



# Opportunity Zones A Golden Opportunity?

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Published on [www.lorman.com](http://www.lorman.com) - June 2018

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# **Opportunity Zones - A Golden Opportunity?**

Written by Mary Burke Baker and Olivia S. Byrne – 3/14/18

## **Incentives for Investments in Low Income Communities**

Deferred taxes on capital gains and elimination of taxes on gains from Opportunity Fund investments are intended to attract investors into the Opportunity Zone program. There is growing interest in Opportunity Funds as potential fund developers and investors discover this golden nugget in the tax reform bill.

## **What is the Opportunity Zone program?**

The Tax Cuts and Jobs Act created Opportunity Zones to incentivize economic development and job creation in low income communities (new Internal Revenue Code sections 1400Z-1 and -2). Taxes on capital gains invested in Opportunity Funds are deferred and taxes on earnings while the capital gains are invested in the fund may be forgiven entirely. Opportunity Funds must invest at least 90% of their assets in qualified Opportunity Zone property operating as or used in a qualified Opportunity Zone business.

## **What are Opportunity Zones?**

Opportunity Zones are population census tracts analogous to low income communities qualifying for the New Markets Tax Credit. Up to 25% of qualifying communities in a state may be designated as qualifying Opportunity Zones. Governors must nominate the tracts by March 21, 2018 (a 30 day extension is

allowed) and the Secretary of the Treasury must certify and designate qualifying Opportunity Zones within 30 days of receiving the nomination (another 30 day extension is allowed). It is important to note that because Opportunity Zones are identified at the local and not the federal level states, possessions and the District have more control over the development of underserved communities.

### **What is an Opportunity Fund?**

A qualified Opportunity Fund is an investment vehicle organized as a corporation or a partnership for the purpose of investing in and holding at least 90% of its assets in qualified Opportunity Zone property. Capital gains from the sale or exchange of any property with an unrelated person invested in the Fund within 180 days will qualify for tax deferral until the earlier of the disposition of the investment in the Fund or 2026, with 10% and 15% increases in basis at the 5 and 7 year marks. Gain on Fund investments held at least 10 years will not be subject to tax.

### **What is qualified opportunity fund property?**

Qualified opportunity zone property includes any qualified opportunity zone stock, any qualified opportunity zone partnership interests, and any qualified opportunity zone business property. Corporations and partnerships must be qualified Opportunity Zone businesses. Qualified Opportunity Zone business property is tangible property used in a qualified Opportunity Zone business purchased after December 31, 2017 and the original use begins with the Opportunity Fund or the Fund substantially improves the property.

## What is a qualified Opportunity Zone business?

A qualified Opportunity Zone business is a trade or business where substantially all of the tangible property is qualified Opportunity Zone business property. At least 50% of the total gross income of the business must be from the active conduct of the business. Other conditions and restrictions pertaining to intangible property and passive income apply.

## What incentives are offered through opportunity funds?

Interim Deferral	Increase in Basis	Exclusion
Corporations and individuals can elect to defer paying tax until December 31, 2026, on capital gains invested into an Opportunity Fund.	If capital gains invested in an Opportunity Fund are held at least 5 years, 90% of deferred gain is taxed. If the investment is held at least 7 years, 85% of deferred gain is taxed.	If the capital gains invested in an Opportunity Fund are held for at least 10 years, the gain on the investment (but not the deferred gain) is not taxable upon election by the taxpayer.
		

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