The Sherbert Group is a unique integration of companies that provide valuable tax, accounting, investment and consulting services to clients in the tax credit industry.

- Serving clients in 13 states
- Combined portfolio of $4 billion
- Member of the American Institute of CPAs Government Audit Quality Center
- Expertise & experience in a variety of state & federal tax credits
- Specializing in real estate tax credits
Introduction

• Qualified Opportunity Zones were added to the Internal Revenue Code by the 2017 Tax Cuts and Jobs Act (The “2017 Tax Act”) by Code sections:
  • 1400Z-1 discusses designation of Opportunity Zones.
  • 1400Z-2 discusses how to invest capital gains into opportunity zones and receive significant tax benefits.
Who Can Benefit?

• Literally any US taxpayer with capital gains *(net 1231 capital gains)* can potentially benefit from this new tax incentive. This Includes:
  • Individuals or corporations looking to reinvest gains from sales of property in order to defer and reduce taxes;
  • Real estate developers and start-up companies located in an Opportunity Zone who are looking for equity investment; and
  • Real estate sponsors, syndicators and/or private equity funds looking to create Opportunity Funds and then make investments in Qualified Opportunity Zone Property, including investments in corporations, partnerships or direct investments in property.
3 Major Buckets of “Opportunity”

- A taxpayer who timely reinvests gain from a sale of property into a “Qualified Opportunity Fund” (“Fund”) can enjoy the following tax benefits:
  - **Bucket 1 - Deferral**: Gain on a property sale that is invested in a Fund is deferred until the earlier of the date that the taxpayer sells its interest in the Fund or December 31, 2026.
  - **Bucket 2 - Capital Gain Reduction**: If the taxpayer invests in the Fund for at least 5 years, 10% of the original gain is excluded; if the investment lasts for at least 7 years, an additional 5% (for a total of 15%) of the original gain is excluded.
  - **Bucket 3 - Appreciation Exclusion**: If the taxpayer invests in the Qualified Opportunity Fund for at least 10 years, all appreciation in the new investment will be tax-free.
Bucket 1 – Deferral of Capital Gain

- Investor Sells an Investment or Property for a Capital Gain of $100
  - Reinvests the Capital Gain in a Qualified Opportunity Fund
- Capital Gain of $100 is deferred until the earlier of:
  - Date on when NEW investment is SOLD or Exchanged, or
  - December 31, 2026
- How much Gain is Recognized?
  - Lesser of the amount of gain excluded originally or the sales proceeds
- What does this mean?
  - Original Gain $100
  - Reinvestment $100
  - Sale in 2020 for $90
  - In 2020 your deferred gain of $100 is recognized as $90 gain
Bucket 2 – Reduction of Gain

- If New Investment is held for 5 years, the basis in the Investment is increased by 10%
- If New Investment is held for 7 years, your basis in the Investment is increased by 15%

This can result in the reduction of the original deferred gain

Examples:

1. Original reinvested gain $100 (12/31/2018)
   Sell in 2022 for $90
   Gain recognized $90 (no reduction of gain since not held for 5 or 7 years)

2. Original reinvested gain of $100 (12/31/2018)
   Sell on 1/1/2024 for $90 (5 years plus 1 day)
   Basis = $0
   Increase in Basis 10% x $100 = $10
   Sales Proceeds $90 (A)
   Adjusted Basis = $10 (B)
   Resulting Gain $80 (A) – (B)
Bucket 3 – Permanent Exclusion of New Investment Acquisition Appreciation

• For Investments held by taxpayer for at least 10 years, the basis of such property = FMV at the time the investment is sold or exchanged for Qualifying Investments made between Now & December 31, 2028

• Example – Investment in Fund is Held for 10 Years and Sold in 2028
## Example – Investment in Fund is Held for 10 Years and Sold in 2028

### Opportunity Zone Investment Held for at least 10 Years

<table>
<thead>
<tr>
<th>Bucket 2 - Reduction of Gain</th>
<th>Ordinary Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred Gain (taxed in 2026)</td>
<td>$100.00</td>
</tr>
<tr>
<td>Basis Step-up</td>
<td>15.00</td>
</tr>
<tr>
<td>Taxable Gain</td>
<td>85.00</td>
</tr>
<tr>
<td>Tax (at 23.8%)</td>
<td>$20.23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bucket 1 - Present Value of Deferral of Gain (assumed sale on 12/31/2018)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Present value of tax @ 10% discount rate</td>
<td>$9.44</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bucket 3 - Permanent Exclusion of New Investment Appreciation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gain on Disposition of Investment in Fund</td>
<td>$100.00</td>
</tr>
<tr>
<td>Basis Step-Up</td>
<td>100.00</td>
</tr>
<tr>
<td>Taxable Gain on Disposition</td>
<td>0.00</td>
</tr>
<tr>
<td>Tax (at 23.8%)</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

**TOTAL BENEFITS** | $38.16

**BENEFITS AS A PERCENT OF ORIGINAL GAIN** | 38.16%
What is a Qualified Opportunity Fund?

- A Corporation or Partnership organized for the purpose of investing in “Qualified Opportunity Zone Property” that holds at least 90% of its assets in QOZP
  - 90% determination is made at 6 month and year end measurement periods (test can be performed without taking into account investments received in preceding six months for investments held in cash or debt instruments of 18 months or less)
  - If a Opportunity Zone does not have at least 90% of its assets in QOZP, then fund assets (not invested in QOZP) are penalized at the same interest rate for underpayments of Federal Taxes under IRC Section 6621 – 6% starting in January – no penalty if failure is due to “reasonable cause”, which has not been well defined.
  - Calculation = Shortfall amount x underpayment rate divided by 12
  - This is reported on Form 8996
Qualified Opportunity Fund

- Capital gains via Cash or property at lower of tax basis or FMV
- No services allowed for contribution
- Net 1231 gains at 12/31

Qualified Opportunity Zone Property
90% - Valued by GAAP Audit or Cost
Average of 2 testing periods per year

STOCK (QUALIFIED OPPORTUNITY ZONE BUSINESS)

PARTNERSHIP INTEREST
(QUALIFIED OPPORTUNITY ZONE BUSINESS)

QUALIFIED OPPORTUNITY ZONE BUSINESS PROPERTY
Qualified Opportunity Zone Business (Stock or Partnership Interest)

- Purchased after December 31, 2017, via cash & qualifies for 90% of holding period as QOZB
  1. Substantially all (70%) tangible property **owned or leased** is a QOZBP
  2. 50% gross income is derived from active conduct of the trade or business in the QOZ
     A. 50% Gross Income Measured via
        1. At least 50% of hours worked were in a QOZ
        2. At least 50% of payroll dollars spent were for services performed in a QOZ
        3. Tangible property & Management Operations Functions are responsible for at least 50% of the gross income of the trade or business.
        4. If it can be demonstrated by Facts and Circumstances that at least 50% of gross income is derived from business in a QOZ.
  3. “**Substantial portion**” 40% of intangible property is used in active conduct of the trade or business in the OZ (ex. Franchise Fee)
  4. < 5% of the average of the aggregate unadjusted basis is attributable to Nonqualified Financial Property (“NQFP”) – Debt, Stock, Non –Qualifying Partnership Interest, LESS reasonable Working Capital, ordinary accounts receivable.
Qualified Opportunity Zone Business (Stock or Partnership Interest)

• Working Capital safe harbor – 3 requirements:
  
  1. **Designated in writing** for acquisition, construction and/or substantial improvement of tangible property.
  
  2. A **written schedule** for the expenditure of working capital assets to be spent within 31 months. Delays due to government actions or inactions does not cause a failure of the safe harbor.
  
  3. Actual use of the working capital that is consistent with 1 and 2.

• Delays attributable to waiting for governmental action, the application for which is completed during 31 month period do not violate 31 month period.

• Allows for multiple 31 month-working capital safe harbors

• The written designation for planned use of working capital now includes the development of a trade or business in the qualified opportunity zone as well as acquisition, construction, and/or substantial improvement of tangible property.
QOF must hold at least 90% of its assets in QOZP (i.e. QOZ stock, QOZ partnership interest or QOZBP).

Substantially all (at least 70%, per proposed regulations) of the tangible property owned or leased by the QOZB must be QOZBP.
Qualified Opportunity Zone Business Property

- Tangible property used in business
  1. Property acquired by QOF via non-related party purchase after December 31, 2017,
  2. Original use of such property in the QOZ commences with the QOF or the QOF Substantially Improves the property AND,
     1. Original Use—Person or prior person first places the property in service in the QOZ for depreciation or amortization
     2. 5 year vacancy requirement for abandoned or vacant buildings
  3. During “substantially all” 90% of the QOF’s holding period for such property, “substantially all” 70% of the use of such property is in a QOZ.
     - Inventory in transit does not break use test
  4. Leased property now qualified
Leased Property Rules

Leased property for QOZBP now qualifies when:

• Acquired under a lease entered into after 12/31/2017

• Substantially all (70%) of all the use of the leased tangible property must be in a QOZ during 90% of the lease term.

• No original use requirement on improvements made by a lessee

• No substantial improvement requirement

• Can be leased from related party if:
  • Market rate lease terms exist
  • No prepayment for rent exists greater than 12 months of rent
  • Leased tangible personal property only qualifies if:
    • Lessee becomes the owner of the tangible property of which has value not less than the value of the leased personal property (within 30 months)
    • Substantial overlap in zones
Valuation of Leased Property for 90% Test

• Financial statement method (GAAP)
• Alternative valuation method
  • Net present value of lease payments
  • Discount rate under 1274(d)(1) prescribed
    • Calculated once at the time lease is entered into
Compare QOZB with QOZBP

<table>
<thead>
<tr>
<th>QOF owns an equity interest in a corporation or partnership operating a QOZB:</th>
<th>QOF directly own QOZBP and operates business:</th>
</tr>
</thead>
<tbody>
<tr>
<td>70/30 test relevant to QOZBP</td>
<td>90/10 test (if QOF does not hold interests in subsidiaries, 90% of its assets must be QOZBP)</td>
</tr>
<tr>
<td>Working Capital Safe Harbor applies to allow unlimited amount of cash as long as entity substantially complies with a written plan of deployment for acquisition, construction and/or rehabilitation within 31 months</td>
<td>No working capital safe harbor; absent further guidance, all cash would be counted toward the 10% of assets that can be non-QOZBP</td>
</tr>
<tr>
<td>50% gross income from active conduct of trade or business (deemed to be met during construction/rehabilitation under working capital safe harbor)</td>
<td>No gross income requirement from active conduct standard</td>
</tr>
</tbody>
</table>
## Compare QOZB with QOZBP (continued)

<table>
<thead>
<tr>
<th>QOF owns an equity interest in a corporation or partnership operating a QOZB:</th>
<th>QOF directly own QOZBP and operates business:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can own an unlimited amount of Intangible Property as long as a “substantial portion” (40%) is used in the active conduct of a trade or business (deemed to be met during construction/rehabilitation under working capital safe harbor)</td>
<td>All Intangible Property counts toward the 10% of assets that can be non-QOZBP (QOZBP only calls for tangible property)</td>
</tr>
<tr>
<td>No sin businesses allowed</td>
<td>No prohibition on sin businesses</td>
</tr>
<tr>
<td>A QOZB is able to lease property and the statute contemplates that this property could qualify as QOZBP, but it is not clear how the QOZBP requirements are applied to leased property</td>
<td>No specific reference to the lease of property directly by a QOF</td>
</tr>
<tr>
<td>Statute provides a 5-year grace period for characterization of property held by a QOZB as QOZBP</td>
<td>As currently written, this 5-year grace period does not apply to QOZBP held directly by a QOF</td>
</tr>
</tbody>
</table>
Proposed Regulations Issued
October 19, 2018

• Provide a safe harbor that allows an O Zone Business to hold funds for up to 31 months for the acquisition, construction, or improvement of real and other tangible property

• Calculate the substantial improvement test by reference to the basis of the building, excluding the basis of the land

• Require that an O Zone Business have only 70% of its assets invested in O Zone Business Property

• Allow gains recognized by a partnership to be invested in an O Fund by either the partnership or its partners

• Allow all of the benefits of the program to be claimed by taxpayers through December 31, 2047, despite the earlier expiration of the O Zone designations

• Allow an O Fund to specify the first year and month in which it will be classified as an O Fund

• Limit the eligible gains that can be deferred under the program to capital gains, arguably contrary to the statute
Additional Guidance Provided in Regulations

- Triggering events for income inclusion
- Distributions from a QOF
  - Are inclusion events if the investor has no basis
  - Results in acceleration of the original deferred capital gain to the extent there is no basis
- Reasonable period defined for re-investment or proceeds (12 months)
- No substantial improvement requirement for land, but the land must be used in active conduct of a trade or business (speculative land purchased to hold does not qualify) to be considered QOZBP
- Investor that holds its QOF interest for 10 years can elect to exclude QOF K-1 capital gain (from a QOZB’s sale of QOZBP) from gross income
OZ Critical Dates

- **QOZBP AND QOZB** Must be acquired after 12/31/2017
- **QOZ Investment** must be made by 12/31/2019 in order to get 15% reduction in deferred gain if held until 12/31/2026
- **QOZ Investment** must be made by 12/31/2021 in order to get 10% reduction in deferred gain if held until 12/31/2026
- **Deferred gain must be recognized no later than 12/31/2026**
- **Qualified Opportunity Zones expire 12/31/2028**, no more QOZ investments can be made after this
- **Sale of QOZ Investment** must be made by 12/31/2047

**QOZ Investment must be made by 12/31/2019 in order to get 15% reduction in deferred gain if held until 12/31/2026**

**Deferred gain must be recognized no later than 12/31/2026**

**Qualified Opportunity Zones expire 12/31/2028**, no more QOZ investments can be made after this

**Sale of QOZ Investment must be made by 12/31/2047**
Example Applications of the Opportunity Zone Program:
Rock Hill, South Carolina
UNIVERSITY CENTER (23 ACRES)

BAXTER MILL (9 ACRES)
UNIVERSITY CENTER: CURRENT PROGRESS

- ARENA
- PARKING DECK K
- LOWENSTEIN
Lowenstein Building

- $46,000,000 - 225,000 SF Class A Mixed-Use Office Building
- Currently 70% Lease by National and Local Tenants
- Expected Lease-Up by 2019
Rock Hill Arena

- $25,000,000 - Mixed-Use Arena Venue
- Largest Arena in the State of South Carolina
- 8 Basketball Courts / 16 Volleyball Courts / Walking Tract
- Expected to Accommodate over 5,000 Visitors Each Weekend
Parking Deck K

- $10,000,000 – 5-Story Parking Deck
- 750+ Stalls Serving the University Center Site
- Second Infrastructure Phase of Four Phases
UNIVERSITY CENTER: FUTURE OPPORTUNITY ZONE
EXAMPLES

POWERPLANT
HOTEL
PARKING DECK C
Parking Deck C

- $6,500,000 – 433 Stall Parking Deck
- Construction Expected to Commence in 2019
- Phase Three of Four for Infrastructure Investment
Parking Deck C – Structuring the Deal

Capital Gain Investors

Qualified Opportunity Fund

Equity Investment

Annual City Payment - senior housing - student housing - public use daily rental

*After year 10, OZ investors are bought out at 5% IRR
Parking Deck C – Investment Schedule

<table>
<thead>
<tr>
<th>Investment in Project</th>
<th>$6,300,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Return</td>
<td>5.0%</td>
</tr>
<tr>
<td>Years until Put</td>
<td>10</td>
</tr>
<tr>
<td>Put Price</td>
<td>$10,590,000 (rounded up) based on Investment in Project</td>
</tr>
<tr>
<td>Ordinary Tax Rate</td>
<td>40.00%</td>
</tr>
<tr>
<td>LT Capital Gains Tax Rate</td>
<td>23.50%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Investor</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
<th>2028</th>
<th>2029</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash Available (assumed capital gains)</td>
<td>6,831,579</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10,248,421</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment in QOF</td>
<td>6,831,579</td>
<td>(6,831,579)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10,248,421</td>
<td>3,416,842</td>
<td></td>
</tr>
<tr>
<td>Distributions</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10,248,421</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Put Payment</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10,248,421</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost/Benefit</td>
<td>(6,831,579)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10,248,421</td>
<td>3,416,842</td>
<td></td>
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</tr>
<tr>
<td>OZone Deferral</td>
<td>23.5%</td>
<td>1,605,421</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>(1,364,608)</td>
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<tr>
<td>Cost/Benefits w/ OZone Deferral</td>
<td>(5,226,158)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>-</td>
<td>10,248,421</td>
<td>3,657,653</td>
<td></td>
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</tr>
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</table>

4.14% cash-on-cash IRR
5.18% IRR w/ OZone

<table>
<thead>
<tr>
<th>Project</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
<th>2028</th>
<th>2029</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>QOF Contribution</td>
<td>$6,300,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$6,300,000</td>
</tr>
<tr>
<td>Distributions to QOF</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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</tr>
</tbody>
</table>

4.14% cash-on-cash IRR
5.18% IRR w/ OZone
University Center Hotel

- $22,300,000 - 110 Key Cambria Suites
- Construction Period: Q2 2019 – Q2 2020
- Meeting & Rooftop Space
- Serving both Leisure & Business Travelers
- Up to $3,700,000 in Opportunity Zone Equity
- Potential Investor IRR with Full Opportunity Zone Benefit is 11-16% (Depending on How Distributions are Treated Under Finalized Regulations)
Powerplant

- $17,000,000 - 55,000 SF Class-A Mixed-Use Development
- Office / Retail / Residential Uses
- Adjacent to City Operated Outdoor Amphitheatre
- Proposed 2019 Start Date
Baxter Mill

- 400,000+ SF Class A Mixed-Use Office Building
- 1,282 Stall Parking Deck
- Adjacent to University Center Development
- Expected Construction Start 2019