



BOUSQUET HOLSTEIN PLLC

Opportunity Zones and Brownfield Cleanup Program

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THE OPPORTUNITY ZONES PROGRAM

Tax Incentives to Investors

Delay paying tax on capital gains invested until earlier of disposition or 12/31/2026

Reduce the amount of tax on original capital gain if hold for at least 5 years (10% reduction) or 7 years (additional 5% reduction)

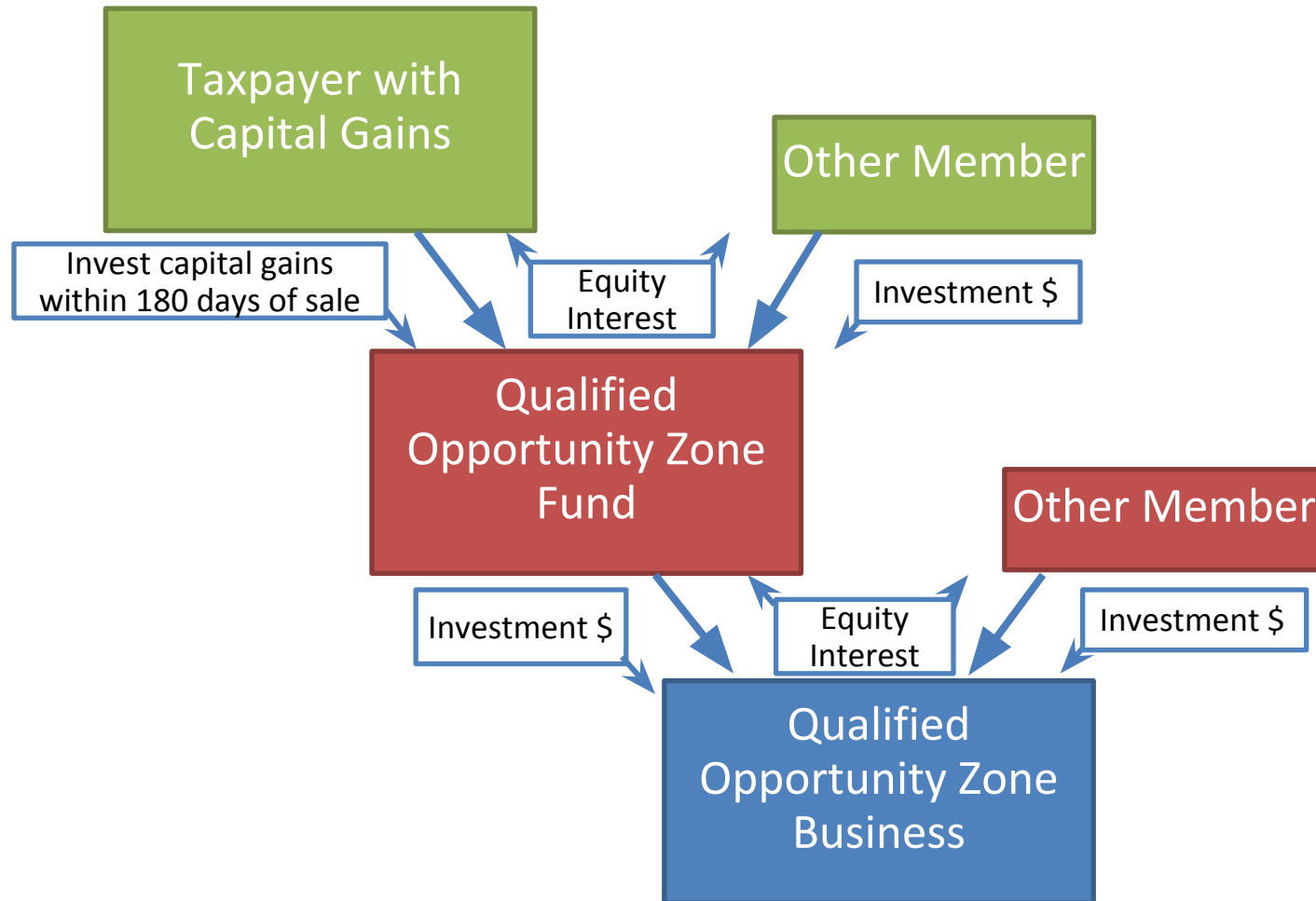
Avoid tax on any appreciation of the Fund investment if held for 10 years

Qualified Opportunity Funds

- Investment vehicle organized as a corporation or partnership for the purpose of investing at least 90% of its assets in Qualified Opportunity Zone Property
- Self-certification (no IRS approval)



How a Qualified Opportunity Fund Works





Qualified Opportunity Zone Business

A trade or business that satisfies 5 tests:

- "Substantially all" test
- Working capital test
- "Serious business" test
- Intangible property test
- Gross income test



“Substantially All” Test

- 70% of ***tangible*** property must be ***Zone Business Property***
 - owned (directly or indirectly)
 - “acquired by purchase” (including self-constructed assets) after 12/31/2017
 - Either:
 - First use of the tangible property is in the Zone; OR
 - Property is substantially improved (don’t have to improve land)
 - Special “first use” rules for vacant structures, land, and tenant improvements
- Leased property can also be Zone Business Property (counts toward the 70% test) if conditions













“Working Capital” Test

- Not more than 5% can be in non-qualified funds
- To meet the working capital safe harbor:
 - Amounts must be designated in writing for acquisition, construction, or substantial improvement
 - Must have a written budget with schedule for deploying funds
 - Must actually deploy funds consistent with the written plan within 31 months of receipt



May Proposed Regs Response to EPA Comments

- “Original Use”
 - Clarify the definition of *original use* to be clear the term applies to brownfield sites under CERCLA 
 - *Original use* should apply to property that is underutilized  vacant 
for a period of one year or more  **≥ five years**
 - *Original use* should include new uses for existing properties 
- “Substantial Improvement”
 - Brownfield assessment, cleanup, and site preparation should count 
 - “Stacked” 30-month window for site preparation and 30-month window for vertical development 
- Allow carryover of gains from one Fund investment to other Fund investments without triggering recognition 



Where Do We Go From Here?

- It is unlikely that there will be additional proposed regulations issued in 2019
- There is strong incentive for investors to make Opportunity Zone investments in 2019
- Taxpayers may generally rely on the proposed regulations if they are applied *consistently and in their entirety* by the taxpayer



NYS BROWNFIELD CLEANUP PROGRAM TAX CREDITS



Overview of NYS BCP Tax Credits

BCP tax credit structure:	Accepted into BCP:	Must receive a CoC by:
Generation 1	Before 6/23/2008	December 31, 2017
Generation 2	6/23/2008 to 6/30/2015	December 31, 2019
Generation 3	7/1/2015 and after	March 31, 2026



Overview of NYS BCP

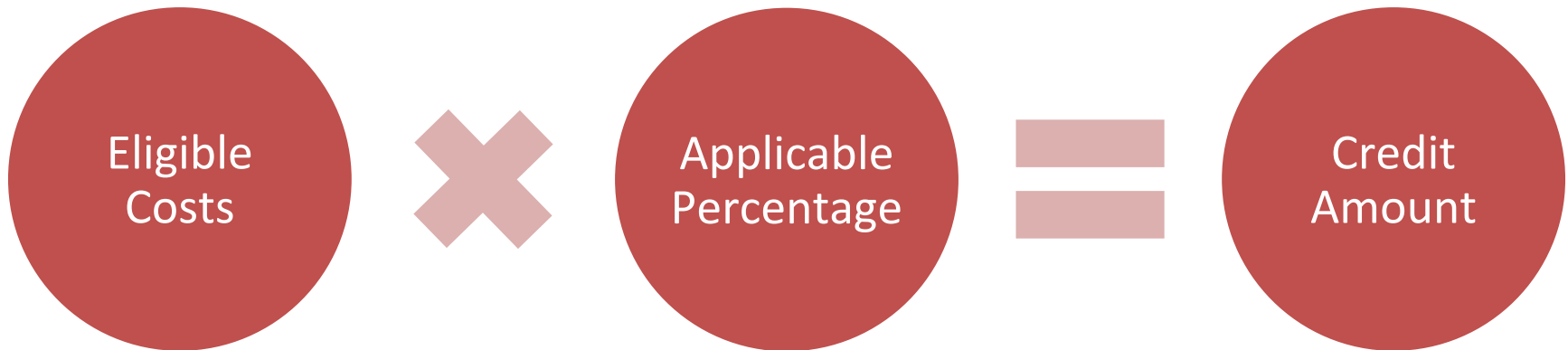
- Refundable – treated like an overpayment of tax
- Three tax credits:
 - Credit based on real property taxes and employment
 - Credit based on qualified policies of environmental remediation insurance
 - **Brownfield Redevelopment Tax Credit (BRTC)**
 - Site Preparation credit component
 - On-site groundwater remediation credit component
 - Tangible property credit component





Overview of BRTC

- BRTC components are product of certain **qualified costs** and **applicable percentage**





Site Preparation Credit Component under **Gen 2**

- Eligible costs: costs paid or incurred **in connection with** (1) qualification for CoC, AND (2) preparing site for construction of building
- Applicable Percentage: varies from 22% to 50% based on intended use of site and level of cleanup
- Timing: First claimed in year CoC is issued, then up to 5 taxable years after CoC





Site Preparation Credit Component under **Gen 3**

- Eligible costs:
 - Capitalized costs necessary to implement the site's investigation, remediation, or qualification for a CoC
 - Post-CoC costs that are “necessary for compliance with the [CoC] or the remedial program defined in such [CoC]”
 - Limits site preparation costs foundations to the cost of a cover system pursuant to DEC regulations
 - Related party service fees are not eligible
- Applicable Percentage: same as Gen 2
- Timing: First claimed in year CoC is issued, then up to 60 months after the year the CoC is issued





Tangible Property Credit Component under **Gen 2**

- Eligible costs: cost or other basis of depreciable property with useful life of **4 years** or more with situs on brownfield site
- Applicable Percentage: 10% (individuals) or 12% (corporations) plus:
 - + 2% for sites remediated to Track 1
 - + 8% for sites within an En-Zone
 - + 2% for sites in BOA and developed in conformance with BOA plan
- Cap:
 - Non-manufacturing sites: lesser of \$35M or 3 x site preparation costs
 - Manufacturing sites: lesser of \$45M or 6 x site preparation costs
- Timing: claimed in year property is placed in service, for up to 10 taxable years after CoC is issued





Tangible Property Credit Component under **Gen 3**

- Eligible costs:
 - Cost or other basis of depreciable property with a useful life of **15 years** or more with a situs on the brownfield site; plus
 - Costs associated with non-portable equipment, machinery, associated fixtures and appurtenances used exclusively on the site, regardless of length of useful life
 - Costs associated with demolition, excavation, and foundation in excess of amount allowable for the *site preparation credit component*
 - “Related party service fees” includable only in year actually paid





Tangible Property Credit Component under **Gen 3**

- Applicable Percentage: 10% base plus, up to max of 24%:
 - + 5% for sites remediated to Track 1
 - + 5% for sites within an En-Zone
 - + 5% for sites in BOA and developed in conformance with BOA plan
 - + 5% for affordable housing
 - + 5% for manufacturing sites
- Cap: same as Gen 2
- Timing: claimed in year property is placed in service, for up to 120 months after date CoC is issued
- Additional restrictions for sites in NYC (not applicable to upstate brownfield sites)





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THANK YOU!



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