Opportunity Zones
Frequently Asked Questions

What are Opportunity Zones? Opportunity Zones are a new concept recently enacted in the 2017 Tax Cuts and Jobs Act. The program is designed to incentivize patient capital investments in low-income communities nationwide that have been cut off from capital and experienced a lack of business growth. There are three types of tax incentives that relate to the treatment of capital gains, each of the incentives are connected to the longevity of an investor's stake in a qualified Opportunity Fund that provides the most upside to those who hold their investment for 10 years or more.

What is an Opportunity Fund? An opportunity fund is any investment vehicle organized as a corporation or partnership for the purpose of investing in "qualified Opportunity Zone property", and that holds at least 90% of its assets in the zone property stocks, partnership interests or business property. The IRS is expected to certify funds by the end of May 2018. A fund could be of any size. It could oversee a single project or serve a defined area (city/region) or a state or be multistate.

What qualifies as an Opportunity Zone? The nominated zone must either be a "low Income community" or "contiguous" to a designated low income community subject to certain statutory limitations.

I. **Low income community:** Means any population census tract if the poverty rate is at least 20 percent. Targeted populations, areas not within census tracts, low population tracts and high migration census tracts may be eligible under defined statutory guidelines.
II. **Contiguous:** Census tract directly adjacent to one or more low-income communities. The income of the desired contiguous tract has to be less than 125% of any neighboring low income tract.

Who designates an Opportunity Zones tract? Eligible zones must be nominated by the governor of a state within a 90-day period starting from the Act's date of enactment (December 22, 2017) to designate up to 25 percent of the total number of low-income census tracts in a state as Opportunity Zones, unless a 30-day extension is applied for and granted. Opportunity Zone designation deadline barring an extension being granted is Wednesday, March 21, 2018.

Although governors are required to nominate low income census tracts, those tracts should have opportunities for potential investment. And clustering census tracts will enhance opportunity. Investors are not likely to invest in high risk census tracts that have no potential.

How many Eligible Tracts qualify in Michigan? There are 1,152 eligible census tracts with the maximum of 25% or 288 of these tracts allowed to qualify per program rules. This number may be adjusted by CDFI.

Types of Opportunity Zone incentives

I. **Temporary Deferral:** A temporary deferral of inclusion in taxable income for capital gains reinvested into an Opportunity Fund. The deferred gain must be recognized on the earlier of the date on which the opportunity zone investment is disposed of or December 31, 2026.
II. **Step-Up in Basis:** For capital gains reinvested in an Opportunity Fund the basis is increased by 10% if the investment in the Opportunity Fund is held by the taxpayer for

at least 5 years and by an additional 5% if held for at least 7 years, thereby excluding up to 15% of the original gain from taxation.

III. **Permanent Exclusion:** a permanent exclusion from taxable income of capital gains from sale or exchange of an investment in an Opportunity Fund if the investment is held for at least 10 years. This exclusion only applies to gains accrued after an investment in an Opportunity Fund.

Opportunity Fund Investments

Preliminary information indicates an Opportunity Fund can be utilized as a primary investment in a variety of activities. Funds can be used to create new businesses, new commercial or residential real estate or infrastructure. Opportunity Funds can be used to invest in existing businesses if it doubles the investment basis over 30 months.

The incentive can also be combined with other incentives such as New Market Tax Credits (NMTC), Low-Income Housing Tax Credit (LIHTC) and historic rehabilitation tax credit, adding a valuable tool for economic and community development. State and local governments should also consider creating and targeting other resources, especially job training, that will play an important role in leveraging investments. Local activity will show that opportunities exist.

An Opportunity fund cannot engage in any of the following “sin” businesses: any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store where the principal business purpose is the sale of alcoholic beverages for consumption off premises.

Does an investor need to live in Opportunity Zone to take advantage of the tax benefits?

No. They can get the tax benefits, even if they don’t live, work or have a business in an Opportunity Zone. All they need to do is invest in a Qualified Opportunity Fund.

How does a taxpayer become certified as a Qualified Opportunity Fund?

To become a Qualified Opportunity Fund, an eligible taxpayer self certifies. (Thus, no approval or action by the IRS is required.) To self-certify, they merely completes a form (which will be released in the summer of 2018) and attaches that form to their federal income tax return for the taxable year. (The return must be filed timely, taking extensions into account.)

If an investor sold some stock for a gain in 2018, and, during the 180-day period beginning on the date of the sale, they invested the amount of the gain in a Qualified Opportunity Fund. Can they defer paying tax on that gain?

Yes, under § 1400Z-2(a)(1) of the Internal Revenue Code, they may elect to defer the tax on some or all of that gain. If, during the 180-day period, they had invested in one or more Qualified Opportunity Funds only an amount that was less than their entire gain, they may still elect to defer paying tax on part of the gain, up to the amount they invested in that way.

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How do investors elect to defer gain on the sale of the stock?

They may make an election to defer the gain, in whole or in part, when filing their 2018 Federal Income Tax return in 2019 (that is, they may make the election on the return on which the tax on that gain would be due if they do not defer it).

If an investor sold some stock on December 15, 2017, and, during the required 180-day period, they invested the amount of the gain in a Qualified Opportunity Fund. Can they elect to defer tax on that gain?

Yes, as long as it was invested in the 180-day period, under § 1400Z-2(a)(1) of the Internal Revenue Code, they may elect to defer the tax on that gain. A deferral election may be made on their 2017 Federal Income Tax return. Information about the sale of their stock is required to be included in that return using IRS Form 8949. Precise instructions on how to use that form to elect deferral of the gain for their 2017 return will be forthcoming shortly.

Can an investor still elect to defer tax on that gain if they have already filed their 2017 tax return?

Yes. They may elect to defer the gain, but they will need to file an amended 2017 return. As part of that amended return, they will follow the election procedure described in the answer to the preceding question.

How can I share comments with the IRS on § 1400Z-2?

Send comments to CC.ITA.Section.1400@irscounsel.treas.gov.