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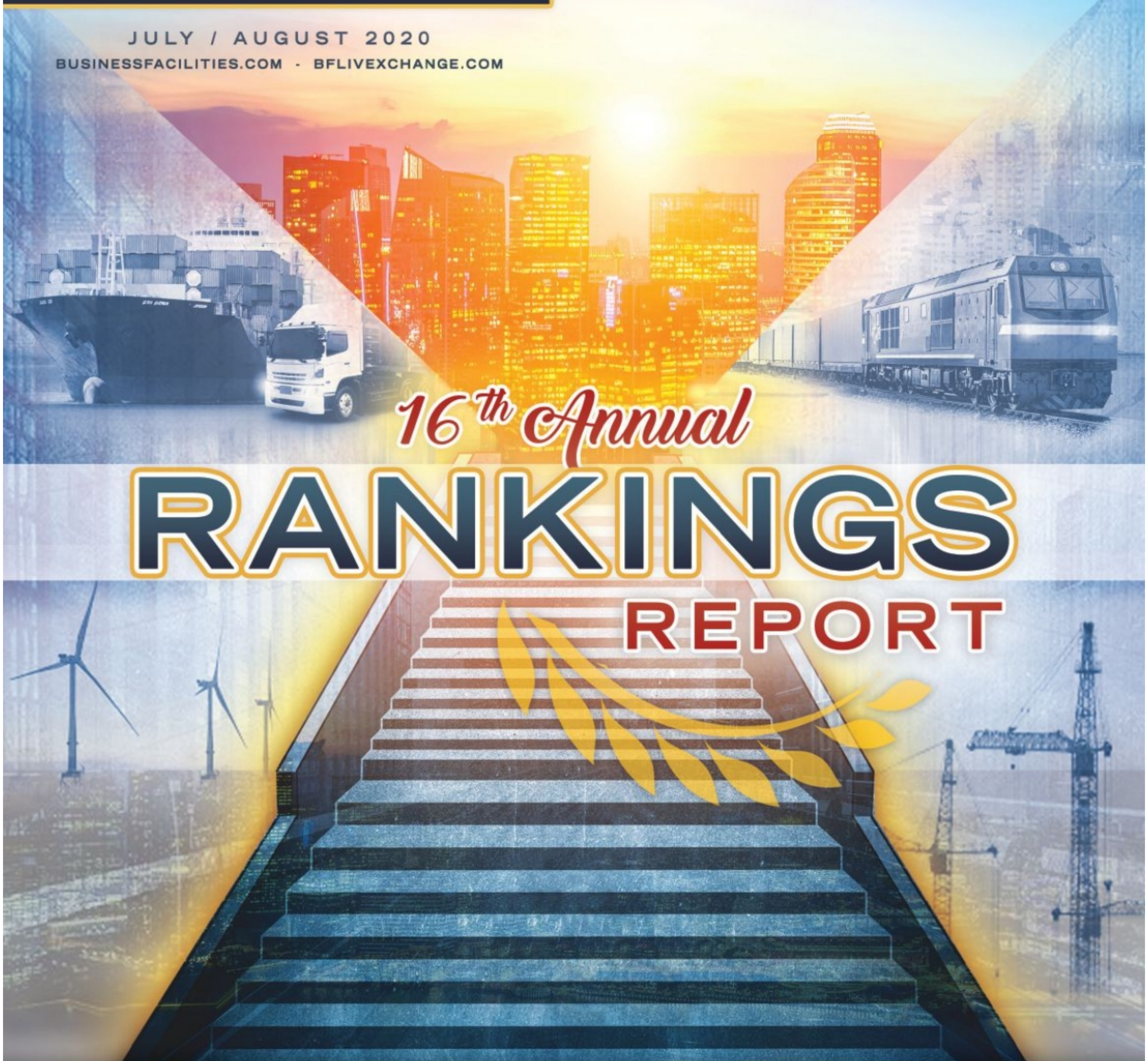

PLUS: Renewable Energy • Opportunity Zones

There's Still Time To Invest In Qualified Opportunity Zones

THE IRS HAS EXTENDED A CRITICAL DEADLINE FOR INVESTMENTS IN QUALIFIED OPPORTUNITY ZONES UNTIL THE END OF THE YEAR, HOPING TO ENTICE INVESTORS WHO HAVE LARGELY SAT ON THEIR MONEY DURING THE GLOBAL PANDEMIC

When first introduced, federal Qualified Opportunity Zones (QOZ) provided a new hope for economically distressed neighborhoods in the U.S. The federal program was created under the 2017 Tax Cuts and Jobs Act (TCJA) to stimulate the economic development and job creation in low-income neighborhoods through the use of long-term private investments.

There are now designated QOZs in each of the 50 states, the District of Columbia and the five U.S. territories based on blocks of low-income areas by census tract that were submitted by each state or territory and certified by the Secretary of the U.S. Treasury.

The goal of the program is two-fold: (1) investment in a QOZ will revitalize the impoverished area's economy and, (2) if a taxpayer invests eligible gain into a Qualified Opportunity Fund (QOF), and meets several other requirements regarding the type of assets held by such QOF in the Opportunity Zone, then the taxpayer will be eligible for preferential tax treatment. The preferential tax treatment for taxpayers who invest in QOZs can include deferral on the initial gain invested in the QOF, partial reduction in deferred gain and exclusion of gain from investment in the QOF.

While the QOF program got off to a fast start, several issues had started to appear before the COVID-19 pandemic became wide-spread in the U.S. The Internal Revenue Service (IRS) released several revenue rulings and final regulations in

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December; however, many questions remained causing some investors to remain cautious about investing in QOFs.

When the COVID-19 pandemic caused major shutdowns in March, many investors turned their focus away from QOFs and back to making sure that their primary businesses and assets would survive in a volatile economy. Since March, there has been a sharp drop in the equity market, a freeze of commercial real estate investment and also a decline in asset values and capital gains which could have otherwise been invested in QOZs. Novogradac has reported that QOZ vehicles have raised about $10 billion; initial estimates had projected that QOZs would tap into nearly $6 trillion of capital gains.

While COVID-19 effectively slowed down the momentum of QOZs, the IRS is providing relief for investors and renewing hope through Notice 2020-39, which was issued on June 4. Part III of the notice extends deadlines for QOZ investors. Here's an overview of the requirements that have been relaxed and how this may impact the QOZ program:

- **180 Day Investment Period.** Requirement for QOF Investors under Section 1400Z-2(a)(1)(A): Notice 2020-23 extended the original April 15, 2020 deadline to July 15, 2020, if the last day of the investment period would have ended on April 1, 2020 and before July 15, 2020. However, Notice 2020-39 extended the deadline from July 15, 2020 until Dec. 31, 2020, if the last day of the investment period would have ended on or after April 1, 2020, and before December 31, 2020. This extension is crucial for QOF investors because it removes the 180-day requirement and introduces a year-end deadline, which may create an influx of new investments.
- **90 Percent Asset Test for QOFs.** Relaxed for 2020 under Section 1400Z-2(d)(1): Notice 2020-39 provides that any failure by a QOF to satisfy the 90 percent asset test during the period of April 1, 2020, through Dec. 31, 2020, will be automatically treated as having met the reasonable cause standard for avoiding penalties, thus rendering such penalties inapplicable for 2020. Any failure to meet such threshold will be disregarded for purposes of determining whether the QOF satisfies the requirements for qualifying as a QOF and whether investments in the QOF constitute qualifying investments. This relief is automatic and the taxpayer does not need to call or write to the IRS to receive such treatment. However, the taxpayer must complete all lines on Form 8996 filed regarding each affected taxable year, except that taxpayer should place a 0 in Part IV, Line 8. This relief will provide more time and opportunities for QOFs to comply with the 90 percent asset test requirement.
- **30-month substantial improvement period** has been extended by nine months: Notice 2020-39 disregards the period beginning April 1, 2020, and ending December 31, 2020, for determining any 30-month substantial improvement period. The 30-month substantial improvement period is tolled during those nine months.
- **31-month working capital safe harbor period** has been extended up to 24 additional months: This relief essentially provides at least 55 months of flexibility and time that was not expected in the original plans of the program. The extension applies to all QOZ businesses holding working capital assets intended to be covered by the working capital safe harbor before Dec. 31, 2020.
- **12-month reinvestment period of QOFs has been** extended up to 12 additional months, if: the initial 12-month period was in effect on Jan. 20, 2020, the QOF otherwise meets the requirements of the 12-month reinvestment period and the QOF invests the proceeds in the manner originally intended before Jan. 20, 2020.

While COVID-19 is having a substantial impact on the economy and most businesses, it has also provided some unique opportunities with respect to QOFs. During the pandemic, many investors chose to sell assets to maintain their business operations or their personal lifestyle. Such sales are likely to have caused the realization of long-and short-term capital gains.

If a client has sold assets to provide liquidity, they may be able to invest the built-in gains into a QOF to alleviate some of the tax impact of the sale. In addition to reducing the built-in gain realized from the sale of capital assets, a properly vetted QOF may provide a better return for investors given the current economic environment. If invested properly and left in the QOF for a certain period of time, investors could see as much as a 15 percent increase in basis and tax-free growth within the QOF. Even if the growth never materializes, a 15-percent ROI through the increase in basis is not an insignificant return.

The sale of assets in order to survive the impact of COVID-19 will likely present unique opportunities in the real estate market—especially those in and surrounding QOZs. With many businesses forced to shut down and real estate markets on the edge of a pullback, properties available for redevelopment within QOZs may start to become more accessible. If properties within the QOZs are bought and redeveloped by a QOF as required by the program, the goal of the program—to revitalize certain economically distressed areas—may become a reality even faster. QOFs may ultimately be a great way for investors to help rebuild the areas hard hit from COVID-19 related issues. *[By Christopher Steele and Jasmin Severino Hernandez, Chamberlain Hrdlicka's Trust and Estates Practice.]*

GILBERT, AZ: THE PLACE FOR YOUR INVESTMENT

Gilbert celebrates its 100th birthday this year and has grown from a small farming community to the 5th largest city in Arizona. With a population over 265,000, Gilbert is larger than Salt Lake City, UT, Boise, ID, Tacoma, WA, and Richmond, VA. Located near the original Town site, Gilbert's Opportunity Zone is one square mile and encompasses the community's Northwest Growth Area and the downtown Heritage District. Two key community growth areas with focused revitalization efforts underway, both have a unified vision of making strategic infrastructure improvements, encouraging reinvestment, attracting new development, increasing property values, and improving the quality of life.

On a typical night in Gilbert's vibrant downtown Heritage District, music can be heard from the street, restaurant patios are filled with the laughter of family and friends, theater patrons are scurrying to take their seats, and colorful art benches line the sidewalks. Over the past 10 years, Gilbert's Heritage District has undergone a renaissance, transforming it into a premier entertainment and employment destination within metro Phoenix. Now home to over 140 businesses, ranging from restaurants to retailers to higher education institutions, the Heritage District has received over $60 million in public investment and attracted over $80 million in private investment since 2012. The district has also seen a 110 percent increase in sales tax revenue in the last five years.

This growth can partially be attributed to it being designated as a redevelopment area in 1989. Through revitalization efforts, this area continues to attract investment from industry leaders like ETix and is now home to Park University and the University of Arizona. Several other exciting projects are currently in the planning phase and will combine transit-oriented development with a mix of office, retail, restaurant, multi-family, and hospitality amenities.

The Northwest Growth Area is Gilbert's densest employment area, with 20.7 percent of the Town's job base concentrated here, and is home to 2.3 percent, or more than 7,500 of Gilbert's residents. In Fiscal Year 2019, Gilbert kicked off a focused revitalization effort within the Northwest Growth Area, which includes a designation of a redevelopment area. The beneficiary of over $20 million in public investment, and over $130 million in private investment since 2012, this area continues to attract a portfolio of industrial, office, housing, and retail uses with industry-leading anchor institutions and companies. These companies are primarily associated with Science, Technology, Engineering, and Math (STEM) related occupations in aerospace, manufacturing, and professional services industries. Notable employers in the Northwest Growth Area include GoDaddy, Lockheed Martin, Northrop Grumman, MOOG Broad Reach, and Curry Supply Company. Ideal investment projects for the Northwest Growth Area could include manufacturing, distribution, research and development, office, hotel, breweries/tap houses, and live/work residential.

Both the Northwest Growth Area and the Heritage District present unique and different opportunities for investors. A few of the current developments in Gilbert's Opportunity Zone include:

North Anchor. In 2019, the Gilbert Town Council unanimously approved the development of this 9.1-acre site. This development will consist of a minimum of 500,000 gross square feet and is planned to include Class A Office, retail,

PHOTO: TOWN OF GILBERT

The Collab, pictured above, is a four-story mixed-use project that is now available for lease in the Heritage District of Gilbert, AZ.