

## In the Zone

### A Qualified Opportunity Zone Overview

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#### Introduction

The Tax Cut and Jobs Act added new Section 1400Z to the Internal Revenue Code, which provides a valuable incentive for investing in so-called “Qualified Opportunity Zones” (“QOZ”). Opportunity Zones are economically deprived areas designated by each state. Under Section 1400Z, any taxpayer realizing a capital gain can defer or eliminate tax on the capital gain by investing all or a portion of the gain in a Qualified Opportunity Zone Fund (“QOF”). If the QOF investment is held for ten years, gain on the QOF investment is also eliminated, providing a powerful incentive to invest in a QOF.

#### Basic Requirements

- Any taxpayer who recognizes capital gains for federal income tax purposes (individual, estate, trust, partnerships, C-Corporation or S-Corporation) can defer gain.
- All or any portion of a capital gain can be deferred for federal and New Jersey State income tax purposes by making an investment equal to the amount of gain (or portion thereof) into a QOF within 180 days of realizing the gain.
- A partnership can elect (within 180 days of realizing the gain). If the partnership does not elect, any partner can within 180 days of year end.
- A QOF is a corporation or partnership that holds 90% of its assets in a QOZ property.
- A QOF property is new property (first use in QOZ) or property that is substantially improved (100% increase in basis within 30 months).



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- A QOF can invest in a Qualified Opportunity Zone Business (“QOB”) (stock or partnership interest) that owns QOZ property.
- A QOB must generate at least 50% of its total gross income from the active conduct of a qualifying trade or business in the QOZ.
- A QOB must not be involved in a “sin business” (i.e., golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling or a liquor store).

### **Benefits**

- Deferral of original gain. Until the earlier of the sale of the QOF investment or December 31, 2026.
- Elimination of 10% of original gain if QOF investment is held for 5 years.
- Elimination of 15% of original gain if QOF investment is held for 7 years.
- Elimination of 100% of gain on all appreciation on QOF investment if QOF investment is held for 10 years.

### **Time to Rollover**

- The earlier of 180 days after gain recognition (subject to partner exception above) or 180 days after December 31, 2026.
- Program Expires December 31, 2049.

### **Technical**

- Failure to satisfy 90% rule results in penalty based on shortfall x IRS underpayment interest rate.
- Generally measured based on their average at 6/30 and 12/31 of each year.
- Falling below 70% leads to disqualification.
- Financial assets excluded, but working capital exceptions exist (31 months to invest cash).

- Elections to defer made on tax return.
- QOF's self-certify qualification.

### **Conclusion**

The Opportunity Zone Program provides an opportunity to defer or eliminate capital gains. While many technical questions still remain, taxpayers with significant unrealized or recently realized capital gains may wish to consider an investment in a QOF.

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