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Why might June 28, 2019, be an important date?

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As you may have heard, June 28, 2019, can be an important date for many taxpayers with capital gains who plan to use opportunity zone ("OZ") investing to defer paying the associated tax.

Qualifying for the OZ incentive can delay the due date for the capital gains tax through a taxpayer's 2026 tax year provided certain timetables and investment requirements are met.

One of those requirements is that the taxpayer invests in a "qualified opportunity fund" (or QOF) during certain specified 180-day periods. In particular, if a taxpayer had a gain arising from the 2018 sale of property "used in a trade or business," then the 180-day period began on December 31, 2018 and ends on ***June 28, 2019.*** Property used in a trade or business would include (among many possibilities) rental real estate or an ***asset*** sale of a business. On the other hand, for sales of stock (even in family businesses), the 180-day period began on the date of the sale.

A similar 180-day computation applies to gains you may have been allocated to the partners or members of a partnership, an LLC, or other pass-through entity. If the entity had 2018 capital gains (from any source, not just trade or business property), and the entity didn't itself make an opportunity zone investment from that gain, then June 28, 2019, is, once again, the last date for partners of that partnership to make a qualifying QOF investment based on their share of the gain.

With hundreds of multi-investor opportunity funds being marketed, many taxpayers wonder if they can manage a thorough review in time to make an intelligent investment by June 28.

In fact, there is a practical alternative to investing in a marketed fund that can significantly extend the time a taxpayer has to find a suitable investment, ***generally until the end of 2019***. Even though the word "fund" appears prominently in the term "qualified opportunity fund," the actual definition applies to any partnership, corporation or LLC (as long as it is not a disregarded entity under the tax rules), even a closely held one, making the proper QOF election. And while a QOF must then pass a semiannual test to demonstrate that 90 percent or more of its assets consist of "qualified opportunity zone business property," the rules won't require such investments to be made until the end of December 2019. Effectively, by setting up and contributing cash to a properly formed LLC on or before June 28, an investor can gain a fresh six months to find suitable investments and delay the due date for the capital gains tax it would otherwise owe.

Like any tax idea, there are lots of qualifications and issues to watch out for. Your closely held QOF can invest directly in opportunity zone assets or businesses, but can't invest in another QOF, so direct investment in marketed funds will be off the table. Still, many multi-investor funds empower the investment manager to also manage closely held funds, so you can still get help in choosing your investments. Not all such funds permit the manager to take these actions, so this may limit your choices. Accordingly, you ***may*** need to find (or help find) your own investments; if you find that daunting, then forming your own QOF might not be for you. And, if you have already filed a tax return reporting the gain, or if you later change your mind and decide not to use your QOF, amended tax returns may be required. Finally, you do have to timely form a qualifying entity, properly capitalize it and make the required election to qualify for the OZ incentives.

The bottom line: June 28 is the important date for taxpayers with certain kinds of capital gains. For others, future investing in marketed funds or setting up your own fund without the time pressure of June 28, 2019, may be the best strategy.

We'd be pleased to explain opportunity funds in greater detail, and we would be happy to discuss your specific situation, help you evaluate your options and, if appropriate, help you set up a qualifying QOF.

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