



Qualified Opportunity Zone Investments

Included in the Tax Cuts and Jobs Act, signed into law in December 2017, is a new tax planning technique for deferring gains from sales. By investing in Qualified Opportunity Funds, taxpayers can defer (and potentially partially avoid) gain recognition on the sale of any property. The Qualified Opportunity Funds are designed to make investments in economically distressed communities called Opportunity Zones.

What is an Opportunity Zone?

An Opportunity Zone is an economically distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment.ⁱ Each state can designate up to 25% of its low-income communities as Qualified Opportunity Zones, and the IRS then must approve the designations. The IRS has an interactive map https://www.cims.cdfifund.gov/preparation/?config=config_nmtc.xml showing all of the Qualified Opportunity Zones that have been approved. You may need to click on the layers tab and uncheck 2011-2015 LIC Census Tract.

What is a Qualified Opportunity Fund?

A QOF is a corporation or partnership organized for the purpose of investing in Opportunity Zone Property (other than another Qualified Opportunity Fund). It must hold 90% of its assets in Qualified Opportunity Zone Property. It uses investors' gains from a prior investment for funding the Opportunity Fund.ⁱⁱ

What gains qualify for deferral?

Any gain from the sale to or exchange with an unrelated party on any property held by taxpayer, at the election of the taxpayer qualifies for deferral. No election can be made with respect to a sale or exchange for which a previous election is in effect or with respect to a sale or exchange after December 31, 2026.

What are the tax benefits?

Taxpayers can defer recognition of gain from the sale of property to an unrelated person by making an investment in a QOF within 180 days of the date of sale. The property sold does not have to be like kind to the fund's investments, and the taxpayer can receive the cash from the initial sale before investment of the QOF. The taxpayer only invests the gain in the QOF. To the extent that the cash received from the sale represents the taxpayer's basis in the property, it can be kept. For example, if property is sold for \$125,000 and the gain is \$75,000. The taxpayer would only invest \$75,000 in the QOF.

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The gain is deferred until the earlier of the date that the investment is sold or December 31, 2026. The deferred gain recognized is the lesser of the gain deferred or the fair market value of the property, less the taxpayer's basis in the investment. The taxpayer's initial basis is zero. However, if an investment is held 5 years, the basis is increased by 10% of the gain deferred. If the investment is held 7 years, the basis is increased by an additional 5%. If the investment is held for at least 10 years, the basis of the investment is equal to the fair market value of the property at the election of the taxpayer. Effectively, this allows a taxpayer to exclude up to 15% of the original deferred gain, and 100% of any additional appreciation on the qualified opportunity fund itself.

Example: Mary realizes \$1,250,000 of gain from the sale of stock in 2018 and invests \$1,000,000 in a QOF. On December 31, 2026 the fair market value of the property is \$1,100,000. She sells the fund for \$1,500,000 in 2029. In 2018, Mary gets to exclude \$1,000,000 of gain from her taxable income by making an investment in a QOF. She recognizes \$250,000 of gain for the amount that is not invested in a QOF. Her initial basis in the QOF is zero. In 2023, her basis is increased to \$100,000. In 2025, her basis is increased to a total of \$150,000. In 2026, she recognizes gain of \$850,000 (The lesser of \$1,000,000 or \$1,100,000 less \$150,000). When she sells the investment in 2029, her recognized gain is zero. To summarize, Mary only pays taxes on \$850,000 of the \$1,500,000 gain in this example by investing \$1,000,000 in a QOF.

What is Qualified Opportunity Zone Property?

Qualified Opportunity Zone Property is either:

- Qualified Opportunity Zone Stock: Stock in a domestic corporation acquired by the fund after December 31, 2017 at its original issue from the corporation solely in exchange for cash. The corporation must be a trade or business in which substantially all of the tangible property owned or leased by the business is used in a Qualified Opportunity Zone,
- Qualified Opportunity Zone Partnership Interest: A capital or profits interest in a domestic partnership acquired by the fund after December 31, 2017 from the partnership solely in exchange for cash. The partnership must be a trade or business in which substantially all of the tangible property owned or leased by the business is used in a Qualified Opportunity Zone, or
- Qualified Opportunity Zone Business Property: Tangible property used in a trade or business that is acquired by purchase after December 31, 2017. The original use of the property in the Qualified Opportunity Zone must commence with the QOF or the fund must substantially improve the property. While the fund holds the property, substantially all of the use of the property must be in the Qualified Opportunity Zone.



Can investments other than gain deferrals be made?

Yes. The fund will treat such investments as two investments. One investment will include only amounts deferred under the new law. The other investment will consist of all other amounts.

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

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

For more information on qualified opportunity zone investments or for other tax concerns, contact Trey Webb or Jerry Weil by calling 770.396.2200.

¹ From IRS Opportunity Zones Frequently Asked Questions – first question

¹ From IRS Opportunity Zones Frequently Asked Questions – sixth question

¹ From IRS Opportunity Zones Frequently Asked Questions – ninth question