

**TFA**
Monthly
Newsletter

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IN THE NEWS

Opportunity Zones - A New Program That Can Benefit Tribes

by Braxton Sato

Opportunity Zones Program

The Opportunity Zones Program was established under the Tax Cuts and Jobs Act of 2017 and is administered by the US Department of Treasury's Community Development Financial Institutions Fund ("CDFI Fund"). The goal of this Program is to stimulate investment in distressed communities around the US.

How can this program help Tribes? Similar to the New Markets Tax Credit Program, which many Tribes have used to their advantage, the tax benefit offered to the investor enables them to pass some of the benefit to a partner (i.e., a Tribe) in development projects located in these designated areas.

The Details

This tax-incentive program allows investors to defer tax on capital gains

income by re-investing these gains into an investment vehicle known as a Qualified Opportunity Fund ("QO Fund"). The amount of tax deferred benefit increases the longer an investor remains in the QO Fund. In fact, if the investor holds the investment in the QO Fund for at least ten years, the investor benefits from a 15% step up in its original investment, plus zero tax on any increase in the value of the QO Fund.

This program provides investors an incentive to remain invested in underserved American communities over the long-term. The net effect of this deferral (or partial elimination) is to create a lower cost of capital or terms that are more economic to the developer/Tribe.

What Types of Investments Qualify?

The State of Indian Gaming: An Exit Interview with NIGC Chair Jonodev Chadhuri

5/8/18 – [IndianCountryMediaNetwork.com](#)

Supreme Court Opens the Door for Sports Betting for States and For Tribes

5/14/18 – [Indianz.com](#)

Muscogee Nation Plans New Gaming Development After Clearing Federal Hurdle

5/14/18 – [Indianz.com](#)

Supreme Court Sides with Tribal Interests in Sovereign Immunity Case

5/21/18 – [Indianz.com](#)

Tribal Nations Hold Some of the Best Water Rights in the West

5/23/18 – [HighCountryNews.com](#)

Jamul Indian Village Completes Takeover and Announces New Name for Casino

5/30/18 – [Indianz.com](#)

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QO Funds must invest at least 90% of their assets into Qualified Opportunity Zone Property ("QOZ Property"). As of guidance today, QOZ Property can take the following forms:

- QOZ Business Property
 - ⇒ Tangible property acquired by (or substantially improved by) a QO Fund after 12/31/17
 - ⇒ Substantially all the property's use must be exclusively within the QOZ
 - ⇒ Some examples include – mixed-use retail development, affordable housing development, improvements to physical assets of an existing business in the community
- QOZ Business
 - ⇒ Substantially all tangible property owned or leased by the business is QOZ Business Property
 - ⇒ "Nonqualified financial property" must be less than 5% – so an asset management firm in an OZ would not qualify
 - ⇒ Cannot engage in certain businesses including casinos, golf courses, country clubs and liquor stores
- QOZ Stock – an equity interest in a QOZ Business



- QOZ Partnership Interest – a partnership interest in a QOZ Business

How Can Tribes Take Advantage of This Program?

Tribes are not subject to capital gains tax in the same manner as typical investors are, so no advantage exists to a Tribe by investing in a QO Fund. However, Tribes with qualified projects are positioned to benefit from this program, specifically by taking advantage of the QO Funds that need to be invested in QOZ Property. TFA suggests the following steps for Tribes who are interested in this program:

- First, [check the CDFI website](#) to determine if your community qualifies as an Opportunity Zone.
- Next, decide what kind of QOZ Business or QOZ Property the Tribe wants to pursue.
- Finally, talk to legal counsel and your financial advisor about putting together materials and prepare to approach a QO Fund for an investment or joint venture in the community.

Given that this is newly legislated, the process is evolving – we will report more as details become available. TFA is happy to talk about the specifics of your Tribe's situation – please give us a call to discuss.

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