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6 things to know about Qualified Opportunity Zone investments


(From left:) Ashlie Forum, David Appel, David Shapiro, Ron Fieldstone and Caroline Fleischer

ASHLEY PORTERO/SOUTH FLORIDA BUSINESS JOURNAL

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By Ashley Portero

More than 50 real estate professionals, developers and investors were in attendance for a panel discussion on Qualified Opportunity Zone investments hosted March 20 at the offices of Marcum LLP in downtown Miami.

Moderated by Ron Fieldstone, a partner at law firm Saul Ewing Arnstein & Lehr and chair of the firm's Opportunity Zone practice, the panel also featured Marcum LLP Southeast Tax Services Leader David Appel; City National Bank Executive Vice President Chris Damian; Cresa Managing Principal Caroline Fleischer; Marcum LLP Southeast Real Estate Tax Services Leader Ashlie Forum; and Saul Ewing Arnstein & Lehr partner David Shaprio, who is chair of the firm's tax practice. Miami Mayor Francis Suarez made an appearance at the panel, where he praised the Opportunity Zone program's potential for driving economic development in Miami's distressed neighborhoods.

The real estate investment program, signed into law as part of the Tax Cuts and Jobs Act of 2017, aims to incentivize private investments in low-income communities by offering significant tax referral opportunities to investors.

Mitah Kripalani, vice president of Colliers International South Florida LLC, said developers are already jumping on the chance to buy up parcels in opportunity zones.

“We recently sold a parcel off of Biscayne Blvd. at N.E. 17th St. that was shovel-ready,” Kripalani said. “Obviously the deal has to make sense for them, but a lot of developers see the benefits as icing on the cake.”

Here are six takeaways from the March 20 panel discussion:

Federal guidelines have not been finalized

Although the IRS and U.S. Treasury Department released a set of proposed rules for the Opportunity Zone program in October, the federal government has yet to release final guidelines. That means certain aspects of the law – for example, its definition of “substantial improvement” as it applies to required property investments – are currently unclear.

In January a bipartisan group of 17 U.S. senators and representatives sent a letter to Treasury Secretary Steve Mnuchin urging the department to provide more clarity about Opportunity Zone regulations, noting “a number of important questions remain, especially in regards to investments in operating businesses.”

Law does not mandate socially responsible investments

While supporters say the Opportunity Zone program will pour much-needed money – and potentially, jobs – into distressed neighborhoods, the panel noted that the federal law does not require investors to put money toward affordable housing, retail shops, grocery stores, warehouses or other businesses that could increase land value, as well as improve conditions for residents and bring jobs to the community. That may encourage gentrification in distressed neighborhoods that could push residents out, Fieldstone said.

Tax benefits only apply to investments made before 2018

Individuals or entities that purchased land or buildings in Opportunity Zones before 2018 are out of luck, because under current guidelines they do not qualify for the law's tax deferral benefits. Those who purchased property in qualified areas before that time would need to sell a majority of their assets to an Opportunity Zone fund, retaining a maximum 20 percent of the property’s ownership, to eventually receive tax benefits from the program. Property owners also have the option to lease their land to an Opportunity Zone fund.

State taxes could still apply

The current law allows opportunity zone funds to defer federal taxes, but individual states could still require investors to pay state income taxes. Investors in states that conform with the federal provisions may receive state tax incentives similar to those available at the federal level. But those investing in nonconforming states may be unable to reduce state taxation on the initial capital gains invested into an Opportunity Zone.

Florida bill would require OZ commissions that reflect municipalities

Florida House Bill 481, proposed in the legislative session that began March 5, would create Opportunity Zone development agencies for each of the state's 427 Opportunity Zones composed of up to 13 members who would be appointed by municipalities. The legislation stresses the agencies should reflect the racial demographics of the communities they represent and has provisions to involve community members in the process and encourage the development of minority-owned businesses.

Cannabis businesses could benefit

Under the 2017 law, certain so-called "sin" businesses - such as liquor stores, massage parlors and race tracks – are not eligible for Opportunity Zone tax deferral benefits. However, the panel noted there's one lucrative emerging industry not exempted: Cannabis businesses.

"Cannabis grow facilities, dispensaries - all of that appears to be on the table," Shapiro said. "I'm not saying they won't amend the rules, but right now there's no basis in the statute to say that cannabis is a no-go in the zone."