

# WELCOME !

## ~ Today's Menu ~



### Opportunity Zones:

What You Need to Know to Take Advantage of  
this Opportunity in Real Estate & Beyond

Hollywood Casino, Bangor, ME

February 26, 2019

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## Our Program

The 2017 Tax Cuts and Jobs Act created a bi-partisan tax incentive program based on economically distressed Opportunity Zones. Investors in Qualified Opportunity Zone businesses now have the ability to defer, and to some extent eliminate, recent capital gain income, by properly investing their gain proceeds. Gov. LePage has designated 32 Opportunity Zones in Maine ranging from Saco to Madawaska, which opens the door for real estate developers pursuing projects in these designated areas to tap into a whole new group of tax savvy investors.

Thank you for joining MEREDA for breakfast today at the **Hollywood Casino Bangor** to learn more about these complicated new rules. Panelists Andy Smith and Nelson Toner will offer insights about how the legislation will impact the real estate industry and the tax advantages available to investors in Opportunity Zone projects.

## Our Speakers:

For more than 30 years, **Nelson Toner** has practiced law at Bernstein Shur providing tax planning, estate planning and business succession planning to individual and business clients. Prior to working at Bernstein Shur, Nelson worked in the tax department at the Boston office of Grant Thornton, an international accounting firm during the halcyon days of pre-1986 real estate syndications. Nelson gives many local and state seminars, including a regular presentation at the Maine Tax Forum each autumn, and for many years taught Estate and Gift Tax at the Maine Law School. He also writes the S Corporation column for the *Journal of Passthrough Entities*, a national tax publication.

Nelson earned a bachelor's degree in mathematics from Trinity College (Hartford), a JD degree from Case Western Reserve University, and an LLC in taxation from Boston University.

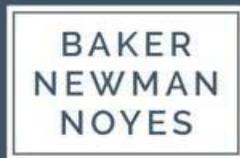
**Andrew Smith** is a principal at Baker Newman Noyes, specializing in assisting his clients with practical advice and creative solutions to their most challenging business issues, including tax efficient structures for business transactions; fixed asset analysis; succession planning; and tax deferral and reduction strategies. He also works with real estate clients of all sizes on cost segregation studies, like-kind exchanges, and historic rehabilitation credits. In addition to serving clients, Andy is also actively involved in the firm's college recruiting initiatives, having begun his career at the firm in 1997 as an intern and leads the tax department's Multi-Generational Business group.

He earned a bachelor's degree in business administration, with concentrations in accounting and finance, from the University of Maine, Orono.

# Opportunity Zones: What you Need to Know to Take Advantage of This Opportunity in Real Estate and Beyond

February 26, 2019

Andrew Smith, CPA & Nelson Toner, Esq.



## Opportunity Zones Subchapter Z

# Opportunity Zones (OZs)

- This is an economic development tool to provide an incentive for investments into distressed communities. It is intended to promote development and job creation.
- The states nominated the zones and the Secretary of the treasury certified them.
- Maine has 32 OZs
- New Hampshire has 27 OZs
- Massachusetts has 138 OZs

# Opportunity Zones

- Special Rules for Gains Invested in OZs:
- Three potential tax benefits are provided. In each case, a qualifying investor must have:
  1. Invested money into a qualifying OZ, and
  2. Have generated the means for that funding using proceeds from a previous, completely unrelated sale that resulted in a gain.  
*(An amount greater than the original transaction's gain may be invested in an OZ, but the gain and the non-gain portions of the OZ investment must be tracked separately, and only the portion related to the gain qualifies for the favorable treatment described below.)*
- Three benefits are available:
  1. A temporary deferral of capital gain on the sale of a property IF the gain is reinvested in a Qualified Opportunity Fund within 180 days of sale. Such gains may be deferred until the earlier of (a) the taxpayers subsequent sale of the fund or (b) 12/31/2026.
  2. Reduction of recognized gain (accomplished through a basis step-up), resulting in a permanent exclusion of gain of up to 15%:
    - For OZ property held for 5 years, 10% of deferred gain is allowed as a basis step-up.
    - For OZ property held for 7 years, another 5% of deferred gain is added to basis.
  3. If the OZ investment is held at least 10 years, the taxpayer may elect step-up of investment to FMV, potentially resulting in NO taxable gain, and a permanent exclusion!

# Opportunity Zones

- Example:

- Year 1 - \$1M Gain on Sale of Stock
- Year 1 – Within 180 days invest \$1M in QOF, deferring gain. Basis in the investment is zero
- Year 5 – Step-up of basis \$100,000
- Year 7 – Step-up of additional \$50,000
- Year 8 – 12/31/2026 recognize deferred gain of \$850,000
- Year 10 and beyond – Step-up to FMV and no tax on appreciation when qualified investment is sold

# Opportunity Zones

- To qualify, investors must realize a gain from the sale or exchange to an unrelated party. The property originally sold does not have to be located in an OZ, but the reinvestment does.
- Investor must reinvest gain within 180 days in a Qualified Opportunity Fund (QOF). Taxpayer can elect to treat gains recognized thru pass-thru entities as occurring on the last day of the pass-thru's year-end.
- QOF is an investment vehicle set up as either a partnership or corporation for investing in property located in a OZ.
- To become a QOF the taxpayer must self-certify, and attach Form 8996 to its federal tax return (DRAFT INCLUDED IN HANDOUTS).
- A QOF must invest in Qualified Opportunity Zone Property (QOZP). At least 90% of its assets must be in QOZP and is measure on last day of the first 6-month period and last day of the taxable year of the fund.

# Opportunity Zones

- QOZP means:

- I. Qualified Opportunity Zone Stock

- QOF acquired stock after 12/31/17 solely for cash
    - original issue of stock such corporation was a, if new formed to be a, QOZB
    - During substantially all QOFs holding period of stock, corporation was a QOZB

- II. Qualified Opportunity Zone Partnership Interest

- QOF acquired interest after 12/31/17 solely for cash
    - At acquisition partnership was a QOZB or if new formed to be a QOZB
    - During substantially all QOFs holding period, partnership was a QOZB

- III. Qualified Opportunity Zone Business Property

- Tangible property used in a T or B; and
      - ❖ Property was acquired (from unrelated party) by the QOF by purchase
      - ❖ Original use of property in the QOZ with the QOF or QOF substantially improves the property. Substantial Improvement is if during 30 month after acquisition of property additions to property EXCEED basis of property acquired
      - ❖ During substantially all of QOF holding of property, substantially all use must be in a QOZ

# Opportunity Zones

- Opportunity Zone Business requirements:

- QOZP was acquired by the business by purchase from unrelated party
  - Original use of the QOZP in the QOZ commences with the business or the business substantially improves the property
  - During the business holding of the QOZP, substantially all of the use of the property was in the OZ
  - At least 50% of gross income of the business is derived from an active trade or business (what does that mean?)
  - Substantial portion of intangible property is used in an active trade or business
  - Less than 5% of the average of aggregate unadjusted basis of the property is attributable to nonqualified financial property
  - The business cannot be a “sin” business – golf course, country clubs, massage parlors, hot tub facilities, suntan facilities, racetracks, other gambling facilities, or a store where principal business is sale of alcoholic beverages for consumption off premises

# Opportunity Zones

- If QOF fails 90% asset requirement it will be assessed a monthly penalty.
- Can defer 2017 capital gain under this incentive. IRS Q&A says you can amend the 2017 return to make the deferral election. Specific instructions are forthcoming.
- More guidance needed.

## COMPARISON WITH 1031

1031 Exchange	Opportunity Zone
- Relinquished & Replacement Property "Like-Kind"	- No "Like-Kind" Requirement
- No substantial improvement requirement	- Must substantially improve acquired asset(s)
- Replacement Property can be anywhere in the United States	- Property must be in designated qualified Opportunity Zone
- Taxpayer must invest ALL of the proceeds from the replacement property	- Taxpayer only needs to reinvest the GAIN portion of the sale
- Gains on Personal Property are ineligible for deferral	- All "Capital Gains" are eligible for deferral which may include personal property
- Basis is only stepped up at death or to the extent gain is recognized	- Step up of 15% after 7 years ownership and full step up of all post-acquisition gains after 10 yrs.

# QUESTIONS

## Question 1

If a QOF purchases an existing building that is located inside an Opportunity Zone, does this qualify for the tax deferral?

Purchase Price = \$1 Million (\$600k for Land, \$400k for Building)

## Question 2

- A QOF purchases land located entirely within an Opportunity Zone for \$600k in 2018. What are the “substantial improvement” requirements based on since only land was acquired?

## Question 3

- A Real Estate developer purchases land located in an Opportunity Zone and wishes to use a QOF to fund construction. How can this be done and what are the requirements?
- If the developer incurred debt to purchase the land how does that change the options?

## Question 4

- Can I invest my capital gains directly in an Opportunity Zone business or property, without going through an Opportunity Fund, and still qualify for the tax incentives?

## Question 5

- Can a taxpayer set up and certify their own fund or do they need to get approval from the IRS or some other government agency?

## Question 6

- Does owning a commercial rental property in an Opportunity Zone and leasing it to tenants under a Triple Net Lease qualify as an eligible business under the Opportunity Zone Business rules?

## Question 7

- Is there a minimum or maximum investment for Opportunity Zone Funds and can you co-mingle qualified funds with non qualified funds when investing?

## Question 8

- The IRS held a public hearing on the Opportunity Zone regulations on February 14<sup>th</sup>. Did anything come out of that hearing that provided clarity or answers to the many questions practitioners have regarding QOFs?

## Resource Link

- <https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx>
- <https://go.bakertilly.com/contactbtc0618>
- <https://www.irs.gov/pub/irs-drop/reg-115420-18.pdf>
- <https://www.irs.gov/pub/irs-drop/rr-18-29.pdf>

## Disclaimer of Liability

*This publication is intended to provide general information to our clients and friends. It does not constitute accounting, tax, or legal advice; nor is it intended to convey a thorough treatment of the subject matter.*

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# LEGISLATIVE ADVOCACY



by MEREDA Lobbyist Andrea Cianchette Maker, Partner and Chair of Government Relations Practice, Pierce Atwood, LLP

## 2018 MEREDA Public Policy Accomplishments

- **Joined a coalition and successfully opposed** the citizen-initiated referendum to enact a new tax to provide home care services.
- Engaged directly with developers in different regions of the state to **understand regional challenges** to development.
- Hosted a joint Lunch & Learn with DevelopME on **Advocating in Augusta**.
- **Prevented an increase** in the Real Estate Transfer Tax.
- Participated in coalition discussions about proposing a **low-income housing tax credit**.

## 2019 MEREDA Policy Goals

- **Nurture Legislative Relations.** In addition to the one-on-one conversations that the Public Policy Committee will have with new legislators, MEREDA is sponsoring a Legislative Social at the Senator Inn in Augusta on March 13 and will exhibit and visit legislators in the Hall of Flags at the State House on April 9, 2019.
- **Repeal** a recently-enacted non-residential disclosure requirement regarding abutting roads. Representative John Martin of Fort Kent has agreed to sponsor a bill for MEREDA to repeal the disclosure requirement.
- **Open dialogue with the Maine DEP** to share concerns of the development community regarding time delays in permit processing and interpretation and application of the rules. With a new administration coming in, the Public Policy Committee believes that now is an ideal time to collaborate with DEP staff **on industry concerns and work together to develop solutions**.
- **Address outstanding concerns with the application of MUBEC.** MEREDA has been and remains a supporter of MUBEC because it provides a uniform set of codes across the state. Having said that, to the extent MUBEC is causing a lack of predictability and unreasonable impediments to development, MEREDA is interested in understanding the problems and working with stakeholders to create solutions.

## New Legislature, New Governor, New Budget!

The 129<sup>th</sup> Legislature officially convened on December 5, 2018. The Senate is now comprised of 21 Democrats and 14 Republicans, and the House has 89 Democrats, 57 Republicans, 4 unenrolled or Independent members, and 1 Common Sense Independent. Members were sworn-in to office and the Senate and House elected their presiding officers – Senate President Jackson and Speaker Gideon, respectively. The Senate and House also conducted a joint session to elect the state’s constitutional officers. As a result of that election, Aaron Frey will serve as State Attorney General, Matt Dunlap will continue to serve as Secretary of State, and Henry Beck will serve as State Treasurer.

# LEGISLATIVE ADVOCACY

On Wednesday, January 2, Democrat Janet Mills was sworn into office as Governor. Among her first acts in office is the preparation and submission to the Legislature of her Fiscal Years 2020-2021 biennial budget, which is due in early February. The Legislature will then begin the work of reviewing and modifying that budget proposal to create a final budget package by June 30, 2019. In addition to that work, Committees have already started meeting to review new bills. MEREDA will be carefully analyzing and monitoring the budget process as well as new legislation as it is printed. As always, we will be on the lookout for issues that affect MEREDA members and the Public Policy Committee will discuss and review these issues to decide how best to engage to represent your interests.

## **New Legislative Committees**

Meanwhile, the Presiding officers have re-arranged a few of the legislature's joint standing committees. The Labor, Commerce, Research and Economic Development Committee has been divided into two new committees: the Labor and Housing Committee; and the Innovation, Development, Economic Advancement and Commerce Committee. Additionally, the Insurance and Financial Services Committee is now the Health Coverage, Insurance and Financial Services Committee. These new committees reflect the changes in the makeup of the Legislature and shifting priorities as Democrats now control both the House and the Senate.

## **New Commissioners**

At press time, Governor Mills had made the following appointments to her cabinet:

- Department of Administrative and Financial Services, Kirsten Figueroa confirmed
- Department of Corrections, Randy Liberty confirmed
- Department of Agriculture, Conservation and Forestry, Amanda Beal nominated
- Department of Marine Resources, Patrick Keliher confirmed
- Department of Economic and Community Development, Heather Johnson confirmed
- Department of Education, Pender Makin confirmed
- Department of Environmental Protection, Jerry Reid confirmed
- Department of Defense, Veterans and Emergency Management, Major General Douglas Farnham confirmed
- Department of Health and Human Services, Jeanne Lambrew confirmed
- Department of Inland Fisheries and Wildlife, Judith Camuso confirmed
- Department of Labor, Laura Fortman confirmed
- Department of Marine Resources, Patrick Keliher confirmed
- Department of Professional and Financial Regulation, Anne Head confirmed
- Department of Public Safety, Mike Sauschuck confirmed
- Department of Transportation, Bruce Van Note confirmed
- Director of Opioid Response, Gordon Smith confirmed
- Office of Innovation and the Future, Hannah Pingree confirmed
- Senior Advisor on Tribal Affairs to the Governor, Donna Loring confirmed
- Worker's Compensation Board Executive Director, John Rhode confirmed

As part of the confirmation process, each nominee will receive a public hearing before the legislative committee with oversight of the respective agency. If a nominee receives the support of the committee, his or her nomination will advance to the Senate, which has final confirmation approval.

## *Our Members are Invested in What we Do*

MEREDA's strength has always come from the support and participation of its valued members. Their generous support is critical to continuing MEREDA's advocacy work, educational programming, and other services that are so vital to those in Maine's real estate industry

Thanks to their generosity, we have become the leading voice for responsible real estate development in Maine, representing hundreds of commercial real estate owners, developers and related businesses, from architects and engineers to property managers.

*We are pleased to give special recognition to our Cornerstone and Sustainer Level Members. If you are interested in learning more about these levels of membership, please contact the MEREDA office.*

### *Cornerstone Level Members:*



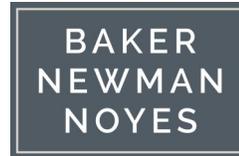
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# Our Members are Invested in What we Do

## Sustainer Level Members:



# MEREDA's Upcoming Events

**February 7, 2019 - 7:30 - 9:00 AM**

**Portland-Area Breakfast Seminar**  
Everyone Needs an Affordable Home:  
Building on Housing Solutions That Work

Portland Regency Hotel  
20 Milk Street  
Portland, ME



**February 26, 2019 - 7:30 - 9:30 AM**

**Bangor-Area Breakfast Seminar**  
**Opportunity Zones:** What you Need to Know to Take  
Advantage of this Opportunity in Real Estate & Beyond

Hollywood Casino Bangor  
500 Main Street  
Bangor, ME



**March 7, 2019 - 7:30 - 9:00 AM**

**DevelopME "Lunch & Learn" Seminar**  
Building a Career in Real Estate

Portland Public Library  
Rines Auditorium  
5 Monument Square  
Portland, ME



**March 12, 2019 - 7:30 - 9:30 AM**

**Portland-Area Breakfast Seminar**  
Transforming the Retail Experience

Holiday Inn By the Bay  
88 Spring Street  
Portland, ME



**March 21, 2019 - 5:00 - 7:00 PM**

**MEREDA's Annual Spring Networking Social**  
Join us for Hors d' oeuvres, Spirits, and  
Great Conversation with Colleagues & Friends.

Ri Ra Irish Pub  
72 Commercial Street  
Portland, ME



**April 11, 2019 - 7:30 - 9:00 AM**

**Portland-Area Breakfast Seminar**  
Topic to be Determined

Clarion Hotel  
1230 Congress Street  
Portland, ME



**April 23, 2019 - 7:30 - 9:00 AM**

**Lewiston-Auburn Area Breakfast Seminar**  
**Opportunity Zones:** What you Need to Know to Take  
Advantage of this Opportunity in Real Estate & Beyond

DaVinci's Eatery  
150 Main Street  
Lewiston, ME



**May 7, 2019 - 1:00 - 5:00 PM**

**MEREDA's Annual Real Estate Spring Conference**  
The Future of Housing in Maine: Opportunity  
& Solutions

Holiday Inn By the Bay  
88 Spring Street,  
Portland, ME



**May 23, 2019 - 5:00 - 7:00 PM**

**MEREDA's 7th Annual "Strikes for Scholars"  
Bowl-a-Thon Fundraising Event**

Bayside Bowl  
58 Alder Street  
Portland, ME



Maine Real Estate &  
Development Association

Supporting Responsible Development

Dates Subject to Change - Please visit [www.mereda.org](http://www.mereda.org) for the latest updates.

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## MEREDA Mission Statement

*The Maine Real Estate & Development Association (MEREDA) is an organization whose mission is to promote an environment for responsible development and ownership of real estate throughout the State.*

### MEREDA'S GUIDING PRINCIPLE:

*Practicality, Predictability, and Clarity in Regulation*

### Invest Wisely.

#### MEREDA's Membership Returns:

Advocacy for Responsible Real Estate Development

Legislative Representation | Regulatory Monitoring

Business Networking Opportunities

Publications | Seminars & Conferences

Reap <sup>the</sup> Dividends.



Maine Real Estate &  
Development Association

Supporting Responsible Development

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