

Gain Deferral Using Qualified Opportunity Zone Investment Strategies

This Legal Update provides an overview of the “Qualified Opportunity Zone” rules.¹ These rules provide for generous deferrals of recognized capital gains, potentially some capital gains exemptions and potentially tax-free returns on the Qualified Opportunity Zone investment itself. We first provide a discussion on the background and legislative intent behind the rules. We then provide a discussion on key concepts within the Qualified Opportunity Zones program, the tax incentives associated with Qualified Opportunity Zone investments and address some of the unresolved issues surrounding the program. We are seeing offering of investments in funds that invest in Qualified Opportunity Zones already springing up.

The Qualified Opportunity Zone rules are complex but provide a fair amount of flexibility. Therefore, we urge investors to not exclude Qualified Opportunity Zone business plans based on the nature of the assets involved, but rather to consult a tax advisor regarding the application of the rules to their particular facts.

Background

In December 2017, the Qualified Opportunity Zone rules were enacted as part of “Tax Cuts and Jobs Act” (a.k.a., the 2017 tax reform legislation).² The opportunity zones program is the first new federal community development tax program since the Clinton administration. On a high level, these new provisions establish a new community development program to promote long-term

investments in low-income communities nationwide and drive long-term capital to underserved communities. The Qualified Opportunity Zones program affords a tax incentive to investors to reinvest their gains into funds that invest in Qualified Opportunity Zones.

What is a Qualified Opportunity Fund?

“Qualified Opportunity Funds” are investment vehicles that hold at least 90 percent of their assets in “Qualified Opportunity Zone Property” and deploy capital in Qualified Opportunity Zones.³ A Qualified Opportunity Fund must meet certain requirements and make certain tax filings.⁴

The Qualified Opportunity Fund must be organized as a “corporation” or “partnership.”⁵ (It is unclear as to whether an opportunity fund may be organized as a limited liability company.) Qualified Opportunity Zone Property includes three items: (1) newly issued stock, (2) newly-issued partnership interests and (3) business property. Qualified Opportunity Zone Partnership Interests and Stock are equity interests in certain businesses that operate in Qualified Opportunity Zones. We explore these rules in more detail below.

Qualified Opportunity Zones

The zones were selected by the US Department of the Treasury (Treasury) after nomination by governors. A Qualified Opportunity Zone is defined as “a population census tract that is a

low-income community that is designated as a qualified opportunity zone.” Importantly, on June 21, 2018, the US Internal Revenue Service (IRS) published a list of all Qualified Opportunity Zones in the United States and Puerto Rico.⁶ The list of Qualified Opportunity Zones can be found at <https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx>.

Qualified Opportunity Zone Partnership Interests and Stock

A qualified opportunity zone partnership interest is any capital or profits interest in a domestic partnership. In this case, the rules envision tiered structures: the Qualified Opportunity Zone Fund (which may be a partnership) will acquire an interest in another partnership that itself is engaged in the qualified opportunity zone business. Importantly, however, a Qualified Opportunity Zone Fund may not invest in another Qualified Opportunity Fund.⁷ The interest must be acquired by the Qualified Opportunity Fund (i) solely in exchange for cash and (ii) after December 31, 2017. Additionally, when the interest is acquired, the partnership must have been a qualified opportunity zone business (discussed below), or be a new partnership formed for purposes of being engaged in a qualified opportunity zone business. Lastly, during substantially all of the Qualified Opportunity Fund’s holding period of the interest, the lower-tier partnership must be engaged in a qualified opportunity zone business.

The requirements for qualified opportunity zone stock are the same as a qualified opportunity zone partnership. Likewise, the stock must be issued by a domestic corporation (as opposed to a domestic partnership).

Qualified Opportunity Zone Business Property

“Qualified Opportunity Zone Business Property” is defined as tangible property used in a trade or

business of the Qualified Opportunity Fund. Qualified Opportunity Zone Property must be acquired by the Qualified Opportunity Fund from unrelated parties, in a transaction that is not a carryover basis transaction,⁸ and the acquisition must occur after December 31, 2017.

Importantly, either (i) “the original use” of the property must commence with the Qualified Opportunity Fund or (ii) the Qualified Opportunity Fund must “substantially improve” the property. Lastly, during “substantially all” of the Qualified Opportunity Fund’s holding period of the property, the use of the Qualified Opportunity Zone Property must be in a Qualified Opportunity Zone. The term “substantially all” appears multiple times in the statutory language but is not defined in the statute or the legislative history.

The term “original use” is not defined in statute, but regulations and case law provide guidance on how the term will likely be interpreted. We expect original use to mean “the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer.”⁹

For the additional requirement for used property (i.e., property the original use of which does not begin with the Qualified Opportunity Fund), “substantial improvement” is considered to occur only if, during the 30-month period after the date of the acquisition of the property, additions to the basis with respect to such property in the hands of the Qualified Opportunity Fund exceed an amount equal to the adjusted basis of such property at the beginning of such 30-month period in the hands of the Qualified Opportunity Fund.¹⁰ This rule allows real estate developers to purchase used real estate and significantly improve the property without having to meet the original use requirement.¹¹

Qualified Opportunity Zone Business

A partnership interest or stock acquired by a Qualified Opportunity Fund must be a stake in a

corporation or partnership that meets three sets of requirements (a “Qualified Opportunity Zone Business”).¹² It is important to note that the rules do not require Qualified Opportunity Zone Business Property to be used in a Qualified Opportunity Zone Business. Hence, if a Qualified Opportunity Fund invests directly in Qualified Opportunity Zone Business Property, rather than in stock or partnership interests, the investment appears to avoid these three requirements (e.g., the sin business prohibition described below).

First, “substantially all” of the tangible property owned or leased by the taxpayer (e.g., a partnership) that owns the business must meet the requirements for Qualified Opportunity Zone Business Property (as described above, e.g., new property or substantially improved property).

Second, there is an active trade or business test that has three elements. The first element is that at least 50 percent of the total gross income of the taxpayer is derived from the *active conduct* of the business. It is not clear how “active conduct” will be defined. There are multiple definitions of an “active” business in the Internal Revenue Code,¹³ and we do not know which one the Treasury will select to adopt in its guidance or if it will define a new standard. The second element is that a “substantial portion of any *intangible* property of such entity is used in the active conduct” of the business. The third element is that less than five percent of the average unadjusted bases of the business’s property is attributable to “nonqualified financial property.”¹⁴

Third, the business cannot be a so-called “sin business.” The sin businesses are golf courses, country clubs, tanning facilities, takeout liquor, massage parlors and hot tub facilities.¹⁵

Tax Incentives

The program provides multiple tax incentives: deferral of gain, partial forgiveness of the tax

due with respect to gain and a basis step-up. These are described below.

Deferral of Gain

The opportunity zones program provides investors an incentive to reinvest realized gains into Qualified Opportunity Funds in exchange for a temporary tax deferral and other tax benefits. Specifically, the provision provides that any gain from a sale or exchange of property by a taxpayer, to an unrelated person, that is invested in a Qualified Opportunity Fund within 180 days of the sale of property is excluded from gross income until the earlier of the date the investment in the Qualified Opportunity Fund is sold, or December 31, 2026.

Because the law requires only the gain to be reinvested into the Qualified Opportunity Fund, not the total proceeds, it is different than any other tax deferral tool. Further, there appears to be no restrictions on the type of gains that can be deferred. As long as the gain is recognized in connection with the disposition of the property, short-term, long-term, ordinary and section 1231 gains can be deferred. It is unclear as to whether pass-through gains, such as gains allocated to a partner in a partnership are eligible for deferral, if the partner (rather than the partnership) invests the gain amount in a Qualified Opportunity Fund. We discuss below the possibility the IRS will assert the provision should be limited to capital gains.

Gains Deferral Example

In this example, the taxpayer is an individual who purchased stock for \$200 in a public company in 2015. The stock appreciated, and in 2018 the taxpayer sold the stock for \$300. Within 180 days of the sale of that stock, the taxpayer invested the \$100 gain in a Qualified Opportunity Fund. The Qualified Opportunity Fund invested the \$100 in a Qualified Opportunity Zone Property in 2018.

Taxpayers are allowed to defer gains invested in Qualified Opportunity Funds.¹⁶ Accordingly, the taxpayer owes no tax in 2018 with respect to the \$100 gain on the sale of the stock. That deferral is continued until the *earlier* of (i) December 31, 2026, or (ii) the taxpayer selling her interest in the Qualified Opportunity Fund.¹⁷

Partial Forgiveness of Tax Due with Respect to Gain

Once the taxpayer has held the investment in the Qualified Opportunity Fund for five years, in our example, her basis in the public company stock she sold in 2018 is deemed to be increased by 10 percent of the deferred gain. She now has a basis of \$210 (i.e., the initial basis of \$200 that she paid for the public company stock in 2015, plus 10 percent of the \$100 deferred gain).¹⁸ This free basis step-up will lessen the amount of the gain subject to tax.

Once the taxpayer, in our example, has held the investment in the Qualified Opportunity Fund for seven years, her basis in the public company stock she sold in 2018 is deemed to be increased by another five percent of the deferred gain. She now has a basis of \$215 in the public company stock she sold in 2018 (i.e., the \$210 as described above, plus five percent of the \$100 deferred gain).¹⁹ Then on December 31, 2026, the taxpayer will be subject to tax on the remaining \$85 of taxable gain (i.e., the \$300 gain from the 2018 stock sale less the \$215 basis).

Note, if the taxpayer, in our example, had sold the public company stock in 2022 and had invested in the Qualified Opportunity Fund in 2022, she would never get the benefit of the 10 percent and five percent deemed increases in her basis because the five- and seven-year holding periods would not be satisfied until after December 31, 2026, which is the deadline for the gain recognition. Therefore, in that instance, the benefit would just be the deferral of the gain until December 31, 2026. Thus, the maximum benefit is available for gains from and investments made

in Qualified Opportunity Funds on or before December 31, 2019 (i.e., seven years before the gain recognition deadline for the imposition of tax on the original gain).

Partial Basis Step-up with Respect to the Taxpayer's Interest in the Qualified Opportunity Fund

Also in the fifth and seventh year of the holding period, the taxpayer's basis in partnership interest or stock of the Qualified Opportunity Fund is increased by 10 percent and five percent, respectively. Accordingly, the taxpayer's basis in her interest in the Qualified Opportunity Fund is \$15 after year seven.²⁰

Further, on December 31, 2026, the taxpayer's basis in her interest in the Qualified Opportunity Fund will be increased by \$85 as the result of the tax being imposed on the remaining \$85 of taxable gain with respect to the stock she sold in 2018 as described above. Therefore, at this point, the taxpayer's basis in the Qualified Opportunity Fund will be \$100 (i.e., \$10 + \$5 + \$85).

Basis Step-Up After 10 Years

At the end of a 10-year holding period, the taxpayer's basis in the Qualified Opportunity Fund partnership interest or stock will be equal to the fair market value of such partnership interest or stock on the date it is sold or exchanged.²¹ This basis step-up allows the taxpayer to avoid any federal income tax on the disposition of the Qualified Opportunity Zone investment; however, the adjustment is optional.²² Therefore, if the fair market value of her interest in the Qualified Opportunity Fund is less than \$100, the taxpayer can opt to retain her basis in the Qualified Opportunity Fund that resulted from the adjustments that occurred in years five and seven and on December 31, 2026.

Outstanding Issues and Questions

Questions Surrounding the Taxpayer's Basis

The statutory language presents an interesting dichotomy as to the “inside basis” of Qualified Opportunity Zone Property acquired by a Qualified Opportunity Fund. One would expect Qualified Opportunity Funds to have a basis in property equal to the purchase price it pays for the property.²³ However, the rules state that “Except as otherwise provided . . . the taxpayer’s basis in the investment shall be zero.”²⁴ (The exception relates to the taxpayer’s basis in its interest or stock in the Qualified Opportunity Fund stepping-up to fair market value in connection with a sale after 10 years.) Thus, the rule appears to be addressing the taxpayer’s basis in its interest in the Qualified Opportunity Fund. If that is the case and the taxpayer contributes cash to the Qualified Opportunity Fund, one interpretation could lead to the conclusion that the Qualified Opportunity Fund, under carryover basis principles, would have a zero initial tax basis in the contributed amounts and, accordingly, zero basis in the property it acquires with such amounts.²⁵

However, the rules suggest a different analysis is appropriate with respect to inside basis.²⁶ The statute compares “substantial improvements” relative to *adjusted basis* of used Qualified Opportunity Zone Property acquired by a Qualified Opportunity Fund: “property shall be treated as substantially improved by the [Qualified Opportunity Fund] only if ... additions to basis with respect to such property in the hands of the [Qualified Opportunity Fund] exceed an amount equal to the *adjusted basis of such property*.”²⁷ Accordingly, if the “taxpayer’s basis in the investment shall be zero” rule means the Qualified Opportunity Fund has a zero basis in the Qualified Opportunity Zone Property it acquired with the cash contributed to it by the taxpayer, then the Qualified Opportunity Fund

could spend one dollar on improvements (i.e., more than adjusted basis of zero of the Qualified Opportunity Fund in the property) and meet the “substantial improvement” requirement for used property. This would be a nonsensical result. To avoid such a result, the rules most likely deviate from the regular basis accounting rules and mean that the Qualified Opportunity Fund takes a basis in the Qualified Opportunity Zone Property equal to what it paid for it, despite the Qualified Opportunity Fund using money contributed to it by the taxpayer that did not result in basis for the taxpayer in the taxpayer’s partnership interest or stock in the Qualified Opportunity Fund.

We are hopeful that the Treasury’s guidance will clarify this “inside/outside” basis difference consistent with the above analysis. That is, at the outset the taxpayer has a zero outside basis in the Qualified Opportunity Fund,²⁸ while the Qualified Opportunity Fund has an inside basis in Qualified Opportunity Zone Business Property equal to the cost to acquire it.²⁹ Then the taxpayer’s outside basis in the Qualified Opportunity Fund increases by 10 percent at year five, another five percent at year seven, then by the amount of gain recognized by the taxpayer on December 31, 2026, and finally to fair market value when the partnership interest or stock is sold after a 10-year holding period.³⁰ Further, for a Qualified Opportunity Fund that is taxed as a partnership and has a section 754 election in effect, the sale by the taxpayer of its interest in the Qualified Opportunity Fund should result in an increase in the inside basis of the Qualified Opportunity Fund’s assets pursuant to section 743(b).

Two Basis Benefits in Years Five and Seven

The statutory language provides, “In the case of any investment held for at least five years, the *basis of such investment* shall be increased by an amount equal to ten percent of the amount of gain deferred.”³¹ And it further provides, “In the case of any investment held by the taxpayer for

at least seven years, in addition to any adjustment made [pursuant to the prior sentence], the *basis of such property* shall be increased by an amount equal to five percent of the amount of gain deferred.”³²

The first quoted sentence could be reasonably read to provide only for a 10-percent increase in the taxpayer’s *basis in the Qualified Opportunity Fund* due to the reference to “basis of such investment shall be increased by ... ten percent.” In contrast, the second sentence could be reasonably read to provide for a five-percent increase only in the deemed *basis of the property* that was sold that resulted in the original gain due to the reference to “the basis of such property shall be increased.” This is due to the fact that the term “property” appears to be used to refer to an asset that was originally sold for the gain because the opening line of the statute provides in “the case of gain from the sale ... of any *property* held by the taxpayer.”³³

The Conference Report provides that both the taxpayer’s basis in the Qualified Opportunity Fund and the taxpayer’s basis in the property that was sold are increased by 10 and five percent:

If the investment in the [Qualified Opportunity Fund] is held by the taxpayer for at least five years, the basis on the original gain is increased by ten percent of the original gain. If the opportunity zone ... investment is held by the taxpayer for at least seven years, the basis on the original gain is increased by an additional five percent of the original gain. ... The basis of an investment in a [Qualified Opportunity Fund] immediately after its acquisition is zero. If the investment is held by the taxpayer for at least five years, the basis on the investment is increased by 10 percent of the deferred gain. If the investment is held by the taxpayer for at least seven years, the basis on the investment is increased by an additional five percent of the deferred gain.³⁴

We hope that the Treasury will confirm the dual basis increase interpretation as provided for in the Conference Report.

Are Opportunity Zone Investments limited to Capital Gains?

There is some uncertainty regarding the type of “gains” that can be invested in Qualified Opportunity Funds. This uncertainty arises because the title of the statute and the conference report³⁵ refer to “capital gains,” but the actual statutory text only refers to “gains.”³⁶ The Code itself provides specific guidance with respect to interpreting the Internal Revenue Code. It states that neither the location of sections or “descriptive matter relating to the contents of this title be given any legal effect.”³⁷ The US Court of Federal Claims has cited this rule as restricting the use of headings in interpreting the Internal Revenue Code when the plain meaning of the statute is clear.³⁸

Legislative history is often used to determine the intended meaning of a statute when the statutory language is unclear.³⁹ However, the statutory language in this instance is clear in that it refers to “gains” as opposed to “capital gain.” Accordingly, following a strict constructionist approach, it would appear that all “gains” are eligible for the benefits provided by the Qualified Opportunity Zone rules.

Nonetheless, given concerns about the fiscal cost of all gains being eligible, we would not be surprised if the Treasury’s guidance takes the position that the benefit is limited to “capital gains” and effectively dares taxpayers to challenge that position.⁴⁰

Who is the Taxpayer for Gains Allocated by a Partnership?

Section 1400Z-2(a)(1)(A) refers to “gross income ... shall not include so much of such gain as does not exceed the aggregate amount invested by the taxpayer” in a Qualified Opportunity Fund. This leads to the question of when gains are allocated by a

partnership to a partner may the partner make the Qualified Opportunity Fund investment or must the partnership make the investment.

Further, what happens if the partner does not learn of the gain until receiving its Schedule K-1 which may be received more than 180 days after the sale occurred (i.e., after the window for making the Qualified Opportunity Fund investment)?

We believe it is appropriate for either the partnership or the partner to be able to make the Qualified Opportunity Fund investment. Further, if the partner makes the investment, we believe it is appropriate for the partner to have 180 days from receipt of the Schedule K-1 reflecting the amount of the gain allocated by the partnership to the partner.

LLC Implications

Whether limited liability company (“LLC”) investment vehicles can serve as Qualified Opportunity Funds is a question some have raised as the rules appear to limit investment vehicles to “any investment vehicle organized as a corporation or partnership.” To date, the Treasury has not provided formal guidance on this question. Despite this lack of formal guidance, we believe LLCs taxed as partnerships or corporations should qualify as Qualified Opportunity Fund investment vehicles. To the extent a partnership or corporation can be employed, however, we see no reason for taxpayers to take this risk.

Conclusion

There is a potential for communities in Qualified Opportunity Zones to enjoy meaningful benefits from Qualified Opportunity Zone investments. However, prior to fully realizing this potential, additional guidance is required in order to quell investor apprehension as well as provide the information needed for local officials to capitalize on investment opportunities within their communities. Without this additional guidance, the Qualified Opportunity Zone

program could suffer the fate of other well-intended but poorly implemented federal programs.

Endnotes

- ¹ These rules are provided for in sections 1400Z-1 and 1400Z-2 of the United States Internal Revenue Code of 1986, as amended (the “Code”).
- ² The Opportunity Zone concept was first launched by a bipartisan public policy firm, the Economic Innovation Group, in 2015. The idea was introduced during the 114th Congress in the Investing in Opportunity Act (IIOA) and later reintroduced in the 115th Congress by Senators Tim Scott (R-S.C.) and Cory Booker (D-N.J.) and Congressmen Pat Tiberi (R-Ohio) and Ron Kind (D-Wis.). The bill gained nearly 100 congressional cosponsors in 2017. It was then included in the Tax Cut and Jobs Act, which was enacted on December 20, 2017.
- ³ Code § 1400Z-2(d)(1).
- ⁴ “Opportunity Zones Frequently Asked Questions.” *Internal Revenue Service*, www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions.
- ⁵ See Code § 1400Z-2(d)(1), which we discuss below as to its application to LLCs.
- ⁶ IRS Notice 2018-48.
- ⁷ Code § 1440Z-2(d)(1).
- ⁸ Code § 1400Z-2(c)(2)(D) (referencing Code § 179(d)(2)).
- ⁹ Treas. Reg. § 1.48-2(a)(7). However, not all “use” constitutes “original use.” See *Tenn. Nat. Gas Lines v. Comm’r*, 71 T.C. 74, 87-88 (1978) (use of a liquefied natural gas facility by its prior owner did not constitute original use, as the prior owner intended to sell the facility); see also Treas. Reg. § 1.168(k)-1(b)(3)(v), Ex. (5) (use of new tractors that were held as inventory by an equipment dealer did not constitute “original use” for depreciation purposes, as the dealer held the tractors primarily for sale to customers in the ordinary course of its business); P.L.R. 200502004 (Jan. 14, 2005) (use of a commercial aircraft by its manufacturer did not constitute “original use” for depreciation purposes, as the manufacturer intended to sell the aircraft).
- ¹⁰ Code § 1400Z-2(d)(2)(D)(ii).
- ¹¹ The provision’s first sponsor, Senator Cory Booker (D-NJ), has raised concerns that investments by Qualified

Opportunity Funds in real estate in Opportunity Zones could lead to gentrification and make the people the program is intended to benefit unable to afford to live in the Opportunity Zone. [Ltr. Sen. Cory Booker to Sec. Steven Mnuchin of the U.S. Dept. of Treas. \(Jun. 8, 2018\)](#).

¹² Code § 1400Z-2(d)(2)(B)(i)(III), (C)(iii).

¹³ See, e.g., Code §§ 954(h) and 1202(e).

¹⁴ Code § 1400Z-2(d)(3)(A)(ii) (referencing Code § 1397C(b)(2), (4) & 8). “Nonqualified financial property” is defined in Code § 1397C(e) “as debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property.”

¹⁵ Code § 1400Z-2(d)(3)(A)(iii) (referencing Code § 144(c)(6)(B)).

¹⁶ Code § 1400Z-2(a)(1)(A).

¹⁷ Code § 1400Z-2(a)(2).

¹⁸ Code § 1400Z-2(b)(2)(B)(iii).

¹⁹ Code § 1400Z-2(b)(2)(B)(iv).

²⁰ Code § 1400Z-2(b)(B)(ii); H.R. Rep. No. 115-466 at 539 (2017) (Conf. Rep.) (providing that the “basis of an investment in a qualified opportunity zone fund immediately after its acquisition is zero. If the investment is held by the taxpayer for at least five years, the basis on the investment is increased by 10 percent of the deferred gain. If the investment is held by the taxpayer for at least seven years, the basis on the investment is increased by an additional five percent of the deferred gain. If the investment is held by the taxpayer until at least December 31, 2026, the basis in the investment increases by the remaining 85 percent of the deferred gain.”)

²¹ Code § 1400Z-2(c). The legislative history makes it clear that the step-up occurs with respect to the taxpayers interest or stock in the Qualified Opportunity Fund: “Specifically, in the case of the sale or exchange of an investment in a [Qualified Opportunity Fund] held for more than ten years, at the election of the taxpayer the basis of such investment in the hands of the taxpayer shall be the fair market value of the investment at the date of such sale or exchange.” H.R. Rep. No. 115-466 at 539 (2017) (Conf. Rep.).

²² Code § 1400Z-2(c) (“when the taxpayer makes an election under this clause”).

²³ Code § 1012.

²⁴ Code § 1400Z-2(b)(2)(B)(i).

²⁵ See Code §§ 362 (for a corporation), 723 (for a partnership).

²⁶ Code § 1400Z-2(d)(2)(D)(ii).

²⁷ Code § 1400Z-2(d)(2)(D)(ii) (emphasis added).

²⁸ See Code § 1400Z-2(b)(2)(B)(i).

²⁹ See Code § 1012.

³⁰ See Code §§ 1400Z-2(b)(2)(B)(iii), (iv), 1400Z-2(c). H.R. Rep. No. 115-466 at 539 (2017) (Conf. Rep.).

³¹ Code § 1400Z-2(b)(2)(B)(iii) (emphasis added).

³² Code § 1400Z-2(b)(2)(B)(iv) (emphasis added).

³³ Code § 1400Z-2(a)(1) (emphasis added).

³⁴ H.R. Rep. No. 115-466 at 539 (2017) (Conf. Rep.).

³⁵ H.R. Rep. No. 115-466 at 537 (2017) (Conf. Rep.).

³⁶ Code § 1400Z-2(a)(1).

³⁷ Code § 7806(b).

³⁸ See *Amergen Energy Co, LLC v. U.S.*, (2013, Ct. Fed. Cl.) (the title of Code § 461 (“General rule for taxable year of deduction”) did not limit the application of it to deductions).

³⁹ *U.S. v. Woods*, 134 S. Ct. 557 (2013) (“Whether or not legislative history is ever relevant, it need not be consulted when, as here, the statutory text is unambiguous.”) *Heppner v. Alyeska Pipeline Service Co.*, 665 F.2d 868, 871 (9th Cir. 1981).

⁴⁰ See, e.g., Notice 2018-18 (taking the position that for purposes of the carried interest rule in Code § 1061 that the statute’s use of the term “corporation” does not include S corporations).

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