

Can You Take Advantage Of The GoZone Act Relief?

By Sunny David

The aptly named Gulf Opportunity “GoZone” Act is attracting attention from Realtors and real estate investors in areas affected by Hurricanes Katrina and Rita.

Congress approved the GoZone legislation on Dec. 16, 2005, and President Bush signed it into law five days later. It is designed to offer tax benefits and incentives to individuals and businesses to help them revitalize and rebuild in areas damaged by the two hurricanes. The hurricanes are considered to be the most devastating natural disasters that this country has ever seen.

According to the act’s provisions, all parishes in Louisiana are covered, as are 49 counties in Mississippi and 11 in Alabama, including Baldwin and Mobile. Florida is partially covered, but only in the southern part of the state. Escambia County, Fla., is not covered.

In these affected areas, taxpayers are allowed to claim an additional first-year bonus of 50 percent depreciation on a GoZone property. A qualified GoZone property includes personal property with a life of 20 years or less; residential and nonresidential property; property acquired by the investor after Aug. 27, 2005; property placed into service before Dec. 31, 2008, for residential property, and Dec. 31, 2009, for nonresidential property; and property that can be used but is “new” to the taxpayer.

Certain properties, such as casinos, liquor stores, golf courses, massage parlors, hot tub and suntan facilities, and racetracks are ineligible.

Also, under the act’s provisions, a wide range of businesses has the opportunity to build or rebuild with Gulf Opportunity Zone Bonds, which carry interest rates from 1.5 percent to 2 percent lower than conventional financing. Taxpayers in Alabama, for instance, will be able to use the state’s tax-exempt borrowing authority to borrow money.

Regina Faggard, an agent with Ono Professional Partners, warns that not everyone will be eligible for the GoZone tax relief and that every person who wants to purchase or build in the hope of taking advantage of the bill’s provisions should make sure they qualify before signing on the dotted line. “They have to meet certain criteria based on a variety of measures,” she said. Faggard advised that anyone considering taking advantage of the GoZone Act should contact a qualified tax attorney or certified public accountant (CPA) to make sure they are eligible.

David Swiger, another agent with Ono Professional Partners, who said he has sold several million dollars’ worth of property in the area because of GoZone legislation, agreed. “The first thing I do,” he said, referring to a potential buyer who wants to take advantage of the GoZone credits, “is make sure that they check with their CPA.” However, “the one thing I have learned is that if you check with 10 different CPAs, you will get 10 different opinions. Some CPAs are more aggressive than others. There are some aspects of the GoZone legislation that haven’t been tested.”

Some may question why Gulf Shores and Orange Beach properties in Alabama are eligible for the relief, believing that they were not badly affected by either hurricane. However, the Eastern Shore of Mobile Bay and the West Beach area of Gulf Shores were heavily flooded. Swiger said that just because someone wasn’t directly affected doesn’t mean they can’t take advantage of the provision.

Bert Sanders, a CPA and partner in the accounting firm of Grant, Sanders and Taylor in Gulf Shores and Orange Beach, warns that the provisions of the new act are extremely complicated. “Each buyer is going to have to be determined for eligibility on a case-by-case basis,” he said. “Qualifying the property is straightforward. Qualifying to get a benefit or to get a deduction for an individual is not. There are requirements that the IRS imposes in order to qualify, and they are pretty straightforward.”

In referring to buyers from outside the region who are buying properties under the new law, Sanders warned, "It is such a localized piece of legislation. You are not going to find [accountants] in Tennessee or Florida or Georgia who know anything about it. There is no reason for them to study this law."

Sanders draws a distinction between buyers who are taking advantage of the law's provisions to build properties that are business-related and those who are buying rental property. "We have clients who are going to qualify this year because they have built a new office building or apartments or things that are business-related and there is no question that the property qualifies," he said. "Where you run into issues is with individuals buying rental property. The property may meet the requirements, but then they may get absolutely zero deduction because of passive law rules or second home rules that have been in effect for years."

The GoZone Act is patterned after the Liberty Zone Act put into law following the 9/11 attacks on the World Trade Center in New York City. The only guidance the IRS has issued thus far is to refer to that act until new rules can be issued as they refer to the GoZone Act. "We have spent hundreds of hours studying this law, and there are still no regulations," Sanders said, adding that some people will get benefits and some won't. "It's as clear as mud."

For further information on GoZone property requirements, see the Gulf Opportunity Zone Act of 2005, Code Section 1400N(d)(2)(A).