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OPPORTUNITY ZONE PROGRAM

INTRODUCTION

A new tax incentive program to encourage private investment in low-income community businesses was included in the Tax Cuts and Jobs Act (the "Act"), signed into law on December 22, 2017. Under the new program, a taxpayer can elect to temporarily defer gain on the sale of appreciated securities or other property to the extent that the taxpayer reinvests the amount of the gain into an Opportunity Zone through a "qualified opportunity fund." As discussed below, further tax incentives allow for the permanent exclusion of up to 15% of this deferred gain, as well as the permanent exclusion of gain realized from the post-acquisition appreciation of the taxpayer's investment in the qualified opportunity fund.

An Opportunity Zone is a "low-income community" nominated by the governor and designated by the U.S. Treasury Secretary as a qualified opportunity zone under the Act. South Carolina has 135 approved zones, which can be viewed at www.scopportunityzone.com.

WHAT ARE THE TAX INCENTIVES

There are three tax incentives under the Opportunity Zone program:

1. Deferral of Gain for Proceeds Reinvested in an Opportunity Fund

The first tax incentive allows a taxpayer to defer the capital gain from the sale of any appreciated property to an unrelated person to the extent that proceeds from the sale are reinvested in a qualified opportunity fund during the 180-day period beginning on the date of the sale. The property sold can be stock, business assets or personal assets and need not be located in, or connected with, the Opportunity Zone. The taxpayer recognizes the deferred gain on the earlier of two dates: either the date the taxpayer's opportunity fund investment is sold or December 31, 2026.

2. Partial Exclusion of Deferred Gain for Fund Investments Held for 5 Years and 7 Years

The second incentive provides for an increase in the taxpayer's basis in the opportunity fund investment if the taxpayer holds the investment for a required period of time. For opportunity fund investments held for 5 years, the taxpayer's deferred gain is reduced by 10%, and for opportunity fund investments held for 7 years, the taxpayer's deferred gain is reduced by 15%.

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3. Complete Exclusion of Gain on Appreciation of Fund Investments Held for 10 Years

The third tax incentive provides that the taxpayer's basis in an opportunity fund investment held for at least 10 years is equal to the fair market value of the investment on the date the investment is sold. The effect of this provision is to exclude from the taxpayer's gross income all of the post-acquisition gain on the appreciation of the taxpayer's opportunity fund investment when the investment is sold.

CONCLUSION

The new Opportunity Zone tax incentives present tremendous planning opportunities for tax savings for taxpayers who are able to qualify for these incentives under the Act. Considering that no deferral elections are allowed after December 31, 2026, that Opportunity Zone designations expire on December 31, 2028 and that the tax incentives for qualified fund investments are enhanced at 5-year, 7-year and 10-year holding periods, taxpayers interested in obtaining Opportunity Zone tax incentives should begin planning with their tax advisor as soon as possible.

For more information on how you can take advantage of Opportunity Zone tax incentives, please contact a member of Haynsworth Sinkler Boyd's economic development or tax practice groups.