IRS

Opportunity Zones

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Facts about opportunity zones

The Tax Cuts and Jobs Act included changes for businesses and individuals. One of these is the creation of the Opportunity Zones tax incentive, an economic development tool that allows people to invest in distressed areas. This incentive's purpose is to spur economic development and job creation in distressed communities by providing tax benefits to investors. Low income communities and certain contiguous communities qualify as Opportunity Zones if a state, the District of Columbia or a U.S. territory nominated them for that designation and the U.S. Treasury certified that nomination. Following the nomination process, 8,764 communities in all 50 states, the District of Columbia and five U.S. territories were certified as Qualified Opportunity Zones (QOZs). Congress later designated each low-income community in Puerto Rico as a QOZ effective Dec. 22, 2017. The list of each QOZ can be found in IRS Notices 2018-48 and 2019-42. There's also a visual map of the census tracts designated as QOZs.

Benefits of investing in opportunity zones

Opportunity Zones offer tax benefits to investors who elect to temporarily defer tax on capital gains if they timely invest those gain amounts in a Qualified Opportunity Fund (QOF). Investors can defer tax on the invested gain amounts until there is an event that reduces or terminates the qualifying investment in the QOF (an "inclusion event"), or December 31, 2026, whichever is earlier.

The length of time the taxpayer holds the QOF investment determines the tax benefits they receive.

- If the investor holds the QOF investment for at least five years, the basis of the QOF investment increases to 10% of the deferred gain.
- If the investor holds the QOF investment for at least seven years, the basis of the QOF investment increases to 15% of the deferred gain.
- If the investor holds the investment in the QOF for at least 10 years, the investor is eligible to elect to adjust the basis of the QOF investment to its fair market value on the date that the QOF investment is sold or exchanged.

Deferral of eligible gain

Gains that may be deferred are called "eligible gains." They include both capital gains and qualified 1231 gains, but only gains that would be recognized for federal income tax purposes before January 1, 2027, and that aren't from a transaction with a related person. To obtain this deferral, the amount of the eligible gain must be timely invested in a QOF in exchange for an equity interest in the QOF (qualifying investment). Once this is done, taxpayers may make an election to defer the gain on their federal income tax return for the taxable year in which the gain would have been recognized if they had not deferred it.

Taxpayers may make an election to defer the gain, in whole or in part. For additional information, see How To Report an Election To Defer Tax on Eligible Gain Invested in a QOF in the Form 8949 instructions.

Investor reporting requirements

Those who held a qualifying investment in a QOF at any point during the tax year must file Form 8997 with their timely filed federal tax return (including extensions). Failure to file the form will result in a rebuttable presumption of an inclusion event that terminates the qualifying investment in a QOF.

Qualified Opportunity Funds

A QOF is an investment vehicle that files either a partnership or corporate federal income tax return and is organized for the purpose of investing in QOZ property. To become a QOF, an eligible corporation or partnership self-certifies by filing Form 8996 with its timely filed federal income tax return (including extensions). A QOF must hold at least 90% of its assets, measured on two annual testing dates, in qualified opportunity zone property, or pay a monthly penalty for every month it is out of compliance. Further, the eligible entity that elected or is electing to be a QOF must file a completed Form 8996 annually with their timely filed federal tax return (including extensions) to report that the QOF meets the 90% investment standard or to figure the penalty if it fails to meet the investment standard. This is required even in years the corporation or partnership has no taxable income. See Form 8996 instructions. An LLC that chooses to be treated either as a partnership or corporation for federal income tax purposes can organize as a QOF.

Qualified Opportunity Zone property

QOZ property is a QOF's qualifying ownership interest in a corporation or partnership that operates a QOZ business in a QOZ or certain tangible property of the QOF that is used in a business in the QOZ. To be a qualifying ownership interest in a corporation or partnership,

1. the interest must be acquired after December 31, 2017, solely in exchange for cash;
2. the corporation or partnership must be a QOZ business; and
3. for 90% of the holding period of that interest, the corporation or partnership was a QOZ business.

See Form 8996 instructions.

Qualified Opportunity Zone business property

QOZ business property is tangible property that a QOF acquired by purchase after 2017 and uses in a trade or business and:

- The original use of the property in the QOZ commenced with the QOF or QOZ business

OR

the property was substantially improved by the QOF or QOZ business; and

- During 90% of the time the QOF or QOZ business held the property, substantially all (generally at least 70 percent) of the use of the property was in a QOZ.

Leased property may also qualify as QOZ business property. To qualify, the lease must be a market rate lease entered into after December 31, 2017. If the parties to the lease are related parties, the lease must be a market rate lease entered into after December 31, 2017, there must be no prepayment in connection with the lease that exceeds 12 months, and if the leased property had previously been used in the QOZ, then the business must purchase new tangible property to use in the QOZ equal in value to the leased property.

Qualified Opportunity Zone business

Each taxable year, a QOZ business must earn at least 50% of its gross income from business activities within a QOZ. The regulations provide three safe harbors that a business may use to meet this test. These safe harbors take into account any of the following:

- Whether at least half of the aggregate hours of services received by the business were performed in a QOZ;
- Whether at least half of the aggregate amounts that the business paid for services were for services performed in a QOZ; or
- Whether necessary tangible property and necessary business functions to earn the income were located in a QOZ.

Resources

- Opportunity Zone FAQs
- Opportunity Zones
- Notice 2021-10
- Notice 2020-39
- TD 9889, OZ Final Regulation
- Proposed Regulation 115420-18
- Proposed Regulation 120186-18

- Revenue Procedure 2018-16
- Revenue Ruling 2018-29
- Form 8949, Sale and Other Dispositions of Capital Assets
- Form 8996, Qualified Opportunity Fund
- Form 8997, Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments
- Publication 544, Sales and Dispositions of Assets