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HOUSE OF REPRESENTATIVES

{ REPORT  
115-466

# TAX CUTS AND JOBS ACT

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## CONFERENCE REPORT

TO ACCOMPANY

H.R. 1



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**SEC. 13823. OPPORTUNITY ZONES.**

(a) *IN GENERAL.*—Chapter 1 is amended by adding at the end the following:

**“Subchapter Z—Opportunity Zones**

“Sec. 1400Z-1. Designation.

“Sec. 1400Z-2. Special rules for capital gains invested in opportunity zones.

**“SEC. 1400Z-1. DESIGNATION.**

“(a) *QUALIFIED OPPORTUNITY ZONE DEFINED.*—For the purposes of this subchapter, the term ‘qualified opportunity zone’ means a population census tract that is a low-income community that is designated as a qualified opportunity zone.

“(b) *DESIGNATION.*—

“(1) *IN GENERAL.*—For purposes of subsection (a), a population census tract that is a low-income community is designated as a qualified opportunity zone if—

“(A) not later than the end of the determination period, the chief executive officer of the State in which the tract is located—

“(i) nominates the tract for designation as a qualified opportunity zone, and

“(ii) notifies the Secretary in writing of such nomination, and

“(B) the Secretary certifies such nomination and designates such tract as a qualified opportunity zone before the end of the consideration period.

“(2) *EXTENSION OF PERIODS.*—A chief executive officer of a State may request that the Secretary extend either the determination or consideration period, or both (determined without regard to this subparagraph), for an additional 30 days.

“(c) *OTHER DEFINITIONS.*—For purposes of this subsection—

“(1) *LOW-INCOME COMMUNITIES.*—The term ‘low-income community’ has the same meaning as when used in section 45D(e).

“(2) *DEFINITION OF PERIODS.*—

“(A) *CONSIDERATION PERIOD.*—The term ‘consideration period’ means the 30-day period beginning on the date on which the Secretary receives notice under subsection (b)(1)(A)(ii), as extended under subsection (b)(2).

“(B) *DETERMINATION PERIOD.*—The term ‘determination period’ means the 90-day period beginning on the date of the enactment of the Tax Cuts and Jobs Act, as extended under subsection (b)(2).

“(3) *STATE.*—For purposes of this section, the term ‘State’ includes any possession of the United States.

“(d) *NUMBER OF DESIGNATIONS.*—

“(1) *IN GENERAL.*—Except as provided by paragraph (2), the number of population census tracts in a State that may be designated as qualified opportunity zones under this section may not exceed 25 percent of the number of low-income communities in the State.

“(2) *EXCEPTION.*—If the number of low-income communities in a State is less than 100, then a total of 25 of such tracts may be designated as qualified opportunity zones.

“(e) *DESIGNATION OF TRACTS CONTIGUOUS WITH LOW-INCOME COMMUNITIES.*—

“(1) *IN GENERAL.*—A population census tract that is not a low-income community may be designated as a qualified opportunity zone under this section if—

“(A) the tract is contiguous with the low-income community that is designated as a qualified opportunity zone, and

“(B) the median family income of the tract does not exceed 125 percent of the median family income of the low-income community with which the tract is contiguous.

“(2) *LIMITATION.*—Not more than 5 percent of the population census tracts designated in a State as a qualified opportunity zone may be designated under paragraph (1).

“(f) *PERIOD FOR WHICH DESIGNATION IS IN EFFECT.*—A designation as a qualified opportunity zone shall remain in effect for the period beginning on the date of the designation and ending at the close of the 10th calendar year beginning on or after such date of designation.

**“SEC. 1400Z-2. SPECIAL RULES FOR CAPITAL GAINS INVESTED IN OPPORTUNITY ZONES.**

**“(a) IN GENERAL.—**

**“(1) TREATMENT OF GAINS.—***In the case of gain from the sale to, or exchange with, an unrelated person of any property held by the taxpayer, at the election of the taxpayer—*

*“(A) gross income for the taxable year shall not include so much of such gain as does not exceed the aggregate amount invested by the taxpayer in a qualified opportunity fund during the 180-day period beginning on the date of such sale or exchange,*

*“(B) the amount of gain excluded by subparagraph (A) shall be included in gross income as provided by subsection (b), and*

*“(C) subsection (c) shall apply.*

**“(2) ELECTION.—***No election may be made under paragraph (1)—*

*“(A) with respect to a sale or exchange if an election previously made with respect to such sale or exchange is in effect, or*

*“(B) with respect to any sale or exchange after December 31, 2026.*

**“(b) DEFERRAL OF GAIN INVESTED IN OPPORTUNITY ZONE PROPERTY.—**

**“(1) YEAR OF INCLUSION.—***Gain to which subsection (a)(1)(B) applies shall be included in income in the taxable year which includes the earlier of—*

*“(A) the date on which such investment is sold or exchanged, or*

*“(B) December 31, 2026.*

**“(2) AMOUNT INCLUDIBLE.—**

**“(A) IN GENERAL.—***The amount of gain included in gross income under subsection (a)(1)(A) shall be the excess of—*

*“(i) the lesser of the amount of gain excluded under paragraph (1) or the fair market value of the investment as determined as of the date described in paragraph (1), over*

*“(ii) the taxpayer’s basis in the investment.*

**“(B) DETERMINATION OF BASIS.—**

*“(i) IN GENERAL.—*Except as otherwise provided in this clause or subsection (c), the taxpayer’s basis in the investment shall be zero.

*“(ii) INCREASE FOR GAIN RECOGNIZED UNDER SUBSECTION (a)(1)(B).—*The basis in the investment shall be increased by the amount of gain recognized by reason of subsection (a)(1)(B) with respect to such property.

*“(iii) INVESTMENTS HELD FOR 5 YEARS.—*In the case of any investment held for at least 5 years, the basis of such investment shall be increased by an amount equal to 10 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

*“(iv) INVESTMENTS HELD FOR 7 YEARS.—*In the case of any investment held by the taxpayer for at least 7

years, in addition to any adjustment made under clause (iii), the basis of such property shall be increased by an amount equal to 5 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

“(c) **SPECIAL RULE FOR INVESTMENTS HELD FOR AT LEAST 10 YEARS.**—In the case of any investment held by the taxpayer for at least 10 years and with respect to which the taxpayer makes an election under this clause, the basis of such property shall be equal to the fair market value of such investment on the date that the investment is sold or exchanged.

“(d) **QUALIFIED OPPORTUNITY FUND.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘qualified opportunity fund’ means any investment vehicle which is organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (other than another qualified opportunity fund) that holds at least 90 percent of its assets in qualified opportunity zone property, determined by the average of the percentage of qualified opportunity zone property held in the fund as measured—

“(A) on the last day of the first 6-month period of the taxable year of the fund, and

“(B) on the last day of the taxable year of the fund.

“(2) **QUALIFIED OPPORTUNITY ZONE PROPERTY.**—

“(A) **IN GENERAL.**—The term ‘qualified opportunity zone property’ means property which is—

“(i) qualified opportunity zone stock,

“(ii) qualified opportunity zone partnership interest, or

“(iii) qualified opportunity zone business property.

“(B) **QUALIFIED OPPORTUNITY ZONE STOCK.**—

“(i) **IN GENERAL.**—Except as provided in clause (ii), the term ‘qualified opportunity zone stock’ means any stock in a domestic corporation if—

“(I) such stock is acquired by the qualified opportunity fund after December 31, 2017, at its original issue (directly or through an underwriter) from the corporation solely in exchange for cash,

“(II) as of the time such stock was issued, such corporation was a qualified opportunity zone business (or, in the case of a new corporation, such corporation was being organized for purposes of being a qualified opportunity zone business), and

“(III) during substantially all of the qualified opportunity fund’s holding period for such stock, such corporation qualified as a qualified opportunity zone business.

“(ii) **REDEMPTIONS.**—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

“(C) **QUALIFIED OPPORTUNITY ZONE PARTNERSHIP INTEREST.**—The term ‘qualified opportunity zone partnership interest’ means any capital or profits interest in a domestic partnership if—

“(i) such interest is acquired by the qualified opportunity fund after December 31, 2017, from the partnership solely in exchange for cash,

“(ii) as of the time such interest was acquired, such partnership was a qualified opportunity zone business (or, in the case of a new partnership, such partnership was being organized for purposes of being a qualified opportunity zone business), and

“(iii) during substantially all of the qualified opportunity fund’s holding period for such interest, such partnership qualified as a qualified opportunity zone business.

“(D) QUALIFIED OPPORTUNITY ZONE BUSINESS PROPERTY.—

“(i) IN GENERAL.—The term ‘qualified opportunity zone business property’ means tangible property used in a trade or business of the qualified opportunity fund if—

“(I) such property was acquired by the qualified opportunity fund by purchase (as defined in section 179(d)(2)) after December 31, 2017,

“(II) the original use of such property in the qualified opportunity zone commences with the qualified opportunity fund or the qualified opportunity fund substantially improves the property, and

“(III) during substantially all of the qualified opportunity fund’s holding period for such property, substantially all of the use of such property was in a qualified opportunity zone.

“(ii) SUBSTANTIAL IMPROVEMENT.—For purposes of subparagraph (A)(ii), property shall be treated as substantially improved by the qualified opportunity fund only if, during any 30-month period beginning after the date of acquisition of such property, additions to basis with respect to such property in the hands of the qualified opportunity fund exceed an amount equal to the adjusted basis of such property at the beginning of such 30-month period in the hands of the qualified opportunity fund.

“(iii) RELATED PARTY.—For purposes of subparagraph (A)(i), the related person rule of section 179(d)(2) shall be applied pursuant to paragraph (8) of this subsection in lieu of the application of such rule in section 179(d)(2)(A).

“(3) QUALIFIED OPPORTUNITY ZONE BUSINESS.—

“(A) IN GENERAL.—The term ‘qualified opportunity zone business’ means a trade or business—

“(i) in which substantially all of the tangible property owned or leased by the taxpayer is qualified opportunity zone business property (determined by substituting ‘qualified opportunity zone business’ for ‘qualified opportunity fund’ each place it appears in paragraph (2)(D)),

“(ii) which satisfies the requirements of paragraphs (2), (4), and (8) of section 1397C(b), and

“(iii) which is not described in section 144(c)(6)(B).

“(B) SPECIAL RULE.—For purposes of subparagraph (A), tangible property that ceases to be a qualified opportunity zone business property shall continue to be treated as a qualified opportunity zone business property for the lesser of—

“(i) 5 years after the date on which such tangible property ceases to be so qualified, or

“(ii) the date on which such tangible property is no longer held by the qualified opportunity zone business.

“(e) APPLICABLE RULES.—

“(1) TREATMENT OF INVESTMENTS WITH MIXED FUNDS.—In the case of any investment in a qualified opportunity fund only a portion of which consists of investments of gain to which an election under subsection (a) is in effect—

“(A) such investment shall be treated as 2 separate investments, consisting of—

“(i) one investment that only includes amounts to which the election under subsection (a) applies, and

“(ii) a separate investment consisting of other amounts, and

“(B) subsections (a), (b), and (c) shall only apply to the investment described in subparagraph (A)(i).

“(2) RELATED PERSONS.—For purposes of this section, persons are related to each other if such persons are described in section 267(b) or 707(b)(1), determined by substituting ‘20 percent’ for ‘50 percent’ each place it occurs in such sections.

“(3) DECEDENTS.—In the case of a decedent, amounts recognized under this section shall, if not properly includible in the gross income of the decedent, be includible in gross income as provided by section 691.

“(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

“(A) rules for the certification of qualified opportunity funds for the purposes of this section,

“(B) rules to ensure a qualified opportunity fund has a reasonable period of time to reinvest the return of capital from investments in qualified opportunity zone stock and qualified opportunity zone partnership interests, and to reinvest proceeds received from the sale or disposition of qualified opportunity zone property, and

“(C) rules to prevent abuse.

“(f) FAILURE OF QUALIFIED OPPORTUNITY FUND TO MAINTAIN INVESTMENT STANDARD.—

“(1) IN GENERAL.—If a qualified opportunity fund fails to meet the 90-percent requirement of subsection (c)(1), the qualified opportunity fund shall pay a penalty for each month it fails to meet the requirement in an amount equal to the product of—

“(A) the excess of—

“(i) the amount equal to 90 percent of its aggregate assets, over

“(ii) the aggregate amount of qualified opportunity zone property held by the fund, multiplied by

“(B) the underpayment rate established under section 6621(a)(2) for such month.

“(2) *SPECIAL RULE FOR PARTNERSHIPS.*—In the case that the qualified opportunity fund is a partnership, the penalty imposed by paragraph (1) shall be taken into account proportionately as part of the distributive share of each partner of the partnership.

“(3) *REASONABLE CAUSE EXCEPTION.*—No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.”.

(b) *BASIS ADJUSTMENTS.*—Section 1016(a) is amended by striking “and” at the end of paragraph (36), by striking the period at the end of paragraph (37) and inserting “, and”, and by inserting after paragraph (37) the following:

“(38) to the extent provided in subsections (b)(2) and (c) of section 1400Z-2.”.

(c) *CLERICAL AMENDMENT.*—The table of subchapters for chapter 1 is amended by adding at the end the following new item:

“SUBCHAPTER Z. OPPORTUNITY ZONES”.

(d) *EFFECTIVE DATE.*—The amendments made by this section shall take effect on the date of the enactment of this Act.

## CONFERENCE AGREEMENT

**17. Opportunity zones (sec. 13823 of the Senate amendment and new secs. 1400Z-1 and 1400Z-2 of the Code)**

## PRESENT LAW

The Code occasionally has provided several incentives aimed at encouraging economic growth and investment in distressed communities by providing Federal tax benefits to businesses located within designated boundaries.<sup>1191</sup>

One of these incentives is a federal income tax credit that is allowed in the aggregate amount of 39 percent of a taxpayer investment in a qualified community development entity (CDE).<sup>1192</sup> In general, the credit is allowed to a taxpayer who makes a “qualified equity investment” in a CDE which further invests in a “qualified active low-income community business.” CDEs are required to make investments in low income communities (generally communities with 20 percent or greater poverty rate or median family income less than 80 percent of statewide median). The credit is allowed over seven years, five percent in each of the first three years and six percent in each of the next four years. The credit is recaptured if at any time during the seven-year period that begins on the date of the original issue of the investment the entity (1) ceases to be a qualified CDE, (2) the proceeds of the investment cease to be used as required, or (3) the equity investment is redeemed. The Department of Treasury’s Community Development Financial Institutions Fund (“CDFI”) allocates the new markets tax credits.

The maximum annual amount of qualified equity investments is \$3.5 billion for calendar years 2010 through 2019. The new markets tax credit is set to expire on December 31, 2019. No amount of unused allocation limitation may be carried to any calendar year after 2024.

## HOUSE BILL

No provision.

## SENATE AMENDMENT

The provision provides for the temporary deferral of inclusion in gross income for capital gains reinvested in a qualified oppor-

<sup>1191</sup> Such designated areas were referred to as empowerment zones, the District of Columbia Enterprise (“DC”) Zone, and the Gulf Opportunity (“GO”) Zone, and each of these designations and attendant tax incentives have expired. The designations and tax incentives for the DC Zone, and the GO Zone generally expired after December 31, 2011. 1400(f), 1400N(h), 1400N(c)(5), 1400N(a)(2)(D), 1400N(a)(7)(C), 1400N(d). The empowerment zones program and attendant tax incentives expired as of December 31, 2016. Secs. 1391(d)(1). There are also areas that were designated as renewal communities under section 1400E which received tax benefits that all expired as of December 31, 2009, except that a zero-percent capital gains rate applies with respect to gain from the sale through December 31, 2014 of a qualified community asset acquired after December 31, 2001, and before January 1, 2010 and held for more than five years. For more information on these programs and attendant tax incentives, see Joint Committee on Taxation, *Incentives for Distressed Communities: Empowerment Zones and Renewal Communities* (JCX-38-09), October 5, 2009.

<sup>1192</sup> Sec. 45D.

tunity fund and the permanent exclusion of capital gains from the sale or exchange of an investment in the qualified opportunity fund.

The provision allows for the designation of certain low-income community population census tracts as qualified opportunity zones, where low-income communities are defined in Section 45D(e). The designation of a population census tract as a qualified opportunity zone remains in effect for the period beginning on the date of the designation and ending at the close of the tenth calendar year beginning on or after the date of designation.

Governors may submit nominations for a limited number of opportunity zones to the Secretary for certification and designation. If the number of low-income communities in a State is less than 100, the Governor may designate up to 25 tracts, otherwise the Governor may designate tracts not exceeding 25 percent of the number of low-income communities in the State. Governors are required to provide particular consideration to areas that: (1) are currently the focus of mutually reinforcing state, local, or private economic development initiatives to attract investment and foster startup activity; (2) have demonstrated success in geographically targeted development programs such as promise zones, the new markets tax credit, empowerment zones, and renewal communities; and (3) have recently experienced significant layoffs due to business closures or relocations.

The provision provides two main tax incentives to encourage investment in qualified opportunity zones. First, it allows for the temporary deferral of inclusion in gross income for capital gains that are reinvested in a qualified opportunity fund. A qualified opportunity fund is an investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (other than another qualified opportunity fund) that holds at least 90 percent of its assets in qualified opportunity zone property. The provision intends that the certification process for a qualified opportunity fund will be done in a manner similar to the process for allocating the new markets tax credit. The provision provides the Secretary authority to carry out the process.

If a qualified opportunity fund fails to meet the 90 percent requirement and unless the fund establishes reasonable cause, the fund is required to pay a monthly penalty of the excess of the amount equal to 90 percent of its aggregate assets, over the aggregate amount of qualified opportunity zone property held by the fund multiplied by the underpayment rate in the Code. If the fund is a partnership, the penalty is taken into account proportionately as part of each partner's distributive share.

Qualified opportunity zone property includes: any qualified opportunity zone stock, any qualified opportunity zone partnership interest, and any qualified opportunity zone business property.

The maximum amount of the deferred gain is equal to the amount invested in a qualified opportunity fund by the taxpayer during the 180-day period beginning on the date of sale of the asset to which the deferral pertains. For amounts of the capital gains that exceed the maximum deferral amount, the capital gains must be recognized and included in gross income as under present law.

If the investment in the qualified opportunity zone fund is held by the taxpayer for at least five years, the basis on the original gain is increased by 10 percent of the original gain. If the opportunity zone asset or investment is held by the taxpayer for at least seven years, the basis on the original gain is increased by an additional 5 percent of the original gain. The deferred gain is recognized on the earlier of the date on which the qualified opportunity zone investment is disposed of or December 31, 2026. Only taxpayers who rollover capital gains of non-zone assets before December 31, 2026, will be able to take advantage of the special treatment of capital gains for non-zone and zone realizations under the provision.

The basis of an investment in a qualified opportunity zone fund immediately after its acquisition is zero. If the investment is held by the taxpayer for at least five years, the basis on the investment is increased by 10 percent of the deferred gain. If the investment is held by the taxpayer for at least seven years, the basis on the investment is increased by an additional five percent of the deferred gain. If the investment is held by the taxpayer until at least December 31, 2026, the basis in the investment increases by the remaining 85 percent of the deferred gain.

The second main tax incentive in the bill excludes from gross income the post-acquisition capital gains on investments in opportunity zone funds that are held for at least 10 years. Specifically, in the case of the sale or exchange of an investment in a qualified opportunity zone fund held for more than 10 years, at the election of the taxpayer the basis of such investment in the hands of the taxpayer shall be the fair market value of the investment at the date of such sale or exchange. Taxpayers can continue to recognize losses associated with investments in qualified opportunity zone funds as under current law.

The Secretary or the Secretary's delegate is required to report annually to Congress on the opportunity zone incentives beginning 5 years after the date of enactment. The report is to include an assessment of investments held by the qualified opportunity fund nationally and at the State level. To the extent the information is available, the report is to include the number of qualified opportunity funds, the amount of assets held in qualified opportunity funds, the composition of qualified opportunity fund investments by asset class, and the percentage of qualified opportunity zone census tracts designated under the provision that have received qualified opportunity fund investments. The report is also to include an assessment of the impacts and outcomes of the investments in those areas on economic indicators including job creation, poverty reduction and new business starts, and other metrics as determined by the Secretary.

*Effective date.*—The provision is effective on the date of enactment.

#### CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment with the following modifications. First, the provision provides that each population census tract in each U.S. possession that is a low-income community is deemed certified and designated as a

qualified opportunity zone effective on the date of enactment. Second, the provision clarifies that chief executive officer of the State (which includes the District of Columbia) may submit nominations for a limited number of opportunity zones to the Secretary for certification and designation. This change clarifies that the mayor of the District of Columbia may also submit nominations. Third, the provision clarifies that there is no gain deferral available with respect to any sale or exchange made after December 31, 2026, and there is no exclusion available for investments in qualified opportunity zones made after December 31, 2026. The agreement also makes some technical changes to the Senate amendment to make it clear which taxpayer may claim the tax benefits.