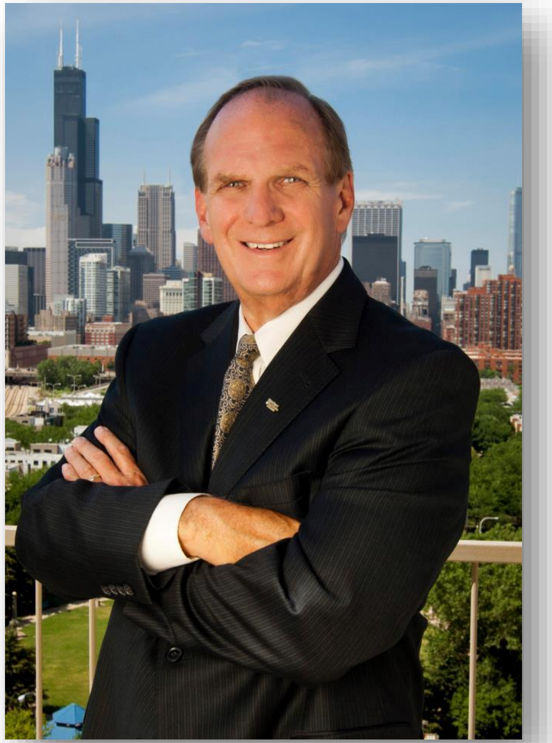
# 1031 EXCHANGE

*Advanced & Alternative Strategies*

MARTY RUETER
Coldwell Banker Commercial
Metro Brokers
Atlanta GA

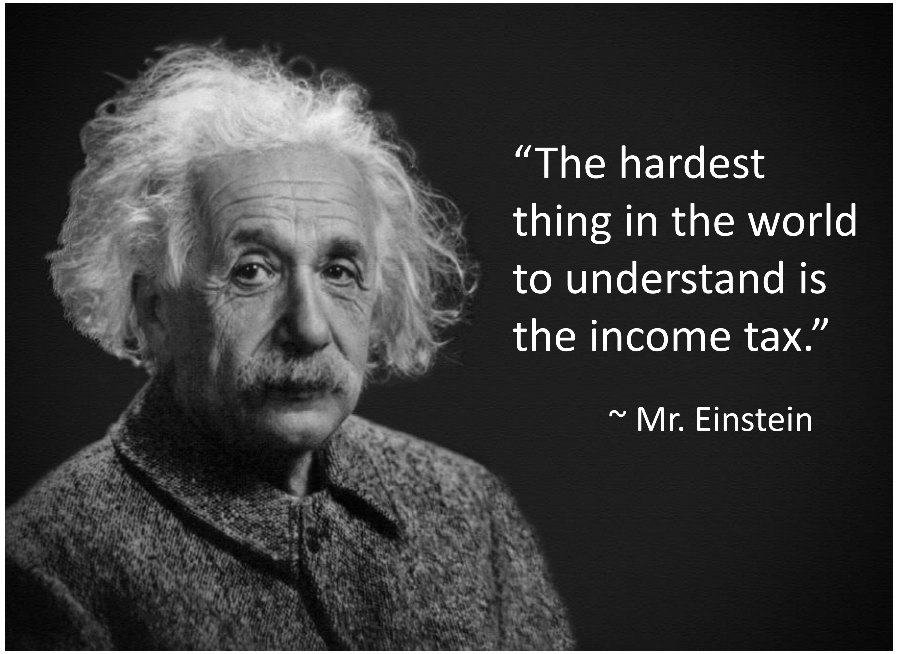
Georgia Association of REALTORS® - Annual Conference, September 4, 2025



MARTIN J. RUETER, GRI

# *Glad to be here. . .*

- S.O.B.
- 4th generation REALTOR®
- Sr. Vice President, Century 21 Intl.
- President, Weichert R.E. Affiliates
- Exec. Vice President, Coldwell Banker Commercial® Metro Brokers
- Monopoly Maniac!




You are neither an accountant, nor a lawyer – and cannot give tax or legal advice to clients, customers, or colleagues.

But real estate professionals need to know enough about the tax and legal ramifications of real estate transactions, and refer clients to their tax professionals or attorney, before proposed deals are agreed to.

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# CAPITAL GAINS AND ME

## WHAT WE'LL COVER

1. What are capital gains?
2. Four tax classes of real estate
3. Estimating capital gains taxes
4. Tax reduction or deferment strategies
   - Capital loss "harvesting"
   - Installment Sale
   - Tax Deferred Exchange


*More than a game!*

# TODAY'S TOPICS

1. What are Capital Gains?
2. Tax Deferred Exchange
    - Basics and More
3. Alternative Reinvestments
    - TICs
    - DSTs
    - OZs
    - CRTs


90 mins

# CAPITAL GAINS AND REAL ESTATE


## REQUIRED REPORTING

A taxpayer MUST report all gains or losses *realized* from the sale of **capital assets,** including stocks, bonds, and **real estate** – and very likely **pay taxes** on net gains in the year of sale.

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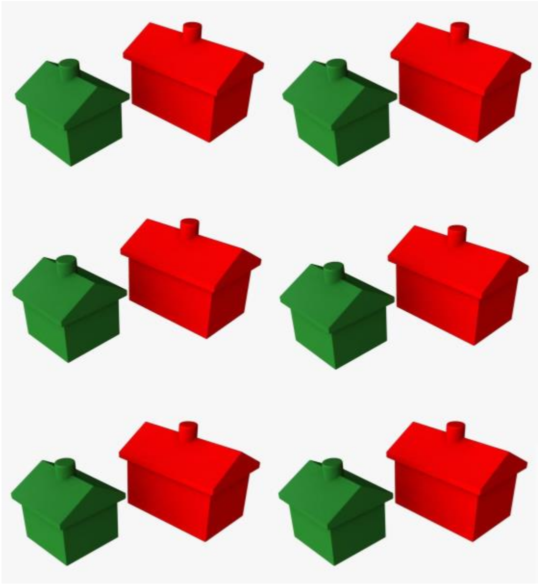
# CAPITAL GAINS AND REAL ESTATE



## CAPITAL ASSETS?

**Physical assets -** land, buildings, machinery, equipment, vehicles, and furniture used in business operations *(tangibles).*

# CAPITAL GAINS AND REAL ESTATE


Intangibles

## CAPITAL ASSETS?

**Non-physical assets -** patents, trademarks, copyrights, goodwill, franchise and software licenses – that add value but lack physical presence.

# CAPITAL GAINS AND REAL ESTATE

**FORTUNATELY**, you only owe taxes on the ***profit*** you made – after recovering what you invested.

Such profit is called **Capital Gain.**

# CAPITAL GAINS AND REAL ESTATE

## AVOID OR POSTPONE?

You may *not* always pay capital gains taxes right away. There are exceptions.

*Realized Gain vs. Recognized Gain*

# CAPITAL GAINS AND REAL ESTATE


## CAPITAL GAINS TAX

- Alternative tax rates for capital gains *(lower).*
- **Capital Gain** = Net Sale Price minus your *"basis"* in asset.
- **Basis** is the amount of your own money you still have left in the investment.

# CAPITAL GAINS AND REAL ESTATE

## CAPITAL GAINS TAX

Most capital gains are taxed at a **lower** capital gains tax rate than taxpayer's "ordinary" rate.

- There are qualified **exemptions** when selling one's primary residence.
- And **tax deferral** possibilities for some qualified CRE sales.

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# Capital Gains Tax Exclusion on Home Sale

**Profit above $250,000 or $500,000 taxed at capital gains rate of 15% - 20%**

**If you've owned a house for 2 years and it's your primary residence, a big part of your profit does not get taxed.**

**Married Taxpayers** → **$500,000 exempted**

**Single Taxpayers** → **$250,000 exempted**

| Ownership Test | Use Test | Exclusion Frequency |
| --- | --- | --- |
| Home must have been owned for at least two years during the five years leading up to the sale date. | Home must have been used as the Primary Residence for at least two years during the same five-year period. | Gains from another home sale have not been excluded in the two years before the sale date. |

## Capital Gains Tax Exclusion on Home Sale

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| Key Point | Description |
|---|---|
| Basics of the Two-Year Rule | Two years of ownership and residency, not necessarily continuous. |
| Partial exclusion for less than two years of use. | Exceptions apply due to health reasons, changes in employment, or other unforeseen circumstances. |

## Capital Gains Tax Exclusion on Home Sale

# CAPITAL GAINS AND REAL ESTATE

## NET CAPITAL GAIN?

- Profits or losses from the sale of various **capital assets** in one tax year.
- Gains and losses from different capital assets in same year are **combined**.

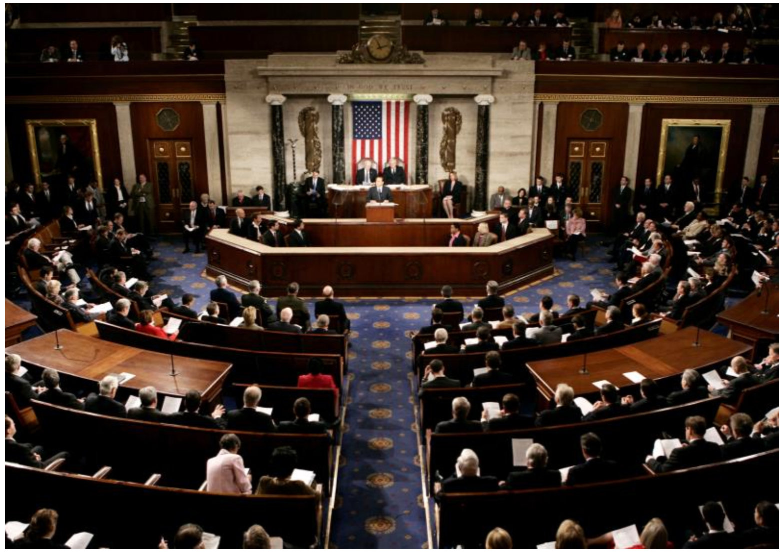
*Gain is **realized** only when you **sell.***

# CAPITAL GAINS AND REAL ESTATE

**REAL ESTATE PROFESSIONALS** should ALWAYS raise the possibility of capital gains taxes when listing a client’s property for sale.

*“Have you talked to your accountant about the likelihood of capital gains taxes when you sell this?*

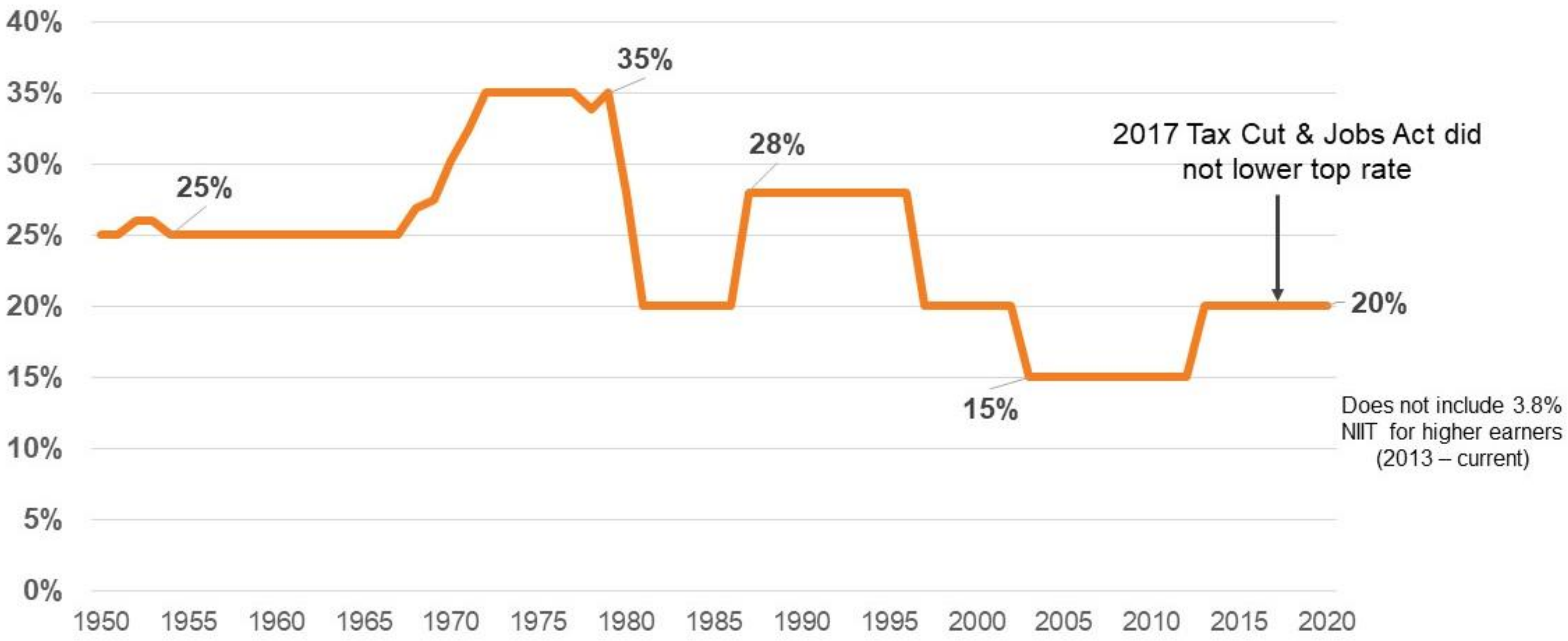
# CAPITAL GAINS AND REAL ESTATE



**HISTORICALLY,** capital gains have received preferential tax treatment.

Lower capital gains tax rates are an **incentive to sell** stocks, bonds, real estate – and then spend or reinvest the proceeds.

# Capital Gain Tax Rates 1950-2020



# CAPITAL GAINS AND REAL ESTATE

**Short Term Capital Gains** vs **Long Term Capital Gains**

**TAX RATE** you pay on capital gains depends on *how long* you've owned the asset.

## TYPES OF CAPITAL GAINS

- **Long term** (held for over one year) taxed at *capital gains* tax rates.
- **Short term** (held for a year or less), taxed at "ordinary" tax rates.

# CAPITAL GAINS AND REAL ESTATE

## LONG-TERM CAPITAL GAINS TAX RATES FOR 2025

| Tax Rate | Single | Married filing jointly | Married filing separately | Head of household |
|---|---|---|---|---|
| 0% | $0 to $48,350 | $0 to $96,700 | $0 to $48,350 | $0 to $64,750 |
| 15% | $48,351 to $533,400 | $96,701 to $600,050 | $48,350 to $300,000 | $64,751 to $566,700 |
| 20% | $533,401 or more | $600,051 or more | $300,001 or more | $566,701 or more |

# CAPITAL GAINS AND REAL ESTATE

## NET INVESTMENT INCOME TAX (NIIT)

NIIT imposes an added **3.8%** tax on "portfolio income." This includes:

- Interest, dividends, capital gains, royalties, rents, other passive income.
- Intended for high-earners.

# CAPITAL GAINS AND REAL ESTATE

| 2025 NET INVESTMENT INCOME TAX | |
|---|---|
| FILING STATUS | AGI THRESHOLD |
| Single | $200,000 |
| Married Filing Jointly | $250,000 |
| Married Filing Separately | $125,000 |
| Head Of Household | $200,000 |
| Qualifying Widower with Dependent Child | $250,000 |

## 3.8%

# CAPITAL GAINS AND REAL ESTATE

**CAPITAL GAINS** tax rates do NOT apply to *all* types of real estate properties.

*You need to know differences.*

# CAPITAL GAINS AND REAL ESTATE

**INTERNAL REVENUE CODE** places real estate into one of **four tax classes**:

1. PERSONAL - *Buy and reside*
2. DEALER - *Buy and flip*
3. INVESTMENT - *Buy and hold*
4. INCOME OR BUSINESS - *Buy, use, and hold*

Deductions
Depreciation
Capital Gains
#1031 Exchange

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# CAPITAL GAINS AND REAL ESTATE

## PERSONAL RESIDENCE

- Where you live. Or intend to live.
- Cap on interest and R.E. tax deductions
- Operating expenses NOT deductible
- No depreciation
- Profit is **capital gain**. Losses **not** deductible.
- May be offset by Homeowner's Exemption.

# CAPITAL GAINS AND REAL ESTATE

## DEALER PROPERTY

- Buying and selling for speculation
- Builders, flippers, wholesalers
- No set rule for how many deals
- No depreciation allowed
- No capital gains tax rates
- But losses are fully deductible.
- IRS could consider you a dealer.

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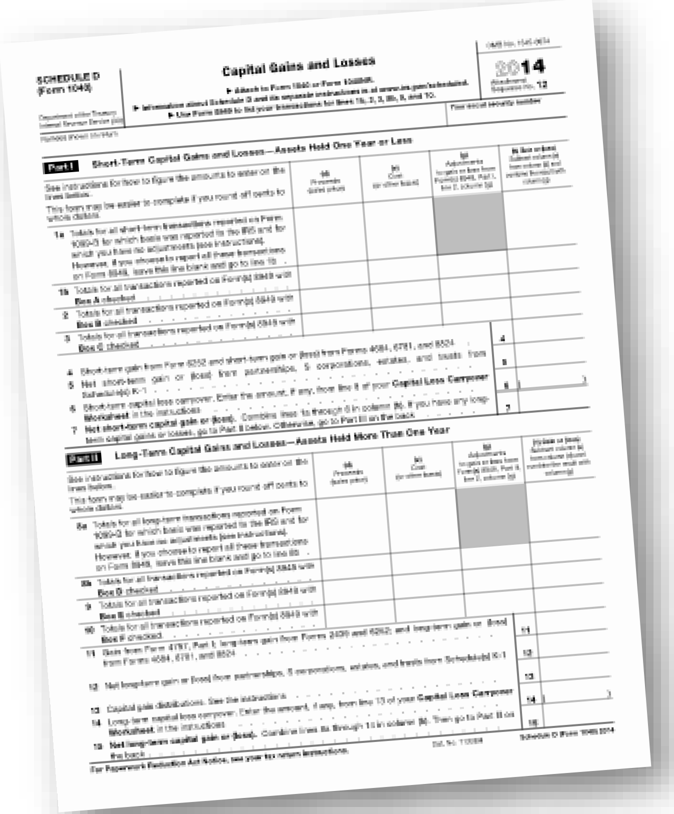
# CAPITAL GAINS AND REAL ESTATE

## INVESTMENT REAL ESTATE (IRC §1221)

- Generally, describes *any* property other than one's home.
- TAX classification is more specific – *real estate held primarily for resale.*
- Does NOT include property *used* in a trade or business, or for production of income.
- Usually unimproved land.

# CAPITAL GAINS AND REAL ESTATE


SCHEDULE D
(Form 1040)

Capital Gains and Losses

2014

Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less

Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year

## INVESTMENT REAL ESTATE (IRC §1221)

- Gains on sale are **capital gains**.
- **Losses** are capped at **$3000** yearly.
- You can carry over unused losses.

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# CAPITAL GAINS AND REAL ESTATE


## INCOME OR BUSINESS REAL ESTATE (§1231)

- Real estate used in a *trade* or *business*, or held for the *production of income*.
- Does not include real estate held solely for resale (IRC §1221).
- Buildings and improvements are **depreciable**.

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# CAPITAL GAINS AND REAL ESTATE


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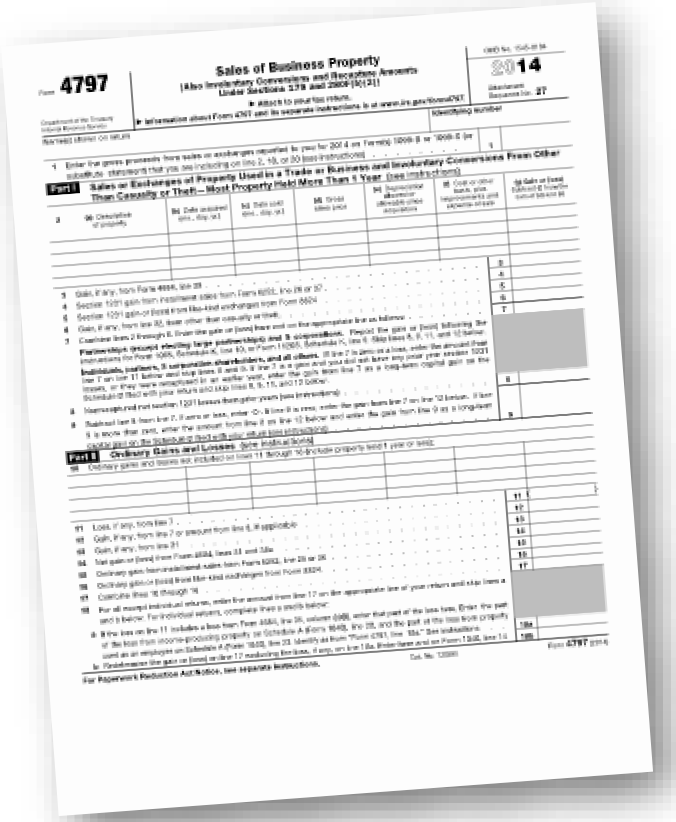
# CAPITAL GAINS AND REAL ESTATE




## INCOME OR BUSINESS REAL ESTATE (§1231)

Gains on sale are **capital gains** (better tax rates).

Losses are **“ordinary”** – the *entire* loss may be deducted from other gross income.

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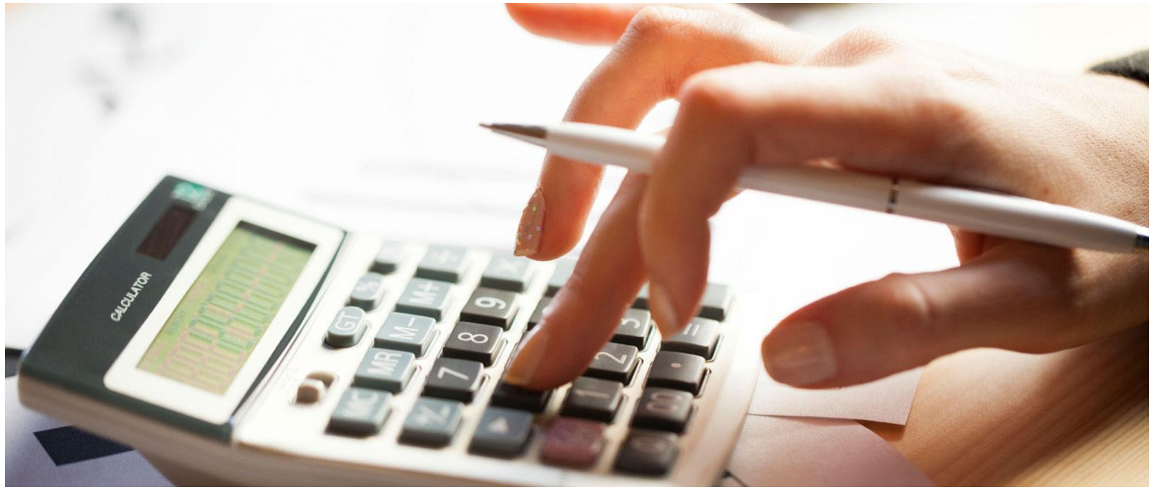
# CAPITAL GAINS AND REAL ESTATE

**REALIZED GAIN** is the difference between **Net Sale Price** and the property's **Adjusted Cost Basis.**



# CAPITAL GAINS AND REAL ESTATE

**ADJUSTED COST BASIS**

BEGINNING BASIS

+ PURCHASING COSTS

+ IMPROVEMENTS

-- ACCUMULATED DEPRECIATION

= ADJUSTED COST BASIS

**NET SALE PRICE**

SALE PRICE

-- SELLER CLOSING COSTS

= NET SALE PRICE

***

NET SALE PRICE

-- ADJUSTED COST BASIS

= REALIZED GAIN

# CAPITAL GAINS AND REAL ESTATE

BEGINNING BASIS *(Usually Purchase Price)*

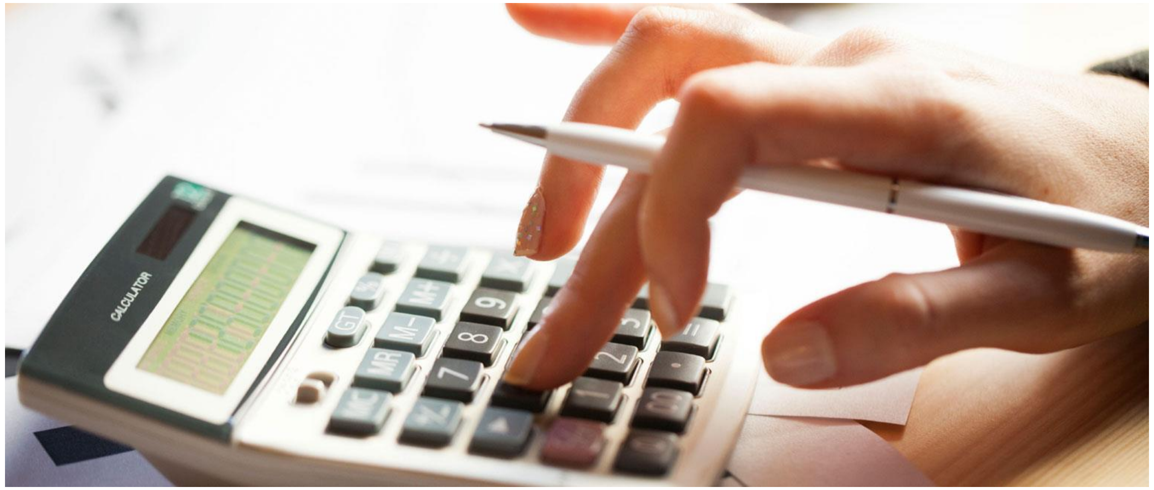
\+ Transaction Costs (buyer)

\+ Capital Improvements

\- <u>Accumulated Depreciation</u>

= ADJUSTED COST BASIS

# CAPITAL GAINS AND REAL ESTATE



**BASIS GOES UP** when you make *capital improvements*.

**BASIS GOES DOWN** when you take *annual depreciation*.

# CAPITAL GAINS AND REAL ESTATE

| | |
|---|---|
| PURCHASE | **BASIS is the purchase price plus closing costs and improvements.** |
| GIFT | **The *lesser* of the adjusted basis of the donor, or property's FMV.** |
| INHERITANCE | **Deceased's ACB or FMV at time of death, whichever is *greater*.** |

# CAPITAL GAINS AND REAL ESTATE


## "STEPPED UP" BASIS

Under IRC §1014(a), when a beneficiary **inherits** an asset, the asset receives a "stepped-up" basis – up to its *fair market value* at the time the giver dies.

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# CAPITAL GAINS AND REAL ESTATE

**DEPRECIATION RECAPTURE** occurs when a taxpayer disposes of an asset that has been **previously depreciated**.

Because the taxpayer deducted depreciation from **ordinary income**, the taxpayer has to report any gain *up to the depreciated amount, as ordinary income* to offset the earlier deduction.

Any gain above that is subject to more favorable capital gains tax rates.

# CAPITAL GAINS AND REAL ESTATE

## DEPRECIATION RECAPTURE

**IRC §1245** "personal property" depreciation is subject to recapture at taxpayer's ordinary rate.

**IRC §1250** depreciation of "real property" is *not* recaptured at ordinary rates, BUT is instead subject to a **25%** tax rate on the amount depreciated.

# HOW DEPRECIATION RECAPTURE WORKS

| | |
|---|---|
| Sale Price | $1,000,000 |
| Selling Costs | 100,000 |
| Net Sale Price | $ 900,000 |
| | |
| Adjusted Cost Basis | |
| Purchase Price | $ 480,000 |
| Purchasing Costs | 20,000 |
| Less: Accumulated Depreciation | 150,000 |
| Adjusted Cost Basis | $ 350,000 |
| | |
| CAPITAL GAIN | $ 550,000 |

**TAX CALCULATION** (federal only)

| | |
|---|---|
| Capital Gain | $ 550,000 |
| Depreciation Recapture | 150,000 |
| Remaining Gain | $ 400,000 |
| | |
| $150,000 @ 25% rate | $ 37,500 |
| $400,000 @ 15% rate | $ 60,000 |
| TOTAL FEDERAL TAX | $ 97,500 |

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# CAPITAL GAINS AND REAL ESTATE

| Higher Capital Gains Tax | Health Care Tax | Depreciation Recapture Tax | State Taxes |
|---|---|---|---|
| 15% or 20% | 3.8% | 25% | 0% to 13.3% |
| Single investors exceeding $533,400; couples exceeding $600,050 pay 20% capital gains rate. | Surtax imposed on gain in excess of $200,000 for single filers and $250,000 for married couples filing jointly. | Applies only to total depreciation previously recovered by taxpayer. | Tax rates vary. In GA it is 6%. |

# CAPITAL GAINS AND REAL ESTATE

## REDUCE OR DEFER CAPITAL GAINS

- Installment Sale
  - ✓ Seller Financing
  - ✓ Lease Purchase
- Tax Deferred Exchange (§1031)
- Die beforehand!

# CAPITAL GAINS AND REAL ESTATE

## INSTALLMENT SALE

- Seller gets paid in two or more installments over more than a single tax year. A portion of payment is capital gain that year.
- Seller financing, contract for deed, or lease purchase.
- *Pros:* Spreads capital gains tax over several years, cash flow.
- *Cons:* Risk of buyer default, interest income fully taxed.

# TAX DEFERRED EXCHANGE

## IRC CODE §1031

*"No gain or loss shall be recognized on the exchange of real property held for use in a trade or business, or for investment, if such real property is exchanged solely for real property of like-kind."*

The investor can defer the entire capital gains tax by reinvesting *all* proceeds into another qualified property.

§1031
DEFERS
taxes

§1031 is
NOT
tax-free


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# TAX DEFERRED EXCHANGE

## WHAT IS A §1031 EXCHANGE


A method for selling one property, then proceeding with acquisition of another within specific timeframes.

While most real estate deals are taxable as outright sales, if you fall within 1031 rules, you'll either have **no tax** or **limited tax** due at time of the exchange.

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# TAX DEFERRED EXCHANGE

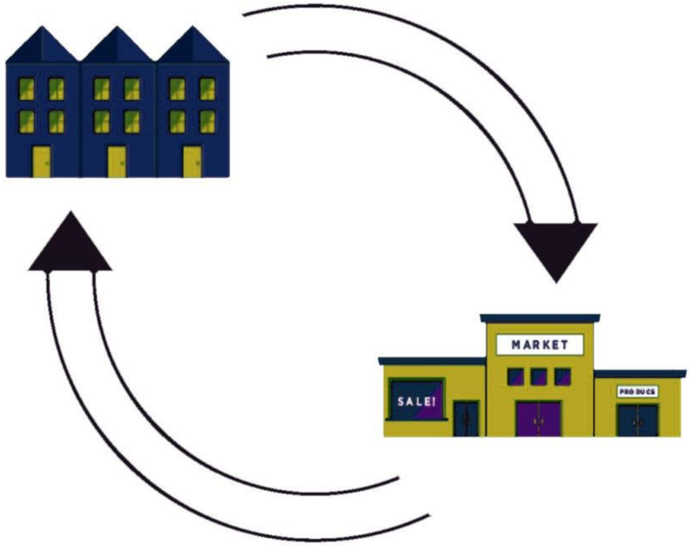
## WHAT IS DEFERRED UNDER §1031?

Federal and state income taxes on capital gains, depreciation recapture, and NIIT.

Of the **four** classes of real estate, only **two** qualify:

- Real estate held for investment (§1221).
- Real estate held for the production of income, or used in a trade or business (§1231).

# TAX DEFERRED EXCHANGE




## §1031 EXCHANGE RULES

Properties must be **"Like Kind"** – *real estate* used in business or trade, or as an investment.

*Personal residence and dealer property are **not** eligible.*

# TAX DEFERRED EXCHANGE

## “LIKE KIND” PROPERTIES

| EXCHANGED PROPERTY | CAN BE EXCHANGED FOR |
|---|---|
| Vacant land | Retail shopping center |
| Industrial warehouse | Apartment building |
| Office building | Duplex rental property |
| Rental condo | Self-storage facility |
| Raw land | Commercial land |

# TAX DEFERRED EXCHANGE

## §1031 EXCHANGE RULES

Purchase price of the replacement property must **equal** or **exceed** the gross sale price of the relinquished property.

# TAX DEFERRED EXCHANGE


## §1031 EXCHANGE RULES

Sales proceeds held by a **Qualified Intermediary**.

*Can't be a relative, your attorney, banker, employee, accountant or real estate agent. People who've served you in any of those capacities in past two years are off-limits.*

# TAX DEFERRED EXCHANGE

The Qualified Intermediary performs several key functions.

| | | | |
|---|---|---|---|
| Acts as a Principal | Holds Exchange Proceeds | Prepares Legal Documentation | Babysits the Deal! |

# TAX DEFERRED EXCHANGE


## §1031 EXCHANGE RULES

Proceeds from original sale must be fully **reinvested** in acquiring the replacement real estate.

*Cash retained from the proceeds is taxable "boot."*

# TAX DEFERRED EXCHANGE


## §1031 EXCHANGE RULES

Replacement property must be subject to an **equal or greater level of debt** than the property sold.

*“Net loan relief” is taxable “boot.”*

# TAX DEFERRED EXCHANGE


## §1031 EXCHANGE RULES

Exchange must occur within strict statutory timeframes.

- **45-day** identification period.
- **180 day** closing period.

# TAX DEFERRED EXCHANGE

**DAY 1**
Sell Your Property

**BY DAY 45**
Find a Replacement

**BY DAY 180**
Close on New Property

These are **calendar** days – not business days – no allowance for weekends or holidays. ***No exceptions or extensions allowed***, unless specified under federal declared emergency.

# §1031 RULES

In order to obtain a deferral of the **entire** capital gain tax the Exchanger must:

1 **EQUAL OR GREATER VALUE**

Purchase property of EQUAL OR GREATER value.

2 **REINVEST**

Reinvest ALL of the net proceeds from the relinquished property.

3 **REPLACE THE VALUE OF THE DEBT**

Replace the value of the debt that was on the relinquished property, by placing or assuming a loan on the replacement property of an equal or greater amount.

4 **RECEIVE NO $**

Receive nothing in the exchange but like-kind property.

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# TAX DEFERRED EXCHANGE

## EXAMPLE:

George Grapegrower (married filing jointly with no other taxable income) has owned a vineyard for almost 10 years and wants to sell the property for $3,000,000. George originally paid $1,500,000 for it, put about $200,000 of capital improvements into the property, and took approximately $600,000 in depreciation deductions over the 10 years. George owes $2,000,000 to the Lender. Seller closing costs approx. $200,000.

# TAX DEFERRED EXCHANGE

## Calculate ADJUSTED COST BASIS

| | |
|---|---|
| Original Purchase Price (Basis) | $1,500,000 |
| PLUS: Capital Improvements | + $200,000 |
| LESS: Accumulated Depreciation | - $600,000 |
| Equals: ADJUSTED COST BASIS | $1,100,000 |

# TAX DEFERRED EXCHANGE

## Calculate CAPITAL GAIN

| | |
|---|---|
| Fair Market Value | $3,000,000 |
| LESS: Estimated Closing Costs | -$200,000 |
| Net Sales Price | $2,800,000 |
| LESS: Adjusted Cost Basis | - $1,100,000 |
| Equals CAPITAL GAIN | $1,700,000 |

# TAX DEFERRED EXCHANGE

## Calculate CAPITAL GAIN TAX DUE

| | | | |
|---|---|---|---|
| **FEDERAL** | **CAPITAL GAIN** | $1,700,000 | |
| | Gain Due to Depreciation (25% recapture)) | -$600,000 x 25% = | **$150,000** |
| | Gain Due to Appreciation | $1,100,000 | |
| | $600,050 x 15% = | | **$90,008** |
| | $499,950 x 20% = | | **$ 99,990** |
| | Taxable Investment Income **(Healthcare Tax)**<br>($1,700,000-$250,000) | $1,450,000 x 3.8% = | **$55,100** |
| **STATE** | **State Tax** (using 5%) | $1,700,000 x 5% = | **$85,000** |
| **TOTAL** | **FEDERAL & STATE TAXES** | | **$480,098** |

# TAX DEFERRED EXCHANGE

## Run THE NUMBERS

| | SALE | EXCHANGE |
|---|---|---|
| Net Equity | $800,000 | $800,000 |
| Total Capital Gain Taxes | $480,098 | -0- |
| Equity to Reinvest | $319,902 | $800,000 |
| Proposed Acquisition (using equity as 25% down payment) | $1,279,608 | $3,200,000 |

**§1031 permits deferral of ALL:**

- **Capital Gains Taxes (Federal & State)**
- **Depreciation Recapture (25% Federal)**
- **Healthcare Tax (3.8%)**

**"Have you talked to your accountant about the likelihood of capital gains taxes when you sell this?"**

# TAX DEFERRED EXCHANGE

## MOTIVATIONS TO EXCHANGE

1. **Portfolio Growth** – Reallocate equity into higher-yield or more strategic assets without an immediate tax hit.
2. **Leverage & Cash Flow** – Exchange into larger or higher-income properties.
3. **Upgrade** from management-intensive to management-light assets (e.g., apartment complex → NNN retail property).

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# TAX DEFERRED EXCHANGE

More Motivations

4. **Geographic relocation** of portfolio to stronger growth markets.
5. **Diversification** into multiple asset classes.
6. **Consolidation** of smaller properties into larger.
7. **Transition** into passive income vehicles.
8. **Estate Planning** – Upon death, heirs receive step-up in basis, eliminating deferred gains.

# TAX DEFERRED EXCHANGE

To provide the other party with notice of the exchange, the Exchanger should have an ***exchange cooperation clause*** in the Purchase and Sale Agreement for **both** the relinquished and replacement properties:

*Buyer hereby acknowledges that it is the intent of the Seller to complete a tax deferred exchange under IRC Section 1031 which will not delay the close of the purchase transaction or cause additional expense to the Buyer. The Seller's rights under the purchase and sale agreement may be assigned to a Qualified Intermediary of the Seller's choice for the purpose of completing such an exchange. Buyer agrees to cooperate with the Seller and the Qualified Intermediary in a manner necessary to complete the exchange.*

# TAX DEFERRED EXCHANGE

## REPLACEMENT PROPERTIES

- **3-Property Rule** - Investor may *identify up to three* potential replacement properties regardless of total market value, and *acquire any or all* of them.
- **200% Rule** - Investor may *identify any number* of replacement properties *if their total value does not exceed 200%* of the relinquished property's total value. The investor may *acquire any or all* of these as desired.

# TAX DEFERRED EXCHANGE

## REPLACEMENT PROPERTIES

- **95% Rule** - Investor may *identify any number* of replacement properties regardless of their value if the investor *acquires 95% of the total market value* of all properties identified.

# TAX DEFERRED EXCHANGE

## 45-DAY IDENTIFICATION PERIOD

- To officially identify replacement property, investor must provide written notice to the Qualified Intermediary.
- Notice must be unambiguous regarding each proposed replacement.

# TAX DEFERRED EXCHANGE


## EXCHANGE CLOSING PERIOD

Must close on replacement property within **180 days** after original property closing, OR the due date for the person's tax return for that tax year in which transfer of relinquished property occurred, *whichever is earlier.*

*File for an extension.*

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# TAX DEFERRED EXCHANGE

## TYPES OF 1031 EXCHANGES

- **Simultaneous Exchange** – Both properties close the same day (rare).
- **Delayed Exchange** – Relinquished property sold first; replacement property acquired within 180 days.

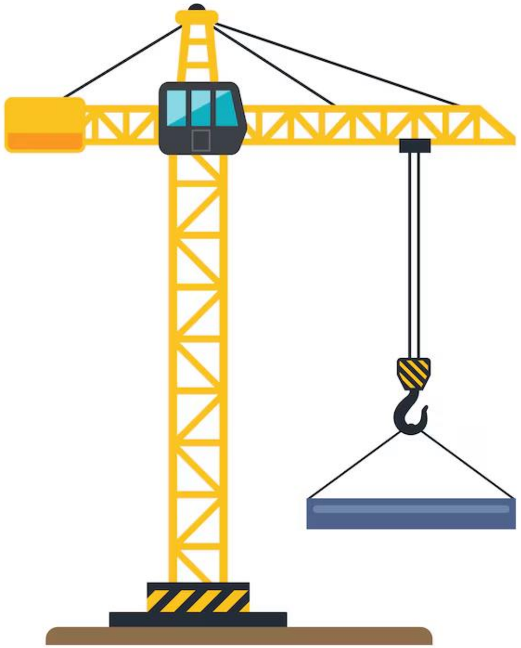
# TAX DEFERRED EXCHANGE

## TYPES OF §1031 EXCHANGES

- **Reverse Exchange** – Buy replacement property *first*; sell relinquished property *later*.

You must transfer the new property to an *"Exchange Accommodation Titleholder,"* identify the relinquished property (within 45 days) and complete the transaction within 180 days after replacement property bought.

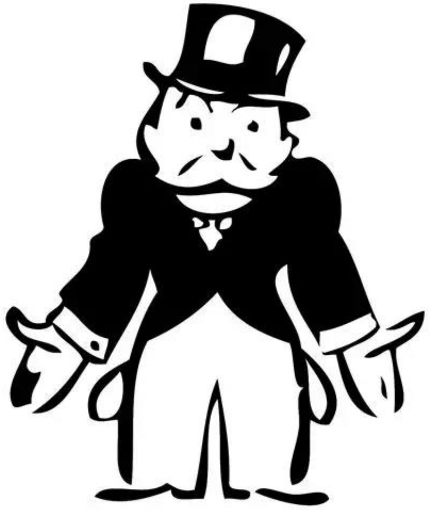
# TAX DEFERRED EXCHANGE



## TYPES OF §1031 EXCHANGES

- **Improvement Exchange**—Allows the investor to use some or all of their §1031 proceeds to fund improvements on a replacement property – either on raw land, or on an existing property being upgraded (strict rules).

# TAX DEFERRED EXCHANGE



## COMPLIANCE PITFALLS

- **Missing deadlines** – no exceptions except disasters.
- **Improper I.D.** – vague descriptions, changes after day 45.
- **Personal use** – for personal residence following exchange.
- **Related-parties** – special holding requirements.
- **Constructive receipt of funds** – touching the money.

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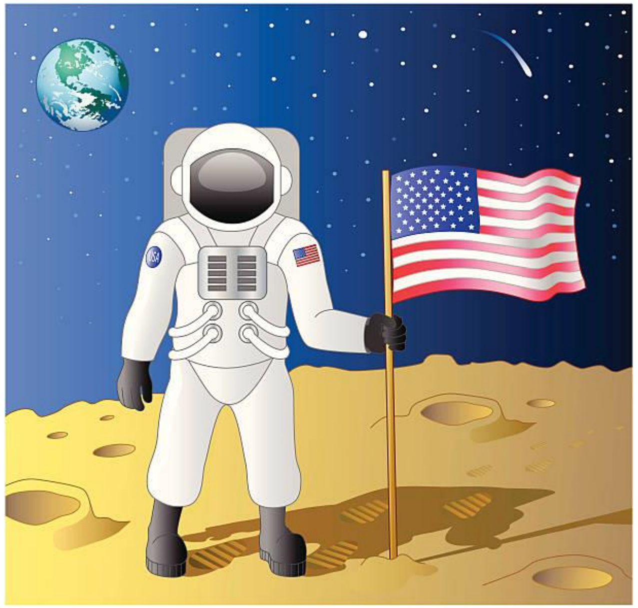
# TAX DEFERRED EXCHANGE



## NO FOREIGN PROPERTIES!

You can do a §1031 exchange within 50 states, D.C., and following U.S. territories:

- U.S. Virgin Islands
- Guam
- Northern Mariana Islands

*Note:* Puerto Rico is not eligible.

# TAX DEFERRED EXCHANGE

## WHAT IF YOU DON'T REINVEST EVERYTHING?

- Any net proceeds not reinvested is called "boot."
- Boot is taxable as capital gain (or *depreciation recapture*).
- Boot can be cash received, purchase price decrease, or mortgage relief (you take on *less debt* in the new property than you had on the old one, and don't make up the difference with added cash).

# TAX DEFERRED EXCHANGE

## IMPORTANT THINGS ABOUT §1031 EXCHANGES

- A §1031 exchange doesn’t make capital gains tax go away; it just postpones them.
- You don’t have to swap a multifamily property for another multifamily property, a parking lot for a parking lot, or a gas station for a gas station. It’s not the property use but the I.R.S. **tax class** that matters.
- Let the Qualified Intermediary help you early on. Their job is to keep everything legal so they get paid too!

# TAX DEFERRED EXCHANGE

## DEPRECIATION OF REPLACEMENT PROPERTY

When you exchange property under §1031, you do *not* reset the depreciation schedule to the fair market value of the replacement property. Instead, you *carry over* the adjusted basis of the relinquished property.

Depreciating the new property is typically split into two components:

1. *Carryover basis* – continues to depreciate on the old schedule.

2. *Excess basis* – any additional money you invested creates a new basis that can be depreciated as if it were a fresh purchase.

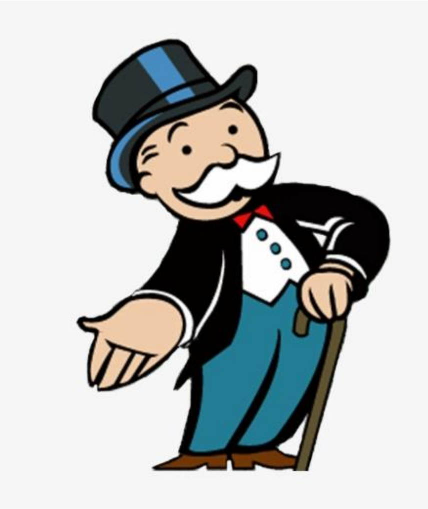
# ALTERNATIVE LIKE-KIND PROPERTY

# TAX DEFERRED EXCHANGE

## ALTERNATIVE "LIKE KIND" PROPERTY

Besides a qualified replacement property, there are alternative replacements to a traditional §1031 exchange that investors may use to defer capital gains taxes.

- Tenancy in Common (TICs)
- Delaware Statutory Trusts (DSTs)
- Opportunity Zones (OZs)



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# TENANTS IN COMMON (TICs)

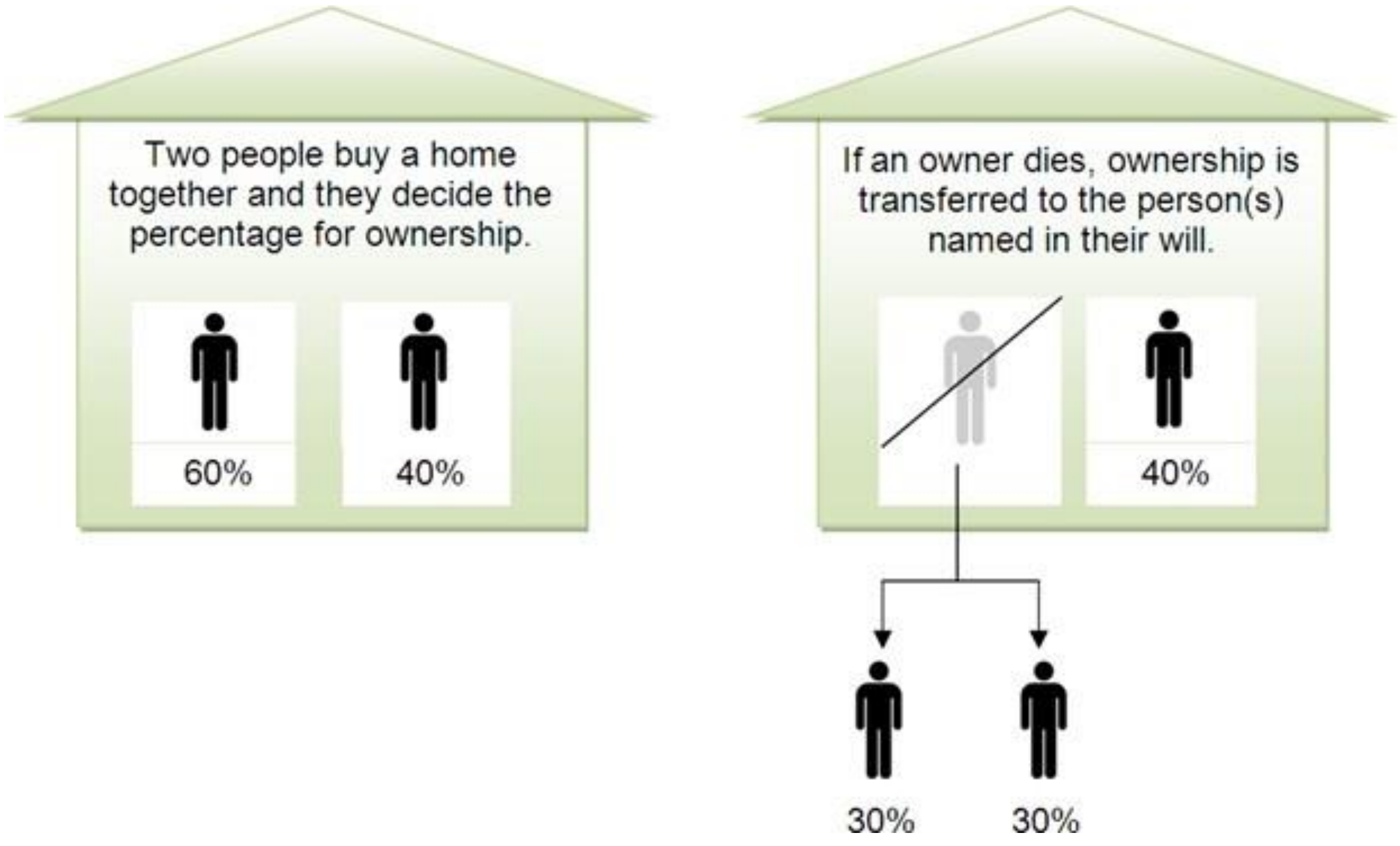
## WHAT IS A TIC?

TICs, or **Tenants in Common**, is a form of **co-ownership** where two or more people hold undivided interests in a real estate property, *not* necessarily in equal shares, and *without* a right of survivorship.

A TIC allows multiple investors to co-own fractional interests in a single property. Each investor can sell, mortgage, or transfer their interest independently, but the property is managed collectively.

IRS revenue rulings allow for a maximum of 35 co-owners.

# TENANTS IN COMMON (TIC)



# TENANTS IN COMMON (TIC)

| FEATURE | DESCRIPTION |
|---|---|
| **Ownership Interest** | **Each co-owner owns a percentage (e.g., 25%, 50%) which can differ between co-tenants.** |
| **Title** | **All owners are listed on the deed as “tenants in common.”** |
| **Transferability** | **Each co-tenant can sell, mortgage, transfer, or bequeath their share independently of the others.** |
| **No Survivorship** | **If one co-owner dies, their share goes to their estate, not to the other co-tenants.** |
| **Use & Possession** | **All owners have equal right to use the entire property, regardless of share size.** |

# TENANTS IN COMMON (TIC)

| FEATURE | TIC | JOINT TENANCY | PARTNERSHIP |
|---|---|---|---|
| Ownership % | Unequal allowed | Must be equal | Varies |
| Right of Survivorship | ❌ No | ✅ Yes | ❌ No |
| Title | Separate shares | Single title | Entity-owned |
| Transferability | Freely transferable | Restricted | May need agreement |
| Tax Reporting | Individual (1099/Sch E) | Individual | Usually through entity |

# TENANTS IN COMMON (TIC)


## TICs IN A §1031 EXCHANGE

- Considered “like kind” – you can exchange into a TIC interest in another exchangeable property, and defer capital gains taxes.
- Qualified Intermediary still required.
- Other §1031 rules still apply.

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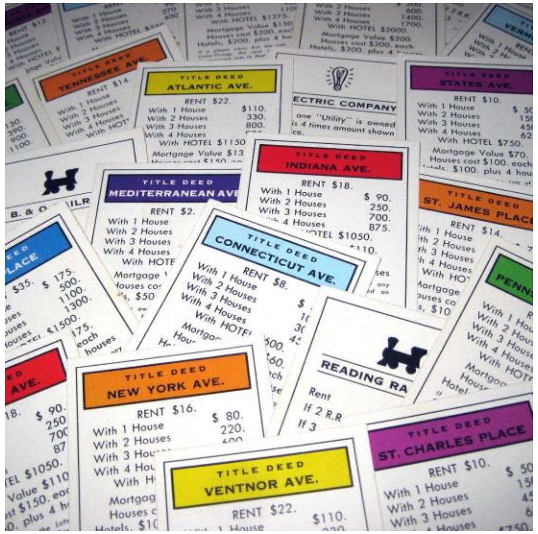
# TENANTS IN COMMON (TIC)




## PROS OF USING TICs IN §1031 EXCHANGE

- Smaller investors can co-own big CRE.
- Spread your investment across multiple TIC interests.
- TICs also provide current rental income, and/or tax shelter.

# TENANTS IN COMMON (TIC)

## CONS / CONSIDERATIONS

- Selling a fractional TIC interest can be slower.
- TICs require co-owner agreements covering decision-making and exit strategies.
- Some lenders are cautious.
- Major decisions often require agreement of all TIC owners.

# DELAWARE STATUTORY TRUST (DST)


**DELAWARE STATUTORY TRUST** lets smaller investors access large institutional-grade properties with the advantage of §1031 tax deferral.

Such replacement properties require no active participation by the investor, are professionally managed, provide monthly cash flow, and steady appreciation.

# DELAWARE STATUTORY TRUST (DST)


## HOW DO DSTs WORK?

- Legal trust set up, though not necessarily located, in State of Delaware.
- Private governing agreement under which real estate is managed, administered, operated.
- Trust's sponsor handles operations, management, and leasing.

# DELAWARE STATUTORY TRUST (DST)

## DSTS IN A §1031 EXCHANGE

- DST interests are qualified replacement property.
- Qualified Intermediary (QI) must be used.
- DSTs can be purchased with exchange proceeds, simplifying the process.

# DELAWARE STATUTORY TRUST (DST)

## PROS OF DSTs IN A §1031 EXCHANGE

- Ideal for investors who want to be “hands-off.”
- Own high-value CRE with small capital.
- Spread risks across multiple DST offerings or properties.
- Each owner receives percentage share of income, tax benefits, and appreciation.

# DELAWARE STATUTORY TRUST (DST)

## CONS

- Sponsor controls operations.
- DST interests are illiquid.
- Market downturns.
- Pre-determined exit strategy—often 5 to 10 years, after which the property is sold.

# ACTIVE DST'S

| SPONSOR | Equity Raised | % Market Share |
|---|---|---|
| Ares Real Estate Exchange | $1.02 billion | 18% |
| JLL Exchange | $566 million | 10% |
| Inland Private Capital Corporation | $563 million | 10% |
| Hines Real Estate Exchange | $403 million | |
| Exchange Right Real Estate | $397 million | 7% |


Opportunity
Zones
IRS

# OPPORTUNITY ZONES

## ANOTHER ALTERNATIVE STRATEGY

is to invest §1031 exchange proceeds into a **Qualified Opportunity Fund,** operating inside a federally designated **Opportunity Zone**.

# OPPORTUNITY ZONES

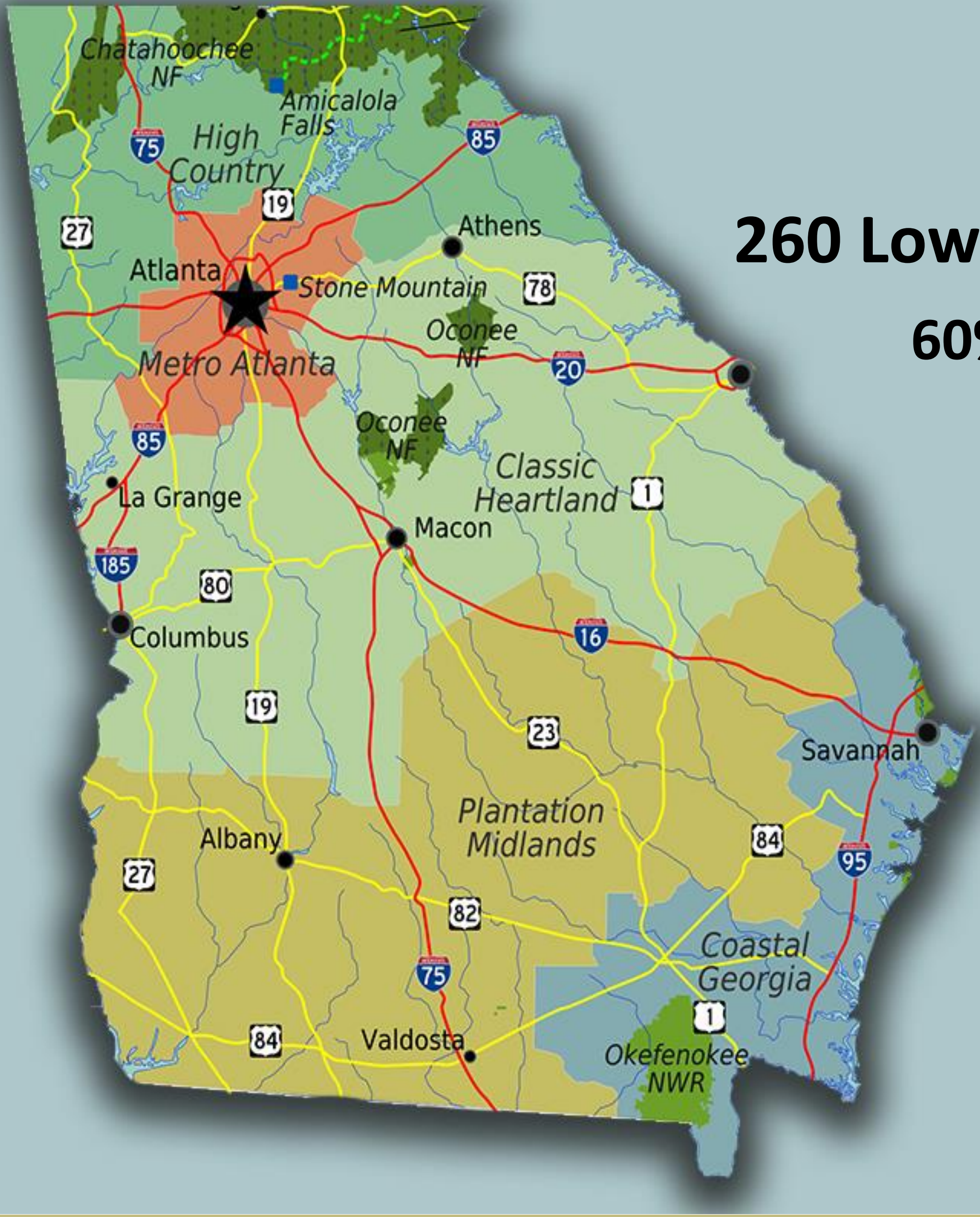
## WHAT ARE THEY? WHERE ARE THEY?

Created under TCJA (2017) to spur private investment in economically distressed areas.

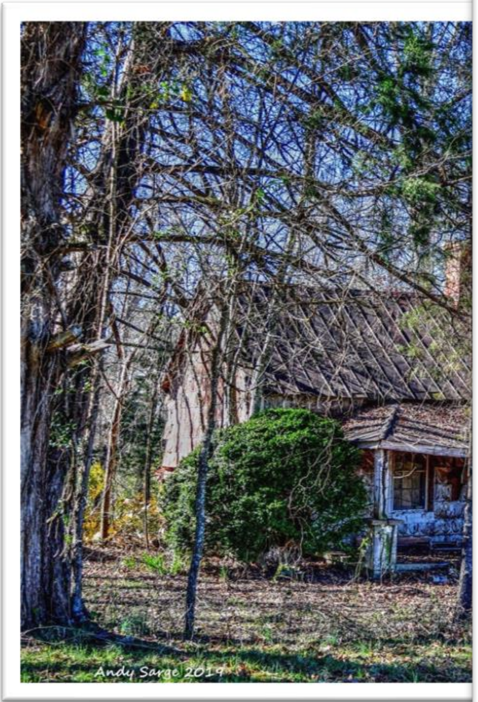
- States designated 25% of low-income census tracts as “Opportunity Zones.”
- U.S. Treasury approved 8,764 OZs in 50 states and five U.S. possessions.

## 260 Low-Income Communities

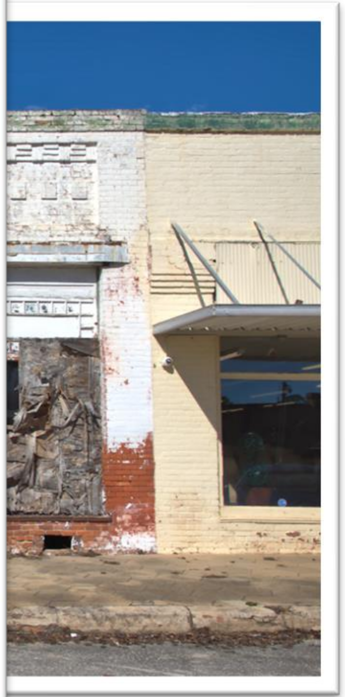
**60% Rural, 40% Urban**




## State of Georgia Opportunity Zones







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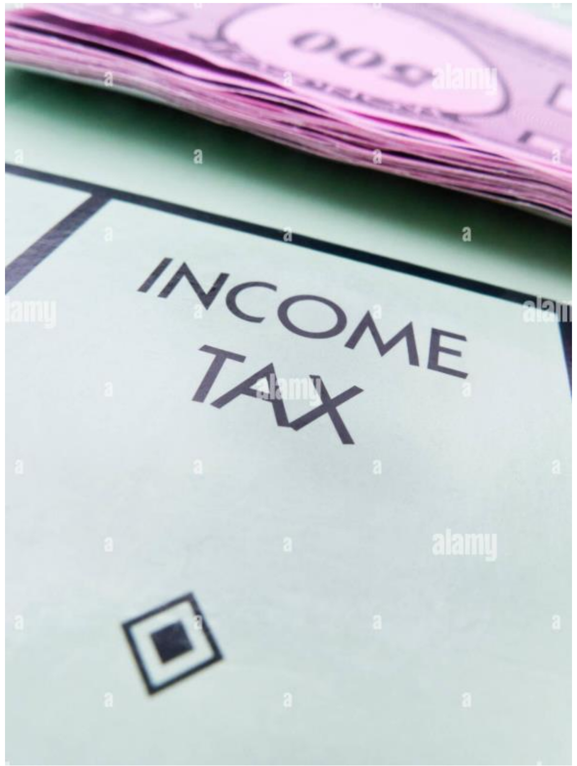
# OPPORTUNITY ZONES

| LOCATION | OPPORTUNITIES |
|---|---|
| Westside Atlanta | Mixed-use, adaptive reuse, affordable housing |
| Downtown Atlanta | Retail/office redevelopment near Five Points |
| Savannah | Historic redevelopment and tourism-based hospitality |
| Augusta | Medical campus expansion and workforce housing |
| Macon, Columbus, Albany | Manufacturing, logistics, community revitalization |

# OPPORTUNITY ZONES




**QOFS PROVIDE** investors a legal place to reinvest their sales proceeds from 1031 Exchange.

While investing in economically distressed areas may be civic minded, there were *(and are)* selfish income tax incentives for putting your money into Opportunity Zone projects.

# OPPORTUNITY ZONES

## ORIGINAL TAX BENEFITS

- Defer taxes on original gains until the *earlier* of the sale of the OZ investment or December 31, 2026.
- If held for 5 to 7 years, a portion of the deferred gain would be excluded from capital gains taxes.
- If investment held for 10 or more years, any **new gains** from the OZ investment were entirely tax-free. Deferred gain would still be recognized.

**OPPORTUNITY ZONE TAX BENEFITS**

**Tax Benefit #1:** Temporary Capital Gains Tax Deferral

**Tax Benefit #2:** Step-Up in Basis for Capital Gains

**Tax Benefit #3:** Permanent Exclusion

# ORIGINAL TAX BENEFITS (continued)

- Prior to OZs, an investor could defer capital gains *only* through a §1031 exchange – trading ***real estate*** *for* ***real estate****.*
- An OZ deal does **not** require an exchange of only real estate.
- With an OZ Fund, an investor can defer eligible gain in *any* capital asset, including stocks, private business, real estate, collectibles, etc.


# QUALIFIED OZ "PROPERTIES"

1. Opportunity Zone Business Property (real estate, equipment, etc.)
2. Opportunity Zone Partnership Interests
3. Opportunity Zone Stock

***Real estate** is still the most common asset class due to its physical location being easily tied to a Zone.*

# QUALIFIED OZ PROPERTIES

- Real estate development, substantial renovation
- New business
- Partnerships or corporations operating in OZs.

**CRE includes:**

- Mixed-use, office, industrial, multi-family (including affordable housing); hotels and hospitality projects.

# OPPORTUNITY ZONES

## ORIGINAL REQUIREMENTS

- The Opportunity Fund must invest more than 90% of its assets in property located inside an Opportunity Zone.
- The property must be original use (new), or meet the definition of “substantial improvement,” i.e., adjusted basis in the property must be **doubled** (or more) within 30 months of acquisition in order to reap tax benefits.

# OPPORTUNITY ZONES

## SUCCESSES

One of the most effective housing supply programs.

- Over 313,000 new housing units nationally; average subsidy cost of $26,000 per unit—versus traditional subsidies of $100,000.
- 48% of new housing within designated tracts, 16% across all low-income communities, 4% of total U.S. housing production.

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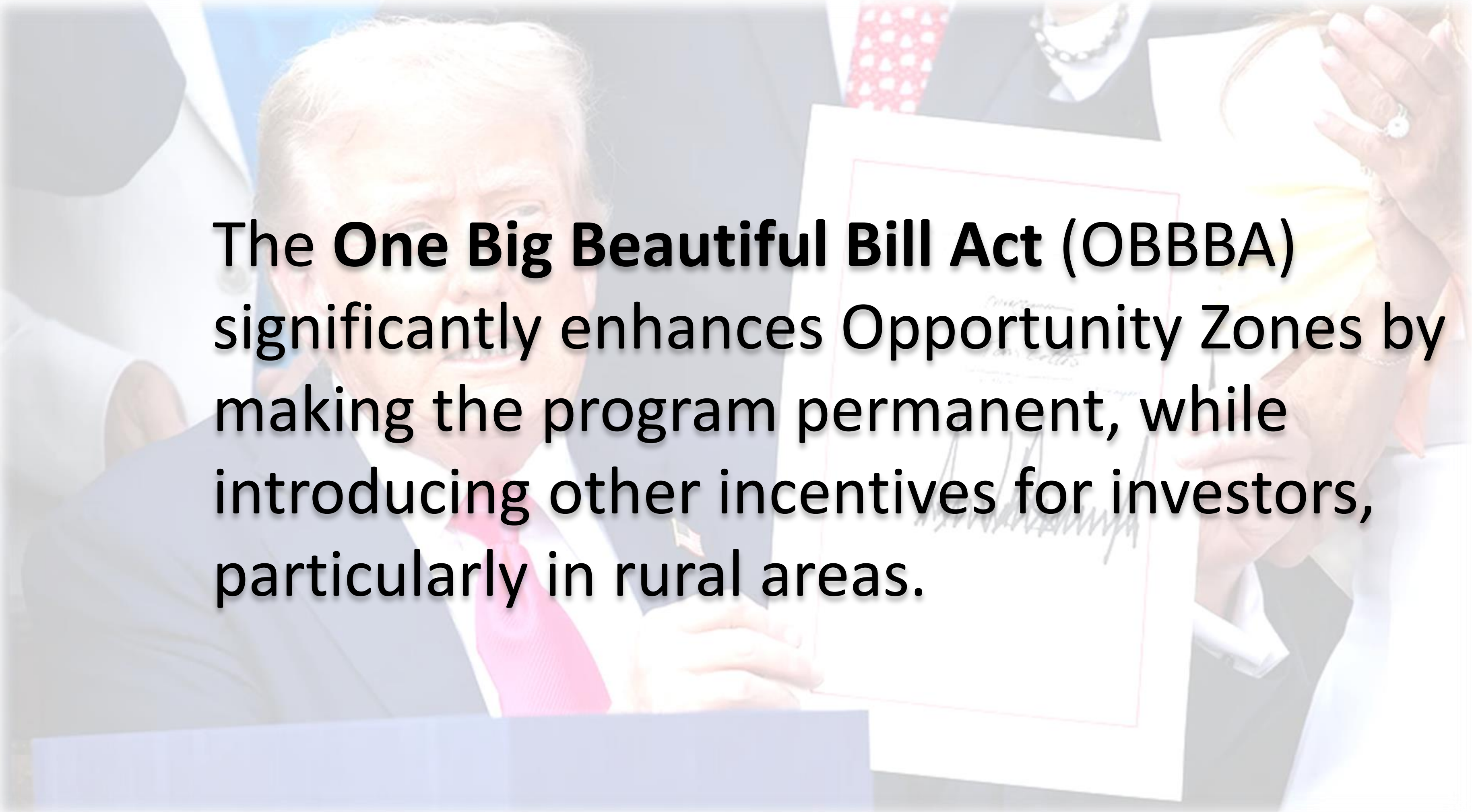
# CRITICISM

| CONCERN | DETAILS |
| --- | --- |
| Gentrification | Potential displacement of local residents |
| Limited Reporting | Lack of robust data on jobs, economic outcomes |
| Investor vs. Community Benefit | Some projects favor investors more than local economies |



The **One Big Beautiful Bill Act** (OBBBA) significantly enhances Opportunity Zones by making the program permanent, while introducing other incentives for investors, particularly in rural areas.


## PERMANENT PROGRAM & REDESIGNATIONS

- The Opportunity Zone program is now permanent, eliminating prior expiration date of December 31, 2026. Current OZs will continue to be valid through 12/31/2028.
- Starting July 1, 2026, state governors may nominate new census tracts to become effective on January 1, 2027, for a 10-year designation period – but with tighter eligibility requirements.


## REVISED TAX INCENTIVES

- **Rolling 5-Year Deferral:** For investments made after January 1, 2027, deferred gains must be recognized **5 years** after the original investment date, even if you still hold onto your QOF interest.
- **10% Basis Step-Up Only:** A one-time 10% basis increase to the deferred gain is granted after a 5-year hold (the previous additional 5% step-up at year 7 under TCJA was eliminated).

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## REVISED TAX INCENTIVES

- **Tax-Free Exit After 10 Years:** Gains from the Fund itself may be entirely tax-free if the investment is held for 10 years or more. This is consistent with prior rules.
- **30-Year Freeze in Basis:** If held longer than 30 years, basis is frozen at fair market value at year 30; any appreciation after that must be taxed.

# EXAMPLE

**June 15, 2027** - Sell stock at a $1 million capital gain; invest into a QOF.

- If you sell your QOF interest in 2029 (two years later), you recognize the deferred gain of $1 million in 2029.
- If you don't sell, the law forces recognition of the gain (pay tax) on the 5-year anniversary June 15, 2032. At that time, however, the deferred gain is reduced by 10% - or $900,000 recognized gain.

This does not affect appreciation of the QOF itself. If held for 10 years, the basis of the original investment is stepped up to FMV after 10 years.

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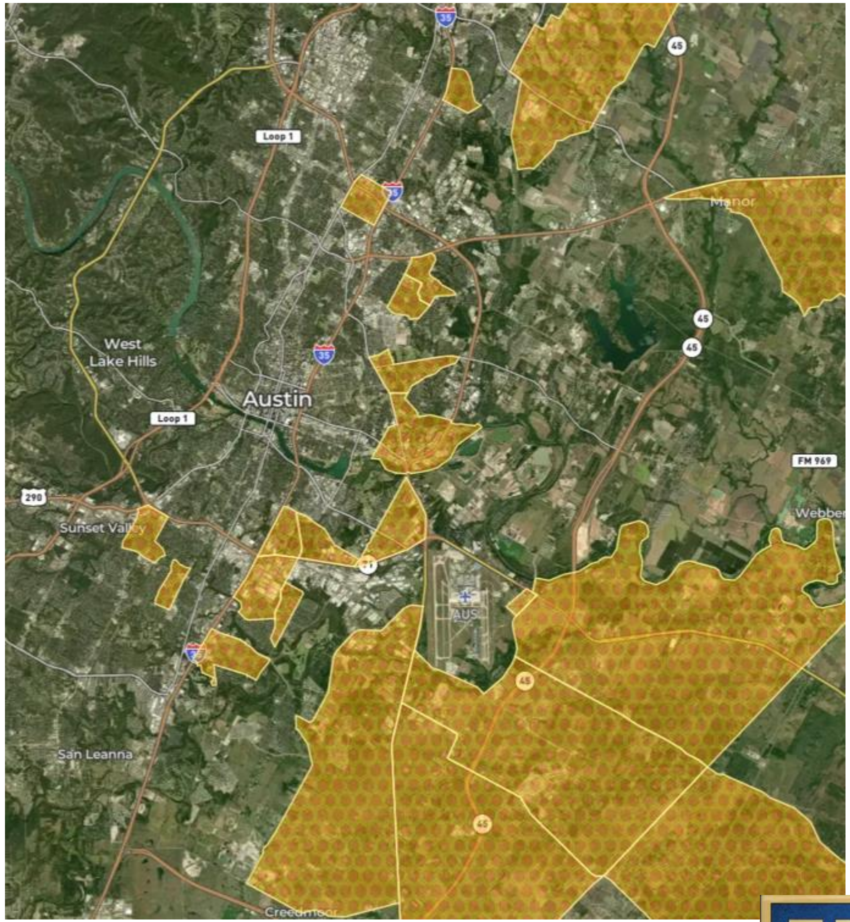
# ENHANCED BENEFITS FOR RURAL OZs

Qualified Rural Opportunity Funds (QROFs) investing primarily in rural OZs receive enhanced tax benefits:


- **30% basis step-up** after 5 years, instead of 10%.
- **Reduced substantial improvement requirement**: 50% of adjusted basis vs. 100% for non-rural investments.


Loop 1
Manor
West
Lake Hills
Austin
Loop 1
FM 969
290
Sunset Valley
Webber
AUS
San Leanna
Creedmoor

| Feature | TCJA (2017)<br>Investments made before 1/1/2027 | OBBBA (2025)<br>Investments made on and after 1/1/2027) |
|---|---|---|
| Deferral period | Until earlier of sale or disposition OR Dec 31, 2026 (hard backstop) | Until earlier of sale/disposition OR 5-year anniversary (rolling clock) |
| Step-up benefits on deferred gain | 10% after 5 years (if invested by 12/31/2021) + extra 5% after 7 years (if invested by 12/31/2019). Both expired, no longer available | 10% basis step-up after 5 years still applies for all new QOF investments (30% step-up if invested in special rural funds) |
| Recognition date for deferred gain | Always by 12/31/2026 (tax reported on 2026 return, due April 2027) | 5 years after investment unless sold earlier |
| 10-year exclusion (growth inside QOF) | Appreciation in the QOF can be excluded if held 10+ years | Still available - appreciation in the QOF can be excluded if held 10+ years |
| Practical effect | 2026 - all pre-2027 investors must pay tax on deferred gain by end of 2026 regardless of hold period | Tax due on a rolling 5-year schedule; modest 10% haircut incentive brought back. |

# OPPORTUNITY ZONES

| FUND NAME | SIZE | FOCUS / GEOGRAPHY |
|---|---|---|
| Virtua Opportunity Zone Fund | ~$200M | Commercial real estate – National |
| Origin QOZ Fund | ~$200M | CRE & multifamily – Southeast (incl. Georgia) |
| Cadre Opportunity Zones | ~$350M | Institutional CRE (includes Georgia, TN) |
| Pollack Shores OZ Fund | ~$30–35M | Multifamily – Georgia, South Carolina |
| Urban Catalyst QZ Fund II | ~$200M | California mixed-use redevelopment |
| Tucson/Bakersfield Self-Storage OZF | $25K minimum | Single-asset self-storage opportunities |

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# OPPORTUNITY ZONES

## WHERE TO FIND OZ FUNDS IN ATLANTA

- **Invest Atlanta,** city's economic development authority, has issued Request for Qualifications (RFQ) inviting Opportunity Funds to invest in Atlanta's OZs.
- **Georgia Department of Community Affairs (DCA)** provides information on GA's 260 Opportunity Zones. While DCA does not list specific Opportunity Funds, they offer resources and guidance for investors interested in these OZs.
- **National Opportunity Fund Directories-** Platforms like Novogradac Opportunity Funds Listing and QOZ Marketplace compile directories of Qualified Opportunity Funds across the nation. Some funds may have investments in GA.

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# OPPORTUNITY ZONES

## ROLE OF CRE PROFESSIONALS

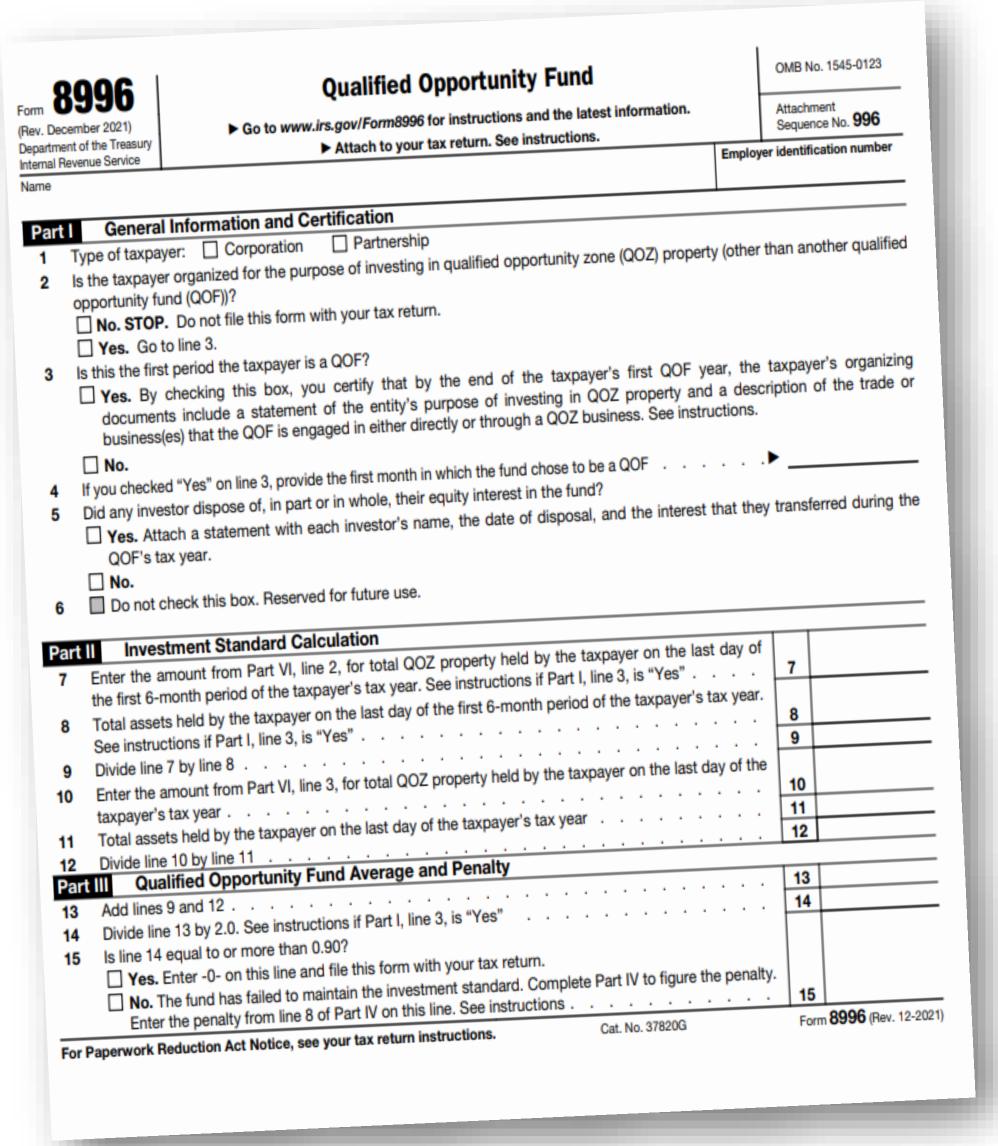
As an agent or broker, you can:

- Identify Opportunity Zone parcels.
- Help clients structure deals using QOFs.
- Layer OZ incentives with local, state tax credits.
- Guide compliance with improvement timelines and investment rules.

# OPPORTUNITY ZONES


## ESTABLISH AN OPPORTUNITY ZONE FUND

- Fund must be a partnership or corporation.
- Self-certify by including Form 8996 with your federal tax return.
- At least 90% of fund assets must be invested in qualified OZ properties or businesses within Opportunity Zones.



Form **8996**
(Rev. December 2021)
Department of the Treasury
Internal Revenue Service

**Qualified Opportunity Fund**

▶ Go to *www.irs.gov/Form8996* for instructions and the latest information.
▶ Attach to your tax return. See instructions.

OMB No. 1545-0123
Attachment Sequence No. **996**

Name | Employer identification number

**Part I** **General Information and Certification**

1 Type of taxpayer: ☐ Corporation ☐ Partnership

2 Is the taxpayer organized for the purpose of investing in qualified opportunity zone (QOZ) property (other than another qualified opportunity fund (QOF))?
☐ **No. STOP.** Do not file this form with your tax return.
☐ **Yes.** Go to line 3.

3 Is this the first period the taxpayer is a QOF?
☐ **Yes.** By checking this box, you certify that by the end of the taxpayer's first QOF year, the taxpayer's organizing documents include a statement of the entity's purpose of investing in QOZ property and a description of the trade or business(es) that the QOF is engaged in either directly or through a QOZ business. See instructions.
☐ **No.**

4 If you checked "Yes" on line 3, provide the first month in which the fund chose to be a QOF . . . . . . ▶

5 Did any investor dispose of, in part or in whole, their equity interest in the fund?
☐ **Yes.** Attach a statement with each investor's name, the date of disposal, and the interest that they transferred during the QOF's tax year.
☐ **No.**

6 ☐ Do not check this box. Reserved for future use.

**Part II** **Investment Standard Calculation**

7 Enter the amount from Part VI, line 2, for total QOZ property held by the taxpayer on the last day of the first 6-month period of the taxpayer's tax year. See instructions if Part I, line 3, is "Yes" . . . . 7

8 Total assets held by the taxpayer on the last day of the first 6-month period of the taxpayer's tax year. See instructions if Part I, line 3, is "Yes" . . . . 8

9 Divide line 7 by line 8 . . . . 9

10 Enter the amount from Part VI, line 3, for total QOZ property held by the taxpayer on the last day of the taxpayer's tax year . . . . 10

11 Total assets held by the taxpayer on the last day of the taxpayer's tax year . . . . 11

12 Divide line 10 by line 11 . . . . 12

**Part III** **Qualified Opportunity Fund Average and Penalty**

13 Add lines 9 and 12 . . . . 13

14 Divide line 13 by 2.0. See instructions if Part I, line 3, is "Yes" . . . . 14

15 Is line 14 equal to or more than 0.90?
☐ **Yes.** Enter -0- on this line and file this form with your tax return.
☐ **No.** The fund has failed to maintain the investment standard. Complete Part IV to figure the penalty. Enter the penalty from line 8 of Part IV on this line. See instructions . . . . 15

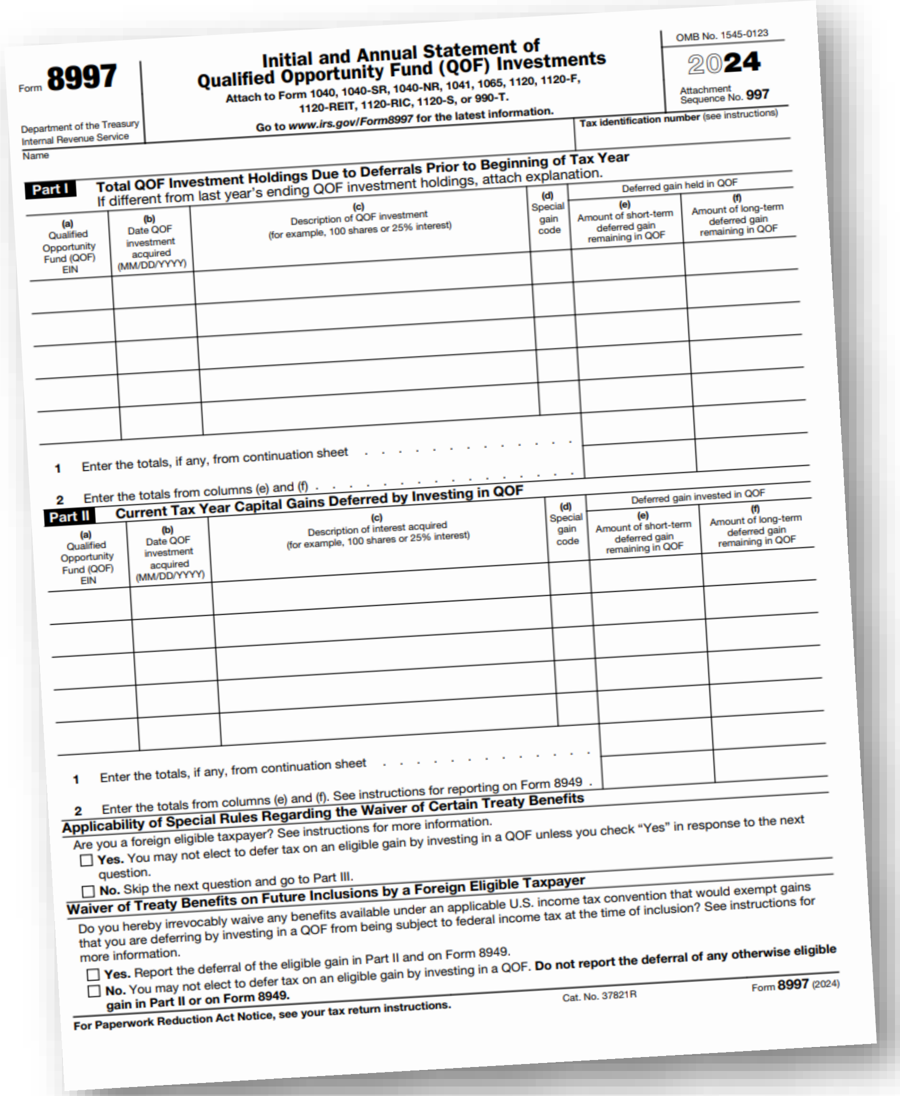
**For Paperwork Reduction Act Notice, see your tax return instructions.** Cat. No. 37820G Form **8996** (Rev. 12-2021)

# Self-Certification filed initially and every year by the QOF.

# OPPORTUNITY ZONES

## ESTABLISH AN OPPORTUNITY ZONE FUND

- Real estate must be original use, or undergo substantial improvement (doubling basis over 30 months), except in rural zones where only 50% of basis is needed.
- File Form 8997 annually to demonstrate compliance; non-filing can trigger lapses in benefits.
- Tracts are redesigned or replaced in each 10-year cycle, especially if planning long-term investments.



Form **8997**

Department of the Treasury
Internal Revenue Service

**Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments**

Attach to Form 1040, 1040-SR, 1040-NR, 1041, 1065, 1120, 1120-F, 1120-REIT, 1120-RIC, 1120-S, or 990-T.

Go to www.irs.gov/Form8997 for the latest information.

OMB No. 1545-0123

2024

Attachment Sequence No. 997

Name | Tax identification number (see instructions)

**Part I** **Total QOF Investment Holdings Due to Deferrals Prior to Beginning of Tax Year**
If different from last year's ending QOF investment holdings, attach explanation.

| (a) Qualified Opportunity Fund (QOF) EIN | (b) Date QOF investment acquired (MM/DD/YYYY) | (c) Description of QOF investment (for example, 100 shares or 25% interest) | (d) Special gain code | Deferred gain held in QOF (e) Amount of short-term deferred gain remaining in QOF | (f) Amount of long-term deferred gain remaining in QOF |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

1 Enter the totals, if any, from continuation sheet

2 Enter the totals from columns (e) and (f)

**Part II** **Current Tax Year Capital Gains Deferred by Investing in QOF**

| (a) Qualified Opportunity Fund (QOF) EIN | (b) Date QOF investment acquired (MM/DD/YYYY) | (c) Description of interest acquired (for example, 100 shares or 25% interest) | (d) Special gain code | Deferred gain invested in QOF (e) Amount of short-term deferred gain remaining in QOF | (f) Amount of long-term deferred gain remaining in QOF |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

1 Enter the totals, if any, from continuation sheet

2 Enter the totals from columns (e) and (f). See instructions for reporting on Form 8949

**Applicability of Special Rules Regarding the Waiver of Certain Treaty Benefits**

Are you a foreign eligible taxpayer? See instructions for more information.

☐ **Yes.** You may not elect to defer tax on an eligible gain by investing in a QOF unless you check "Yes" in response to the next question.

☐ **No.** Skip the next question and go to Part III.

**Waiver of Treaty Benefits on Future Inclusions by a Foreign Eligible Taxpayer**

Do you hereby irrevocably waive any benefits available under an applicable U.S. income tax convention that would exempt gains that you are deferring by investing in a QOF from being subject to federal income tax at the time of inclusion? See instructions for more information.

☐ **Yes.** Report the deferral of the eligible gain in Part II and on Form 8949.

☐ **No.** You may not elect to defer tax on an eligible gain by investing in a QOF. **Do not report the deferral of any otherwise eligible gain in Part II or on Form 8949.**

**For Paperwork Reduction Act Notice, see your tax return instructions.** Cat. No. 37821R Form **8997** (2024)

# WHO FILES?

Every taxpayer who invests in a QOF (individuals, estates, trusts, corporations)

- To report each investment in a QOF.
- Track deferral elections, basis adjustments, and dispositions.
- Filed annually with investor's federal tax return.

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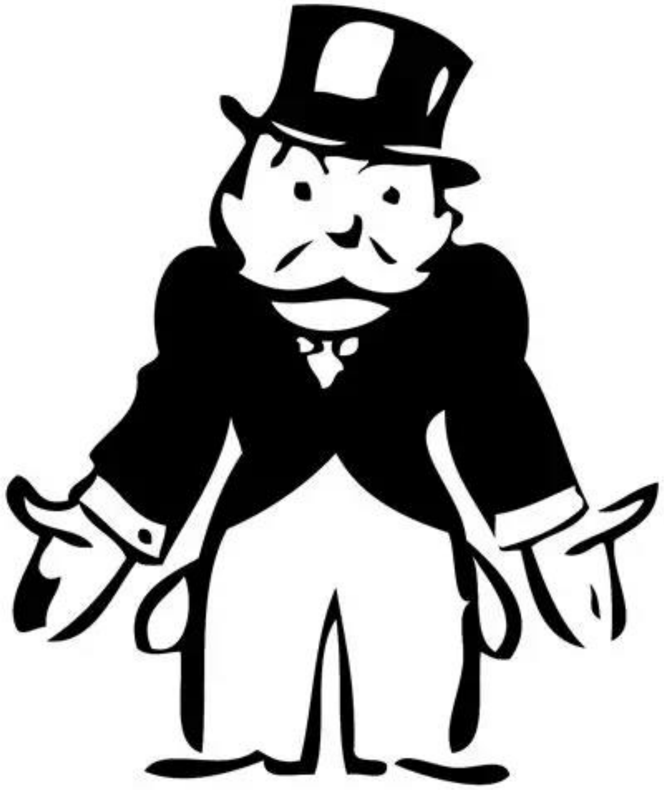
## State of GA – Economic Incentives

| Incentive | Highlight |
|---|---|
| OZ Job Tax Credit | $3,500 per job/year x 5 years; 2+ jobs; applies to income + withholding |
| General Job Tax Credit (Special Zones) | $3,500 per job/year in OZs or Military Zones regardless of county tier |
| Port Tax Credit Bonus | +$1,250/job/year with 10% port traffic increase (tied to other job credits) |
| Quality Jobs Tax Credit | $2,500 - $5,000/job/year for high-paying jobs (50+ jobs in 2 years) |
| Historic Rehab. Tax Credit | State tax relief for qualifying historic building rehabilitation |



## SORRY

You cannot §1031 exchange a QOF interest into another "like-kind" property.

- A QOF interest is a *security*, not *real estate* for §1031 purposes.
- Your main tax benefits come from the 10-year hold rule, not from rolling into another deal via 1031.

# OTHER DEFERMENT STRATEGIES

## CHARITABLE REMAINDER TRUSTS (CRTs)

- Transfer property into a trust, receive income for 20 years or until you die (the sooner), plus an immediate charitable deduction.
- *Pros:* Defers capital gains tax, charity deduction, steady income stream, supports charity.
- *Cons:* Irrevocable, assets eventually go to charity.

# SMALL BUSINESS STOCK GAINS EXCLUSION

**SECTION 1202** provides for 100% exclusion of any capital gains if the acquisition of the small business stock was after Sept. 27, 2010.

- No portion of the excluded gain is a preference item for AMT purposes.
- Capital gains exempt are also exempt from the 3.8% NII tax.
- The amount of gain excluded is limited to $10 million or 10 times the adjusted basis of the stock.
- The taxable portion of any gain has maximum tax rate of 28%.

# CAUTION!

A real estate broker **cannot** legally collect a referral fee or commission tied to the sale of a DST or TIC interest unless they also hold the required securities license.

*What you **can** do:*

1. Earn your commission on sale of relinquished property.
2. Educate your client about §1031 options (fee-simple real estate, DSTs, TICs, OZs).
3. Refer them to a licensed securities professional.

# CAUTION!

## WHEN SELLING REAL ESTATE BECOMES A “SECURITY”

A real estate transaction becomes a “security” when it meets criteria established under federal securities laws. The sale of real estate becomes a **security** when there is:

- An investment of money…
- In a common enterprise…
- With expectation of profits…
- Derived primarily from the efforts of others.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# CAUTION!

## WHEN REAL ESTATE IS A SECURITY

- Real estate syndications where passive investors pool funds, and manager (sponsor) handles all operations.
- TIC or DST offerings with centralized management and no investor control.
- Condo hotel or vacation home sold with a plan promising passive income.
- Fractional land or commercial ownership offered as investment shares online.

In all of these, the investor is not buying real property to use or control—they're investing in the potential income generated by someone else's efforts.

# CAUTION!

## WHEN REAL ESTATE IS NOT A SECURITY

- Buyer purchases a retail center, manages leasing and operations.
- Land buyer holds property personally with no expectation of income except appreciation upon sale.
- Flipper buys, improves, then sells a property with own labor and decisions.

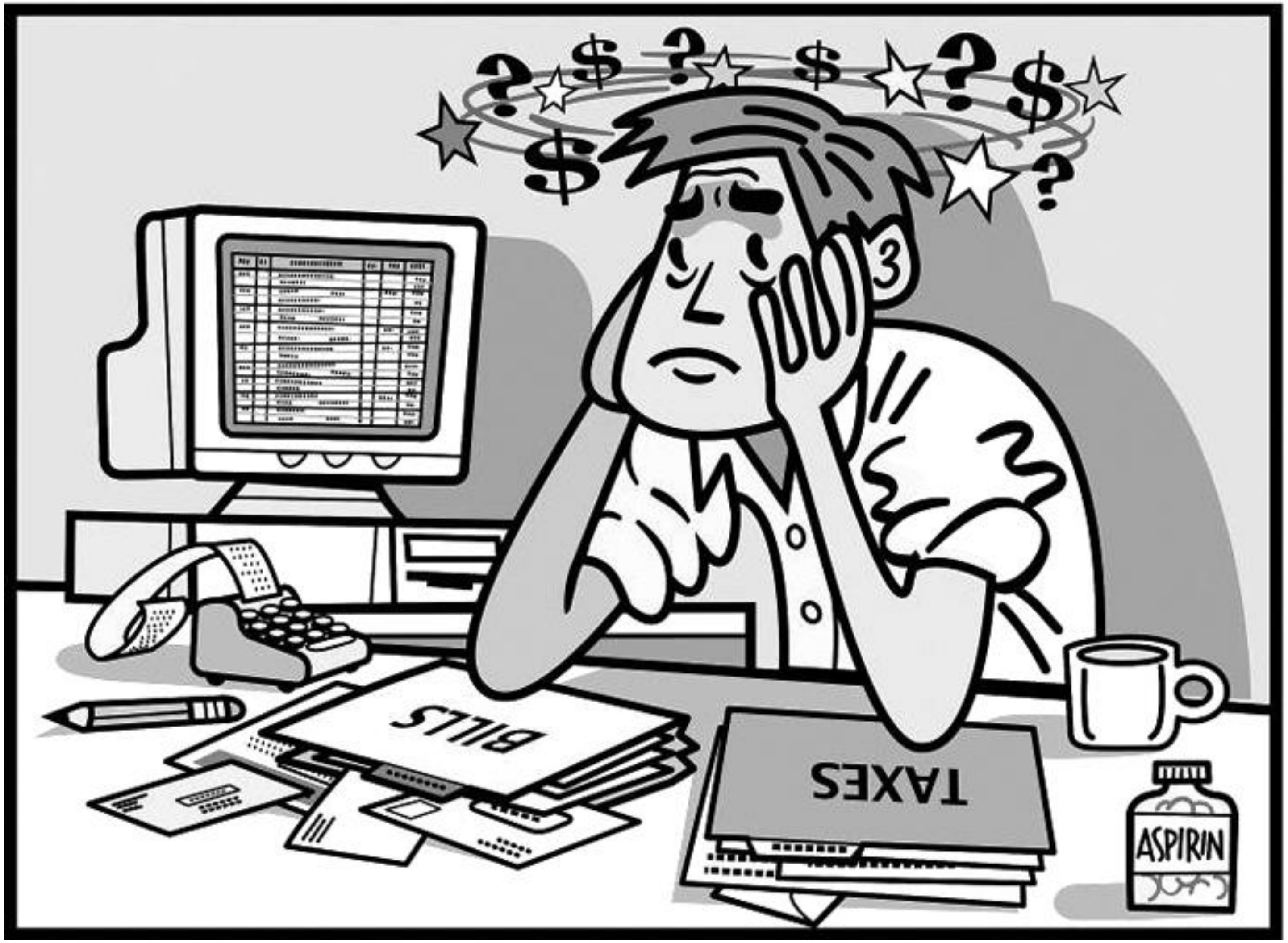
These are *real estate* transactions, *not securities*, because there is no passive investment in a common enterprise.

# CAUTION!

## WHY IT MATTERS?

If a transaction is deemed a security, the seller/sponsor must comply with federal and state **securities laws**—including:

- SEC registration (or legal exemption)
- Full disclosure obligations
- Anti-fraud provisions
- Broker-dealer registration (if raising money)

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Final
Thoughts

"The tax code is a monstrosity and there's only one thing to do with it. Scrap it, kill it, drive a stake through its heart, bury it and hope it never rises again to terrorize the American people."

*~ Steve Forbes*

"You don't *pay* taxes–they *take* taxes."

*~ Chris Rock*

"Collecting more taxes than is absolutely necessary is legalized robbery."

*~ Calvin Coolidge*

"One thing is clear: The Founding Fathers never intended a nation where citizens would pay nearly half of everything they earn to the government."

*~ Ron Paul*

# Marty Rueter

**678-675-7478**

**marty.rueter@metrobrokers.com**

- **Foundational and Advanced CRE**
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