BAKER DONELSON

OPPORTUNITY ZONE TAX INCENTIVE PROGRAM

WHAT YOU NEED TO KNOW – OPPORTUNITY ZONE TAX INCENTIVE PROGRAM. A new incentive created under the Tax Cuts and Jobs Act, which was signed into law in December of 2017, will allow investors to defer tax on, and potentially exclude from tax, gains from the sale or exchange of their assets to the extent they reinvest the gains in qualified businesses located in Opportunity Zones. Opportunity Zones have been designated across the U.S., resulting in this new program having the potential to reenergize private investment on a national scale. Below is an overview of the benefits and requirements related to investment in Opportunity Zones.

What are Opportunity Zones? Opportunity Zones are specific census tracts located in economically distressed communities. In early 2018, State Governors were invited to nominate geographic areas within their states for "Opportunity Zone" designation. The Secretary of the Treasury released the final round of Opportunity Zones on June 14, 2018. You can view a map of the Opportunity Zones here. Opportunity Zones are designed to promote economic development and job creation in economically distressed communities.

How do investors benefit from Opportunity Zones? Investors can defer paying tax on gains from the sale or exchange of their assets, and even exclude from tax a portion of the original gain and future appreciation, by reinvesting up to the full amount of their gain in qualified businesses called "Qualified Opportunity Funds," which are located in the Opportunity Zones.

What are Qualified Opportunity Funds? Qualified Opportunity Funds are privately owned and managed investment vehicles. The law requires a Qualified Opportunity Fund to be organized for tax purposes as a partnership or corporation that has a business purpose of investing in "Qualified Opportunity Zone Property," and which holds at least 90 percent of its assets in Qualified Opportunity Zone Property.

Almost anyone can create an entity that qualifies as a Qualified Opportunity Fund as long as the entity satisfies all of the requirements related to the ownership of Qualified Opportunity Zone Property.

To become a Qualified Opportunity Fund, an eligible entity self-certifies. (Thus, no approval or action by the IRS is required.) To self-certify, the entity merely completes a form and attaches that form to the entity's federal income tax return for the taxable year.

What is Qualified Opportunity Zone Property? "Qualified Opportunity Zone Property" is either: (i) "Qualified Opportunity Zone Stock," (ii) "Qualified Opportunity Zone Partnership Interests," or (iii) "Qualified Opportunity Zone Business Property." Both (i) and (ii) are generally equity interests in a trade or business in which substantially all of the tangible property owned or leased is "Qualified Opportunity Zone Business Property."

"Qualified Opportunity Zone Business Property" is tangible property used in a trade or business of the Qualified Opportunity Fund (or by entities described in items (i) or (ii) above), if: (A) purchased by the Qualified Opportunity Fund from an unrelated party (as defined in the Internal Revenue Code) after December 31, 2017; (B) originally used or substantially improved by the Qualified Opportunity Fund; and (C) used in a Qualified Opportunity Zone during substantially all of the Qualified Opportunity Fund's holding period. Almost any type of business will qualify, with a few exceptions: private and commercial golf courses, country clubs, massage parlors, hot tub facilities, liquor stores, suntan facilities, racetracks, and other facilities used for gambling cannot be Qualified Opportunity Zone Businesses.

Who is eligible to invest in Qualified Opportunity Funds?

Any taxpayer with taxable gain from the sale or exchange of any type of asset to an unrelated party (e.g., appreciated stock, proceeds from the sale of a company, existing real estate, vehicles, artwork, etc.) that occurs on or before December 31, 2026 is eligible. The taxpayer does not have to live, work, or own a business in an Opportunity Zone to be eligible. The taxpayer simply has to invest in a Qualified Opportunity Fund within 180 days of the sale or exchange an amount equal to the portion of the taxable gain on which he intends to defer tax. The person must make an election to defer the tax.

How long can a taxpayer defer tax on gain reinvested in a Qualified Opportunity Fund?

The tax on the gain reinvested will not be included in the taxpayer's income until the taxable year which includes the earlier of: (i) the date on which the taxpayer sells or exchanges his interest in the Qualified Opportunity Fund, or (ii) December 31, 2026 (as applicable, the "Recognition Date"). This gives investors the flexibility to decide what tax year they want to include the deferred gain in income.

Can companies move into an Opportunity Zone to become a Qualified Opportunity Fund?

We believe that companies will be able to move into Opportunity Zones to take advantage of the benefits offered by the program.

In addition to deferring, can taxpayers exclude any gain from tax?

If the taxpayer holds the investment in the Qualified Opportunity Fund for at least five years, then the taxpayer may reduce his taxable gain by ten percent of the original amount invested.

If the taxpayer holds the investment in the Qualified Opportunity Fund for at least seven years, then the taxpayer may reduce his taxable gain by 15 percent of the original amount invested.

If the taxpayer holds the investment in the Qualified Opportunity Fund for at least ten years, then by election the taxpayer may exclude from tax any appreciation in his Qualified Opportunity Fund investment.

To maximize the ten-year benefits of the program, investments in Qualified Opportunity Funds should be made before December 31, 2019.

Can an Opportunity Fund invest in multiple Opportunity Zones?

Probably. The law does not appear to prevent Opportunity Funds from investing the required 90 percent of its assets in multiple Opportunity Zones – whether those Opportunity Zones are in the same state or in different states.

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