.

**For more info please email [cmoore@1031exchange.com](mailto:cmoore@1031exchange.com)**


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