**Key Points**

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| * **Many OZ investors are looking for write offs against passive income**
 | * **OZ projects often pass thru losses via depreciation on K1’s**
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| * **In a normal investment, the depreciation needs to be recaptured at sale**
 | * **The OZ program eliminates the depreciation recapture after the 10 year hold period**
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**Summary**

The Opportunity Zone program was created as part of the Tax Cuts and Jobs Act, which was signed into law in December 2017. The Opportunity Zone provisions were included in the tax reform legislation to encourage long-term private investments in low-income urban and rural communities across the United States.

One of the key advantages of investing in Qualified Opportunity Funds (QOFs) is the ability to permanently avoid paying taxes on the recapture of depreciation. Normally, when an investment property is sold, any depreciation deductions previously claimed must be "recaptured" and taxed as ordinary income, which can result in a substantial tax liability.

**Avoidance of Depreciation Recapture**

If the QOF investment is held for at least 10 years, the investor can elect to permanently exclude any post-investment appreciation, including any depreciation that would have otherwise been subject to recapture.

Example:

Let's say an investor has a $1 million capital gain from the sale of an investment property. They decide to reinvest that $1 million gain into a Qualified Opportunity Fund (QOF) that acquires and develops an apartment building in an Opportunity Zone.

Over the 10 years the investor holds the QOF investment, they claim $300,000 in depreciation deductions on the apartment building.

**Traditional Investment:**

* If the investor sold the property after 10 years, they would owe tax on the $300,000 of depreciation recapture, at the 37% ordinary income tax rate. This would be an additional $111,000 in taxes owed.

**Opportunity Zone Investment:**

* If the investor holds the QOF investment for at least 10 years, they can elect to permanently exclude the post-investment appreciation, including the $300,000 in depreciation that would have been recaptured.

It is important to note that the depreciation that investors receive over the life of any project can only be written off against certain income.

**Pending Legislation**

The proposed Opportunity Zones Transparency, Extension, and Improvement Act does not appear to make any changes to the depreciation recapture rules for Opportunity Zone investments.

**Summary**

The Opportunity Zone tax incentive program provides investors with a compelling set of current and potential future benefits. Investors with income from active trade or business income or other passive activities, depreciation losses can provide an important tax benefit.

**Contacts**

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