STATE OF NEW YORK

2139

2021-2022 Regular Sessions

IN SENATE

January 20, 2021

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to establishing the opportunity zone reporting and reform act; and to amend the executive law, in relation to requiring the comptroller to prepare a report on the effectiveness of opportunity zones

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The tax law is amended by adding a new section 45 to read as follows:

§ 45. Short title. (a) This section may be known and shall be cited as the "opportunity zone reporting and reform act".

(b) Reporting requirements on qualified opportunity funds. (1) Every qualified opportunity fund shall file an annual return with the commissioner (at such time and in such manner as the commissioner may prescribe) containing the information described in paragraph two of this subdivision.

(2) The information required to be included in annual returns required pursuant to paragraph one of this subdivision is:

(A) the name, address, and taxpayer identification number of the qualified opportunity fund and the uniform resource locator for the website for such fund;

(B) the value of all property held by the fund as of each date described in section 1400Z-2(d)(1) of the internal revenue code;

(C) the value of:

(i) qualified opportunity zone stock held by the fund on each such date;

(ii) qualified opportunity zone partnership interests held by the fund on each such date;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD06615-01-1

(iii) qualified opportunity zone business property held by the fund on each such date;

(iv) tangible property not described in clause (i), (ii), or (iii) of this subparagraph and held by the fund on each such date; and

(v) intangible property (including cash and cash equivalents) not described in clause (i), (ii), or (iii) of this subparagraph and held by the fund on each such date;

(D) the name, address, and taxpayer identification number of:

(i) each corporation in which the qualified opportunity fund owns stock; and

(ii) each partnership in which the qualified opportunity fund owns a capital or profits interest;

(E) with respect to each qualified opportunity zone business which is conducted by the qualified opportunity fund, by a corporation in which the qualified opportunity fund owns stock, or by a partnership in which the qualified opportunity fund owns a capital or profits interest:

(i) the identity of the entity conducting the qualified opportunity zone business; and

(ii) each North American Industry Classification Code that applies to such trade or business;

(iii) the percentage of such businesses which are women or minority-owned business enterprises; and

(iv) the percentage of such businesses which are owned by first-time business owners;

(F) with respect to each qualified opportunity zone business which is conducted by the qualified opportunity fund or by a corporation or partnership controlled by the qualified opportunity fund:

(i) the value (as of each date described in section 1400Z-2(d)(1) of the internal revenue code) of:

(I) the tangible property of such business; and

(II) the intangible property (including cash and cash equivalents) of such business, specifying the number of union jobs which were created and the wages associated with such jobs; and

(ii) the average monthly number of full-time equivalent employees of such business during the reporting period, including information on the number of employees from low and middle income communities;

(iii) the number of new full-time jobs which were created;

(iv) the percentage of such businesses which are women or minority-owned business enterprises; and

(v) the percentage of such businesses which are owned by first-time business owners;

(G) with respect to each qualified opportunity zone business property held by the fund or by a corporation or partnership controlled by the qualified opportunity fund:

(i) the qualified opportunity zone with respect to the property;

(ii) the date the property was acquired; and

(iii) in the case of real property:

(I) the square footage of such property, specifying the square footage of such property which is zoned for commercial use and the square footage of such property which is zoned for residential use;

(II) the number (if any) of residential units on the property, including:

1. mandate the reporting of rental prices, sales prices, and fees associated with the housing they produce;

2. reporting the percentage of the housing stock that is under any regulatory framework and the type of such regulatory framework; and

(III) the aggregate costs incurred with respect to such property related to:

1. land acquisition;

2. new construction; and

3. rehabilitation;

(H) with respect to each person who has investments in the qualified opportunity fund during the reporting period:

(i) the name and taxpayer identification number of such person;

(ii) the date or dates on which such investments were made;

(iii) the total amount of such investments; and

(iv) such other information as the commissioner may require; and

(I) information pertaining to each individual transaction, including:

(i) the purpose of the investment;

(ii) the size of the investment;

(iii) the location of the qualifying property; and

(iv) the type of qualifying property.

(3) Every qualified opportunity fund shall integrate the investment strategies employed by such fund with the needs of local communities and shall engage the community by:

(A) creating a community needs assessment;

(B) reporting on non-governmental organization partnerships; and

(C) giving public notice of development.

(4) Definitions. For purposes of this section, the following terms shall have the following meanings:

(A) Any term used in this section which is also used in subchapter Z of chapter 1 of the internal revenue code shall have the same meaning given such term under such subchapter.

(B) The term "control" shall have the same meaning given such term under section 954(d)(3) of the internal revenue code.

(C) The term "full-time equivalent employees" means, with respect to any month, the sum of:

(i) the number of full-time employees (as defined in section 4980H(c)(4) of the internal revenue code) for the month, plus

(ii) the number of employees determined (under rules similar to the rules of section 4980H(c)(2)(E) of the internal revenue code) by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by one hundred twenty.

(5) Each qualified opportunity fund shall make the return filed pursuant to this section publicly available on the qualified opportunity fund's website; provided, however, that information included in the return pursuant to subparagraph (H) of paragraph two of this subdivision shall be excluded from such publicly available report.

(c) Information on persons investing in qualified opportunity funds. (1) Every taxpayer who makes an investment in a qualified opportunity fund shall provide an annual statement to the commissioner (at such time and in such manner as the commissioner may prescribe) containing the information described in paragraph two of this subdivision.

(2) The information required to be included in annual statements required pursuant to paragraph one of this subdivision is:

(A) the name, address, and taxpayer identification number of the taxpayer;

(B) the name and taxpayer identification number of the qualified opportunity fund in which the investment was made;

(C) the date such investment was made in a qualified opportunity fund and the amount of such investment, including a separate statement of the

amount of any such investments which are gain for which an election was made under section 1400Z-2(a)(1) of the internal revenue code;

(D) the date of the disposition of the investment; and

(E) such other information as the commissioner may require.

(d) Penalties. (1) In the case of a failure to make a report or statement required under subdivision (b) or (c) of this section that contains the information required by such subdivisions on the date prescribed therefor, or for failure to meet the requirements specified in paragraph two of such subdivision, there shall be a fine in an amount equal to a percentage of the amount allocated under subdivision (b) or (c) of this section, as follows:

(A) For the first failure, a penalty of one-half of one percent.

(B) For the second failure, a penalty of one percent.

(C) For the third failure, a penalty of one and one-half percent.

(D) For the fourth failure, a penalty of two percent.

(E) For the fifth failure, a penalty of two and one-half percent.

(F) After the fifth failure, any subsequent failure shall result in revocation of the qualified opportunity zone fund allocation.

(2) In the case of a failure to make a return or statement as required under subdivision (b) or (c) of this section on or before the due date of the return or statement, a penalty of ten percent of the capital gains required to be included on a return pursuant to this chapter.

§ 2. Article 7 of the executive law is amended by adding a new section 171 to read as follows:

§ 171. Report on opportunity zones. 1. The comptroller shall submit an annual report on the effectiveness of opportunity zones and compliance with the reporting requirements established pursuant to section forty-five of the tax law.

2. The report submitted under subdivision one of this section shall include an analysis of:

(a) the distribution of investments of qualified opportunity funds among qualified opportunity zones;

(b) the distribution of such investments across different industries or investment purposes;

(c) the impact of the designation of an area as a qualified opportunity zone on:

(i) economic indicators, including employment, new business start-ups, and poverty reduction;

(ii) housing costs; and

(iii) income distribution among residents of such zones;

(d) the economic benefits provided by such designations compared to economic costs; and

(e) to the extent practicable, the impact of the provisions of subchapter Z of chapter 1 of the internal revenue code on low-income communities that have not been designated as qualified opportunity zones.

3. The comptroller shall submit an annual report of his or her findings and recommendations to the governor and the legislature on or before December thirty-first of each year.

§ 3. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law.