Opportunity Zones: Where We Stand

Becker
Becker & Poliakoff

Background

Created as part of tax reform, Opportunity Zones offer incentives to private investors taking an equity stake in community development at the nexus of need and opportunity. Tiered tax benefits are tied to investments at five, seven, and 10-year terms. Benefits include a temporary deferral and small reduction of tax liability, as well as - in some circumstances - a full exemption on earnings.

Created in the 2017 Tax Cuts and Jobs Act, Opportunity Zones are designed to drive long-term capital into low-income communities across the nation, using tax incentives to encourage private investment into designated census tracts through privately- or publicly-managed investment funds.

In early 2018, governors nominated Opportunity Zones in each state. By June, the Treasury had approved Opportunity Zones in all 50 states, five territories, and Washington, D.C. designating 8,760 Opportunity Zones... 427 in Florida alone.

Tax Benefits of Investing in Opportunity Zones

Opportunity Zones offer favorable capital gains treatment for taxpayers who invest in designated high poverty neighborhoods. Invest in real estate or businesses located in a qualified zone, hold it for ten years, and not only can an investor sell their investments free of capital gains tax, but you also you get a tax break of up to 15% on untaxed capital gains rolled into an Opportunity Zone investment. Individuals in a high-tax state and with short-term capital gains can avoid $7.50 in taxes for each $100 they invest, even before considering any return on their Zone investments. It's very favorable treatment.

The Opportunity Zones program offers three tax benefits for investing in low-income communities through a qualified Opportunity Fundi:

1. A temporary deferral of inclusion in taxable income for capital gains reinvested in 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.

2. A 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.

3. A permanent exclusion from taxable income of capital gains from the 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.

A Few of the Major Issues Hopefully Clarified By Upcoming IRS Guidelines:

Advocacy efforts from different parties on key consensus issues (examples):
Clarity on certain definitions and terms

- Gains vs. capital gains
- Definition of Qualified Opportunity Zones Business

Revolving nature of funds and how tax benefit is accrued

- Interim gains issue
- Asset-level vs. fund-level

Length of time allowed for deployment of capital

- Runway issue
- When Opportunity Funds must invest capital, trigger for deployment test

Emerging Uses for Investment Capital

Eligible Opportunity Zone businesses are more wide-ranging than in previous programs, including investments such as residential rental property businesses, which were excluded by the earlier programs. The additional businesses may be lower risk for investors but with a risk that they may be less beneficial for the community. Some allowable investments under the QOZ program include:

- Supporting Entrepreneurs and Growing Businesses
- Start ups
- Growth stage business expansion
- Franchising
- Real Estate
- Redevelopment of commercial property
- Incubator space for entrepreneurs
- Mixed-use properties
- Housing – both market-rate and affordable
- Energy Infrastructure
- Brownfields Redevelopment
- Innovation Districts

Incentives and Additional Funding:

- State treatment of capital gains
- Conform with IRC; further enhancement to keep investment local
- Alignment with existing funding sources (debt, tax credits, grants)

Latest:

The Office of Information and Regulatory Affairs (OIRA), a division of the White House Office Management of the Budget (OMB), on Wednesday received regulatory guidance for review from the Internal Revenue Service

(IRS) concerning the opportunity zones incentive. A proposed rule from the IRS is expected to clarify several issues for investors in the new incentive. After the mandated review of at least 10 days, the OMB should release the guidance to be published in the Federal Register later this month.

Becker & Poliakoff's Clarence Williams, a former Congressional Chief of Staff, represents and advocates for a wide range of clients before Congress and federal executive branch agencies. Clients rely on Clarence's policy and political acumen, gained over 15-plus years of dedicated public service, to help them navigate potential pitfalls in government regulations, procurement, and legislation.

Founded in 1973 and located in 15 cities throughout Florida, New York and New Jersey, the Becker team has been fearlessly pushing the edge of what's possible for our clients. We've carefully cultivated our practices and our people to give you the very best: our formidable expertise, our strategically creative thinking, and our undivided attention. We are your champion, keenly focused on understanding your situation, solving your challenges, achieving your goals. We step into your shoes — so we can show you the right way to step ahead.