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# Federal Opportunity Zones – Thinking Forward; the Continuation of Busy Times for the rest of 2019 and into 2020

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# One of today's presenters:

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# Overview of Today's Discussion

- Introduction
- What is an Opportunity Zone ("OZs")?
- Where do OZs exist?
- What is a Qualified Opportunity Fund ("QFund")?
- Why do QFunds present special opportunities for Real Estate?
- Have there been funds that have been formed yet?
- What is the likely structure for a:
  - Developer, investor, lender?

# Opportunity Zones

## An Overview

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# Opportunity Zones

The Opportunity Zones tax incentive was established by Congress in the 2017 Tax Cuts and Jobs Act as an innovative approach to spur long-term private sector investments in low-income urban and rural communities nationwide.  This economic development initiative is based on the bipartisan **Investing in Opportunities Act**.

# What are Opportunity Zones?

**Opportunity Zone:** A low-income census tract **(LIC)**, as determined within New Markets Tax Credits legislation, is designated as an Opportunity Zone **(OZ)** by the governor of the state or territory in which it is located. Designations will stay in place for 10 years.

**Up to 25% of LICs** in a U.S. state or territory may be designated as OZs.

**States or territories in which there are fewer than 100 LICs may designate up to 25 LICs as OZs.**

**Up to 5% of census tracts contiguous to LICs** may be designated as OZs, if the median family income of the census tract does not exceed 125% of the median family income of the LIC to which the tract is contiguous.

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# Designated Opportunity Zones

**8,762**
census tracts designated

**1,858**
rural census tracts designated

**31%**
average poverty rate

**14.4%**
average unemployment rate

**60%**
average family income in OZ census tracts relative to area median income (AMI)

**24 million**
current jobs in designated tracts

**1.6 million**
businesses in designated tracts

# Definitions

**Opportunity Fund:** An investment vehicle organized as a corporation or partnership for the purpose of investing in Opportunity Zone property.

**Opportunity Funds will be self-certified per IRS guidelines. They must be organized for the purpose of investing in Opportunity Zones**

**Opportunity Funds are required to invest 90% or more of their capital as EQUITY in Opportunity Zone property**

**Opportunity Zone property includes stock, partnership interest, or business property in an Opportunity Zone**

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# Investor Incentives

U. S. investors currently **hold $6.1 trillion in unrealized capital gains**, representing a significant untapped resource for economic development. Opportunity Funds will allow these investors throughout the country to pool and deploy their resources as Opportunity Zone investments.

>

## Deferral - OPPORTUNITY ZONE INVESTMENTS PROVIDE AN IMMEDIATE BENEFIT

to investors of deferring payment of the capital gains tax that would be paid in 2018 until 2026. Further incentives are linked to the duration of an investor's commitment to Opportunity Fund investments.

## REDUCTION - THE OZ TAX INCENTIVE WILL ALLOW

a modest reduction in capital gains taxes in exchange for holding Opportunity Fund investments for five to seven years.

## FREEDOM - IF INVESTMENTS ARE HELD 10+ YEARS,

gains accrued on the Opportunity Fund investment during that 10-year period will not be taxed, further incentivizing patient capital.

# Timeline for Opportunity Zone Investments

| | Investment Year 2019 | Year 5 2023 | Year 7 2025 | Year 8 2026 | Year 10 2028 |
|---|---|---|---|---|---|
| **Tax on Capital Gain Invested** | Gain realized and invested in Opportunity Fund **within 180 days*** | 10% reduction of capital gains tax | 15% reduction of capital gains tax | All taxes due on 12/31/26. Investor pays tax on 85% of original gain | |
| **Tax on Opportunity Fund Investment** | | Any gain realized on Opportunity Fund investment is fully taxable if liquidated | Any gain realized on Opportunity Fund investment is fully taxable if liquidated | Any gain realized on Opportunity Fund investment is fully taxable if liquidated | Any gain realized on Opportunity Fund investment **is tax free**** |

*** Tax is deferred until the earlier of investment liquidation (return of capital) or 12/31/26**

**** Any appreciation on Opportunity Fund investment is tax free if held > 10 years**

# Eligible Investments

*Only equity investments are eligible for the Opportunity Zone tax incentive.*

1. **Business investments**

   can include investments in new stock issuance for corporations and ownership interests in partnerships and LLCs.

2. **Investments in real estate**

   must include an ownership interest of new construction or assets that will be **"substantially improved"** within 30 months of acquisition by the Opportunity Fund.

3. **New equipment and other assets**

   are also eligible investments.

# Economic Development Examples

1. **Business infrastructure real estate funds:**
   - *Industrial*
   - *Retail*
   - *Mixed use*
   - *TOD*

2. **Venture capital funds:**
   - *Seed stage investments*
   - *Series A investments*

3. **Operating business private equity:**
   - *Equity recapitalizations*
   - *Growth capital investments*

4. **Enhancement for other federal tax credit transactions:**
   - *NMTCs*
   - *Historic Tax Credits*

# Qualified Opportunity Zone

- A QFund is an investment vehicle that is:
  - Organized as a corporation or a partnership, and
  - Invests and holds at least 90 percent of its assets in qualified opportunity zone property
  - The investment vehicle can become a QFund through a self-certification process that requires completing a form to be attached to a timely filed tax return

  – Qualified opportunity zone property includes the following:
  - Qualified opportunity zone stock
  - Qualified opportunity zone partnership interest, or
  - Qualified opportunity zone business property (see slide 5)

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# Benefit Overview – OZone Investments made during 2019

## Original Investment

### *Sale of Assets*
- Sell assets for $200M with a basis of $120M during 2019
- Realize $80M of capital gain

### *5 Year Basis Step-Up*
5 Year Deferral
- 10% Basis Step-Up
- Capital gain reduced to $72M

### *7 Year Basis Step-Up*
7 Year Deferral
- 5% Basis Step-Up
- Capital gain reduced to $68M

### *Deferred Gain Recognized*
No later than December 31, 2026 - Gain Recognized on original capital investment of $80M (up to $12M may be excluded)

**2019** | **2023/2024** | **2025/2026** | **2026** | **2028/2029 (10yrs or later)**

## New OZone Investment

### *OZone Investment*
- Invest $80M in certified QFund, which invests in OZone property
- Realized capital gain of $80M is deferred.

### *OZone Investment Sale*
10 Year Exclusion
- Sell OZone investment property for $300M
- $220M capital gain excluded

## Example Savings – Investment made during 2019 and Sale of Assets after 10 years

**Original Investment**
Estimated 5 Year Benefit **($1.6M)** = Capital Gain **($80M)** x Basis Step-Up **(10%)** x Capital Gain Tax Rate **(20%)**
Estimated 7 Year Benefit **($2.4M)** = Capital Gain **($80M)** x Basis Step-Up **(15%)** x Capital Gain Tax Rate **(20%)**

**New OZone Investment**
Estimated 10 Year Benefit **($44M)** = Capital Gain **($220M)** x Basis Step-Up **(100%)** x Capital Gain Tax Rate **(20%)**

# Benefit Overview – OZone Investments made during 2020 or 2021

## Original Investment

### *Sale of Assets*

- Sell assets for $200M with a basis of $120M during 2020/2021
- Realize $80M of capital gain

### *5 Year Basis Step-Up*

5 Year Deferral
- 10% Basis Step-Up
- Capital gain reduced to $72M

### *Deferred Gain Recognized*

No later than December 31, 2026 - Gain Recognized on original capital investment of $80M (up to $8M may be excluded)

**2020/2021** — **2025/2026** — **2026** — **2030/2031 (10yrs or later)**

## New OZone Investment

### *OZone Investment*

- Invest $80M in certified QFund, which invests in OZone property
- Realized capital gain of $80M is deferred.

### *OZone Investment Sale*

10 Year Exclusion
- Sell OZone investment property for $300M
- $220M capital gain excluded

## Example Savings – Investment made during 2020/2021 and Sale of Assets after 10 years

**Original Investment**

Estimated 5 Year Benefit **($1.6M)** = Capital Gain **($80M)** x Basis Step-Up **(10%)** x Capital Gain Tax Rate **(20%)**

*There is no potential basis step-up available for the 7 year holding period for investments made after the year 2019.

**New OZone Investment**

Estimated 10 Year Benefit **($44M)** = Capital Gain **($220M)** x Basis Step-Up **(100%)** x Capital Gain Tax Rate **(20%)**

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# Benefit Overview – OZone Investments made during 2022 – 2026

## Original Investment

### *Sale of Assets*

- Sell assets for $200M with a basis of $120M during 2022 through 2026
- Realize $80M of capital gain

### *Deferred Gain Recognized*

No later than December 31, 2026 - Gain Recognized on original capital investment of $80M

***2022 - 2026***

***2026***

***2032 - 2036 (10yrs or later)***

## New OZone Investment

### *OZone Investment*

- Invest $80M in certified QFund, which invests in OZone property
- Realized capital gain of $80M is deferred.

### *OZone Investment Sale*

10 Year Exclusion

- Sell OZone investment property for $300M
- $220M capital gain excluded

## Example Savings –Investment made during 2022-2026 and Sale of Assets after 10 years

**Original Investment**
*There is no potential basis step-up available for either the 5 or 7 year holding periods for investments made after the year 2021.

**New OZone Investment**
Estimated 10 Year Benefit **($44M)** = Capital Gain **($220M)** x Basis Step-Up **(100%)** x Capital Gain Tax Rate **(20%)**

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# What types of deals are we seeing and doing at Duane Morris?

- To date we have closed on 28 deals – owners/family office/developers and investors
- We have another 39 deals under engagement letter we are actively working on
- We have 76 other active conversations going on regarding deals that we will hope to land
- E.g., Real Estate buy and build, fund formation, fund raising, tax, new business counseling, construction

# Types of Deals:

- **Types of Deals DM has been closing/involved in**:
  - Creation of a Qualified Opportunity Zone Funds
  - Creation of a Qualified Opportunity Zone Businesses
  - Private Placement fund raising to enable Sponsors to purchase and build projects
  - Representing investors in review of investment opportunities and relevant documents
  - Development and loan closing with investors/lenders
  - Community redevelopment in low income communities – e.g., $50M in Camden;
  - Township/City planning in Palmyra, Burlington, Wildwood, Atlantic City

# Current Deals – by way of example:

- Formation of a new clean energy business – Va
- Purchase of land, development of a factory, investment by 3rd party investors, creation of a business – $25M; $40M in automation - SC
- Assist family office with investment into a fund – $2M – NY
- Buy out of original investor and creation of OZ Fund to purchase and improve property in AC – $1.5M - NJ
- Purchase of parking lot for potential brewery and distillery - $1.4M purchase; $10M improvement - NJ
- Reg. D private placement to create OZ businesses – $10M - DC
- Assist money partner in funding large real estate project – $30M - Chicago
- Assist in capital raise for new 125,000 building and lease – $9M - Philly
- Ground lease site, design and build 110,000 office and wet lab, lease space, private placement for $20M of OZ equity capital – $84M building - Philly
- Investment of capital gain funds, creation of QOZ Fund, creation of QOZ Business and build 121 units of market rate housing - DC – $35M

# Where are we seeing focus and attention?

- What classes of Real Estate are likely to attract attention from investors:
  - Grocery anchored retail
  - Warehouse and industrial
  - Skilled nursing and medical office
  - Multi-Family
- Will Investors pay more for LIHTC credits knowing they might be able to also get capital gains shelter?
- What is Deferral, Reduction and potential non-payment of gain worth for a project – maybe 300 bps to 500 bps

# Deal Terms:

- Investors are receiving preferred returns between 6-8%
- Arrangers of equity are asking 5-6% of funds delivered – realistically getting 1-2%
- Developers are getting splits of 20-30% after pref. and are getting fees for:
  - Asset management
  - Property management
  - Leasing
  - Acquisition/divestiture
  - Refinancing
  - Development Fee – 5-8% of hard costs

# How can your Owner/Developer clients appropriately shelter their capital gains?

- A lease or purchase or property can effectively enable capital gain protection/shelter
- Purchasing new equipment or building improvements
- Creation of new businesses – ALL businesses other than “sin businesses” – liquor sales, golf courses, massage parlors, hot tub sales, gambling – Note – cordon off the sin side of the business via ground lease or condominium
- Brokers, Universities, Hospitals – untapped fertile ground
- PropCo/OpCo Structures
- Manufacturing businesses
- Businesses that are involved in Real Estate

# Common Misperceptions:

- I have year to invest capital gains if they are in a fund
- I have 30 months from receipt of a building permit to complete my building
- If I put non capital gains into the QOF I can still get appreciation when I sell after 10 years on a tax free basis
- The program is over after this year
- A shot gun buy-sell is good way to resolve disputes in the OZ context
- I can refinance in years 1 or 2 and return capital to the investors

# Key Points

### Investors

- Tax incentive is most valuable for 10 year investments in appreciating assets
- Six months to invest after realizing a capital gain
- Another six months to deploy 90% of capital in Zones
- Capital is required to be an equity investment – loans from investors are not eligible for the tax incentive

### Funds

- All capital must flow through an Opportunity Fund to be eligible for the tax incentive
- Funds are self-certified via an IRS tax form
- Fund must be established for the purpose of investing in Opportunity Zones
- 90% of fund assets must be invested in Zones to maximize the tax incentive

### Eligible Investments

- Must be equity investments
- Real estate investments must include substantial rehabilitation – doubling basis within 30 months
- “Sin businesses” are not eligible
- Other requirements include property use in “active conduct of business” and limits on assets held in cash

# IRC §1031 Exchange vs. OZone Investment

## IRC § 1031 Like-Kind Exchange ("LKE")

- All proceeds from the original sale must be reinvested within 180 days of the exchange
- Deferred gain is recognized upon taxable sale of the new property
- Basis in the new property is equal to the basis in the original property exchanged
- Future LKEs may be applied
- No limitation on location of LKE property
- There is no basis step-up or gain reduction as a result of holding the new property for a period of time
- Generally, exchanges can occur between related parties
- Under Tax Reform, section 1031 only applies to real property exchanges

## IRC § 1400Z-2 OZone Investment

- Only the realized gain portion of the original sale must be reinvested within 180 days of the sale to defer gains
- Deferred gain is recognized upon the earlier of the sale of the property or December 31, 2026
- Basis in the OZone property is zero (assuming only the gain is reinvested) until the deferred gain is recognized
- No future deferrals are allowed after the first election
- Location limited to designated OZones
- There is a basis step-up in the new property if held for 5 years and 7 years of 10% and 5% of the deferred gain, respectively. After 10 years, the basis is equal to the FMV of the investment when sold
- The original sale or exchange of the property must be to an unrelated person
- Investment in new property can be any property if it meets the definitions of qualified opportunity zone property

# April 2019 Regulations - Highlights

On April 17th the Department of Treasury released a second set of proposed regulations for the Opportunity Zone legislation (the first set of regulations was released in October, 2018) which is intended to encourage economic growth and investment in designated distressed communities (qualified opportunity zones) by providing Federal income tax benefits to taxpayers who invest new capital in businesses located within qualified opportunity zones through a Qualified Opportunity Fund.

1. **Reinvestment of Proceeds from a sale or disposition**. A qualified opportunity fund ("QOF") has 12 months from the time of the sale or disposition of qualified opportunity zone property or the return of capital from investments in qualified opportunity zone stock or qualified opportunity zone partnership interests to reinvest the proceeds in other qualified opportunity zone property before the proceeds would not be considered qualified opportunity zone property with regards to the 90-percent asset test.

2. **Real Property straddling an Opportunity Zone and a Non-Opportunity Zone**. A business that purchases real property straddling multiple census tracts, where not all of the tracts are designated as a qualified opportunity zones may satisfy the opportunity zone business requirements if the unadjusted cost of the real property inside a qualified opportunity zone is greater than the unadjusted cost of real property outside of the qualified opportunity zone.

# April 2019 Regulations (continued)

3. **Safe Harbors for the Fifty Percent (50%) Income Test for Qualified Opportunity Zone Businesses ("QOZBs")**. The proposed regulations provide three safe harbors and a facts and circumstances test for determining whether sufficient income is derived from a trade or business in a qualified opportunity zone for purposes of the 50-percent test.

   a. The first safe harbor requires that at least fifty percent (50%) of the **services performed (based on hours)** for such business by its employees and independent contractors (and employees of independent contractors) are performed within the qualified opportunity zone.

   b. The second safe harbor provides that if at least fifty percent (50%) of the services performed for the business by its employees and independent contractors (and employees of independent contractors) are performed in the qualified opportunity zone, **based on amounts paid for the services performed**, the business meets the fifty percent (50%) gross income test.

   c. The third safe harbor provides that a trade or business may satisfy the fifty percent (50%) gross income requirement if:

      (1) the tangible property of the business that is in a qualified opportunity zone and (2) the management or operational functions performed for the business in the qualified opportunity zone **are each necessary** to generate fifty percent (50%) of the gross income of the trade or business.

   d. Finally, taxpayers not meeting any of the other safe harbor tests may meet the 50-percent requirement based on a facts and circumstances test if, based on all the facts and circumstances, at least fifty percent (50%) of the gross income of a trade or business is derived from the active conduct of a trade or business in the qualified opportunity zone.

# April 2019 Regulations (continued)

Note that the seventy percent (70%) tangible property test that requires that seventy percent (70%) of the tangible property of the QOZB be located within the Opportunity Zone continues to be operative for QOZBs.

4. **Working Capital Plans - the 31 Month Test**. The following two changes were made to the safe harbor for working capital.

   a. First, the written designation for planned use of working capital now includes the development of a trade or business in the qualified opportunity zone as well as acquisition, construction, and/or substantial improvement of tangible property.

   b. Second, exceeding the 31-month period does not violate the safe harbor if the delay is attributable to waiting for government action the application for which is completed during the 31-month period.

5. **Measurement Periods**. To help startup businesses the proposed regulations allow a qualified opportunity fund to satisfy the ninety percent (90%) without taking into account any investments received in the preceding 6 months provided those new assets being held in cash, cash equivalents, or debt instruments with term 18 months or less. This flexibility is intended to alleviate concerns with a QOF receiving additional capital gain funds right before a testing period and not being able to deploy the funds prior to the testing period.

# April 2019 Regulations (continued)

6. **Exclusion Elections**. A taxpayer that is the holder of a direct qualified opportunity fund partnership interest or qualifying qualified stock of a qualified opportunity fund S corporation may make an election to exclude from gross income some or all of the capital gain from the disposition of qualified opportunity zone property reported on Schedule K-1 of such entity, provided the disposition occurs after the taxpayer's 10-year holding period.

7. **Continued OZ treatment after Death**. Neither a transfer of the qualifying opportunity fund investment to the deceased owner's estate nor the distribution by the estate to the decedent's legatee or heir would result in the loss of the opportunity fund investment benefit.

8. **Vacant Property**. Where a building or other structure has been vacant for at least **five (5) years** prior to being purchased by a qualified opportunity zone business or qualified opportunity zone business, the purchased building or structure will satisfy the original use requirement.

9. **Leased Property – QOZBs; Original Use; Related Party Permissions; Anti-Abuse Rules**. Leased property may be treated a qualified opportunity zone business property if the following two general criteria are satisfied.

   a. First, leased tangible property must be acquired under a lease entered into after December 31, 2017.

   b. Second, substantially all of the use of the leased tangible property must be in a qualified opportunity zone during substantially all of the period for which the business leases the property.

# April 2019 Regulations (continued)

The proposed regulations, however, do **not** impose an original use requirement with respect to leased tangible property and do not require leased tangible property to be acquired from a lessor that is unrelated. However, the proposed regulations provide one limitation as an alternative to imposing a related person rule or a substantial improvement rule and two further limitations that apply when the lessor and lessee are related.

a. First, the proposed regulations require in all cases, that the lease under which a qualified opportunity fund or qualified opportunity zone business acquires rights with respect to any leased tangible property must be a "market rate lease."

b. Second, if the lessor and lessee are related, a qualified opportunity fund or qualified opportunity zone business at any time make not make a prepayment to the lessor relating to a period of use of the leased tangible property that exceeds 12 months.

c. Third, the proposed regulations do not permit leased tangible personal property to be treated as qualified opportunity zone business property unless the lessee becomes the owner of tangible property that is qualified opportunity zone business property and that has a value not less than the value of the leased personal property. This acquisition of this property must occur during a period that begins on the date that the lessee receives possession of the property under the lease and ends on the earlier of the last day of the lease or the end of the 30-month period beginning on the date that the lessee receives possession of the property under the lease.

d. Finally, the proposed regulations include an anti-abuse rule to prevent the use of leases to circumvent the substantial improvement requirement for purchases of real property (other than unimproved land). In the case of real property (other than unimproved land) that is leased by a qualified opportunity fund, if, at the time the lease is entered into, there was a plan, intent, or expectation for the real property to be purchased by the QOF for an amount of consideration other than the fair market value.

# April 2019 Regulations (continued)

It is also worth noting that improvements made by a lessee to leased property satisfy the original use requirement and are considered purchased property. Thus, a tenant in a building can also satisfy the QOZB tests noted under the OZ Act.

10. **Intangible Assets**. For purposes of determining whether a substantial portion of intangible property of a qualified opportunity zone is used in the active conduct of a trade or business, the term "substantial portion" means at least **40 percent**.

11. **Unimproved Land**. Unimproved land that is within a qualified opportunity zone and acquired by purchase is not required to be substantially improved if it is used in a trade or business of the QOF or the QOZB.

12. **Investments Held by Funds**. Funds have been provided with additional flexibility to hold more than one investment within a fund if they are structured appropriately.

13. **Inventory**. Inventory in transit to a QOZB within an OZ will be treated as tangible property that counts for purposes of the seventy percent (70%) test for QOZBs even if it is not within the OZ so long as it is on the way.

14. **Debt Financed Distributions**. Guidance has been provided under the new regulations regarding refinancing and distributions to partners/members which would permit appreciated portions of the property that have been refinanced to be distributed to the partners or members of the QOF on a tax free basis so long as the distribution is not in excess of the investors basis.

# Concerns

- Encouraging Social Impact and  Preventing Gentrification
  - No requirement for a fund to meet social impact; no current reporting requirements
  - Lack of oversite could lead to abuse
  - Will require that cities and states provide structure on investments in these markets with soft funding. Zoning or permit controls or tax policies.

# Tax Elections and Tax Reporting

# Proposed regulation self-certification and election deferral forms

### Form 8996 for self-certification and annual compliance

It is expected that taxpayers will use Form 8996, Qualified Opportunity Fund, both for initial self-certification and for annual reporting of compliance with the 90-Percent Asset Test and that Form 8996 would be attached to the taxpayer's Federal income tax return for the relevant tax years. See Prop. Treas. Reg. §1.1400Z-2(d)-1(a)(1)(i).

### Form 8949 for gain deferral election

It is expected that taxpayers will make deferral elections on Form 8949, which will be attached to their Federal income tax returns for the taxable year in which the gain would have been recognized if it had not been deferred.

### Effective dates

The proposed regulations generally are proposed to be effective on or after the date of publication in the Federal Register. However, eligible taxpayers may generally rely on the proposed rules prior to the final regulations if the taxpayer applies the rules in their entirety and in a consistent manner.

# Opportunity zone and New Markets Tax Credit (NMTC) and Low-Income Housing Credit (LIHTC)

## QOZ/NMTC

Both the NMTC and Opportunity Zones share the same geographic footprint to the extent of the 25% limitation on the number of population census tracts that can be designated. In addition qualified opportunity zones can include a percentage of contiguous non-low-income tracts. While it may have been congressional drafter's original intent to certify QOFs in a manner similar to CDEs, the IRS's self-certification guidance allows QOFs to be created without any government review or regulation. Finally, the NMTC allocation authority is limited to 3.5 billion for each of 2018 and 2019 after which the program is set to expire. There is no limit of the investment of gains taxpayers may contribute to QOFs that will eventually be deployed into QOZs.

## QOZ/LIHTC

While the LIHTC is available only for residential rental property, QOZ property can include both commercial and residential real property. Moreover, QOFs that invest LIHTC projects located in a QOZ could potentially benefit from both LIHTC and the gain deferral for QOZs.

# QOZ Designation and State Conformity

# State conformity to opportunity zone IRC provision

Please note that states may change conformity and that further state legislation is possible

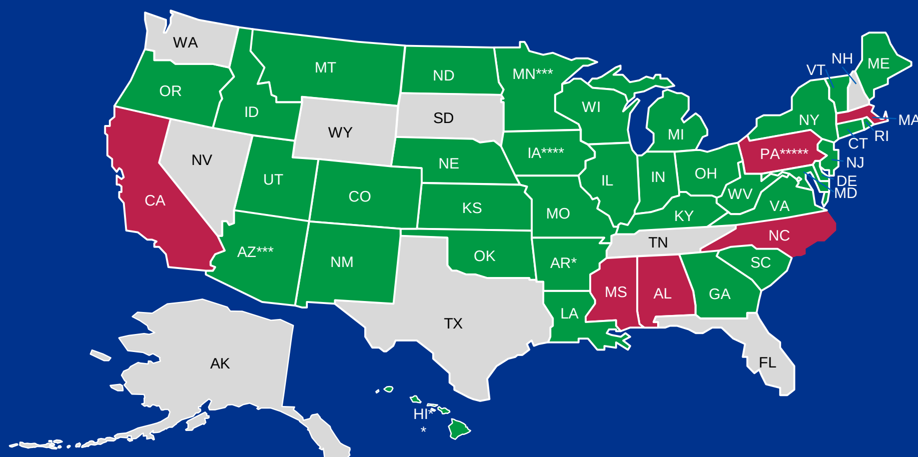
## Corporations

- 39 states currently conforming (rolling or updated state IRC conformity; AZ and MN are recent changes; AZ retroactively conforms starting TY18; HI conforms starting in TY19; IA conforms starting in TY19; MN appears retroactive but DOR guidance not issued yet)
- 2 states didn't update IRC conformity (CA, NH)
- 1 state updated IRC conformity but decoupled from IRC 1400Z (NC)
- 2 states with only selective IRC conformity (AR, MS) of which one does not conform (MS) and one conforms (AR) but only with respect to QOZs located within this state
- 4 states impose gross receipts taxes and not corporate income tax (NV, OH, TX, WA)
- 2 states don't impose corporate income tax or gross receipts tax (SD, WY)

## Individuals

- 33 states currently conforming (rolling or updated state IRC conformity; AZ and MN are recent changes; AZ retroactively conforms starting TY18; HI conforms starting in TY19; IA conforms starting in TY19; MN appears retroactive but DOR guidance not issued yet)
- 1 state didn't update IRC conformity (CA)
- 1 state updated IRC conformity but decoupled from IRC 1400Z (NC)
- 6 states where IRC conformity is different for personal income tax or only have selective IRC conformity (AL, AR, MA, MS, NJ, PA) of which three do not conform (AL, MA, MS), one conforms (NJ), one will conform (PA for TYB 1/1/20), and one conforms but only with respect to QOZs located within this state (AR)
- 3 states don't impose personal income tax but impose gross receipts tax on certain businesses (NV, TX, WA)
- 6 states don't impose personal income tax or gross receipts tax on individuals (AK, FL, NH, SD, TN, and WY)

# State QOZ conformity – Individual income tax

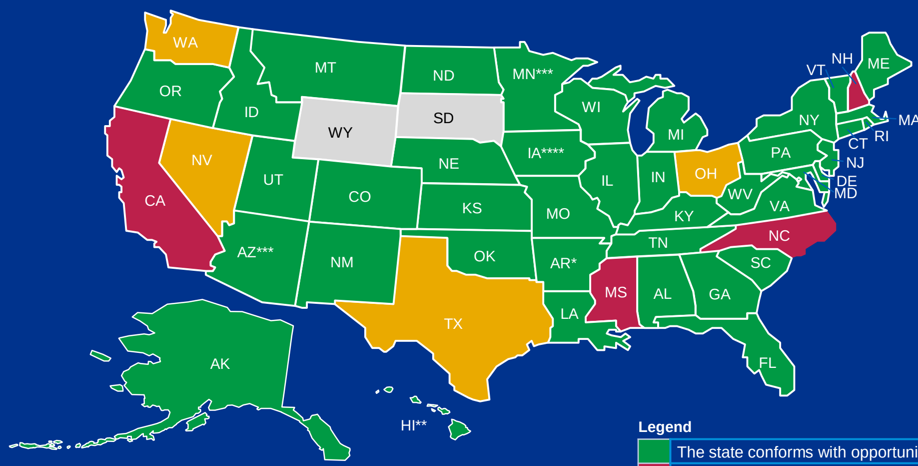



**Legend**

| | |
|---|---|
| (green) | The state conforms with opportunity zone benefits for tax year 2018 |
| (red) | The state does not conform with opportunity zone benefits for tax year 2018 |
| (grey) | No individual income tax that includes capital gains in the tax base |

Information is current as of July 1, 2019
State conformity to P.L. 115-123 (Puerto Rico) may vary from the above
* Arkansas only conforms with respect to QOZs located within this state
** Hawaii only conforms with respect to QOZs located within this state (did not conform for 2018)
*** Arizona and Minnesota are recent changes and further Dept. of Revenue guidance expected
**** Iowa conforms with QOZ benefits beginning with tax year 2019 (did not conform for 2018)
***** Pennsylvania will conform for tax years beginning January 1, 2020 and after

# State QOZ conformity – Corporate income tax




**Legend**

| | |
|---|---|
| | The state conforms with opportunity zone benefits for tax year 2018 |
| | The state does not conform with opportunity zone benefits for tax year 2018 |
| | Taxability or deferral of gain may depend on what type of property is sold, so these gross receipts tax states required specific analysis |
| | No corporate income tax |

Information is current as of July 1, 2019
State conformity to P.L. 115-123 (Puerto Rico) may vary from the above
* Arkansas only conforms with respect to QOZs located within this state
** Hawaii only conforms with respect to QOZs located within this state (did not conform for 2018)
*** Arizona and Minnesota are recent changes and further Dept. of Revenue guidance expected
**** Iowa conforms with QOZ benefits beginning with tax year 2019 (did not conform for 2018)

# Income tax rates in certain states

**Current as of July 1, 2019 (TY2018 - highest marginal rate)**

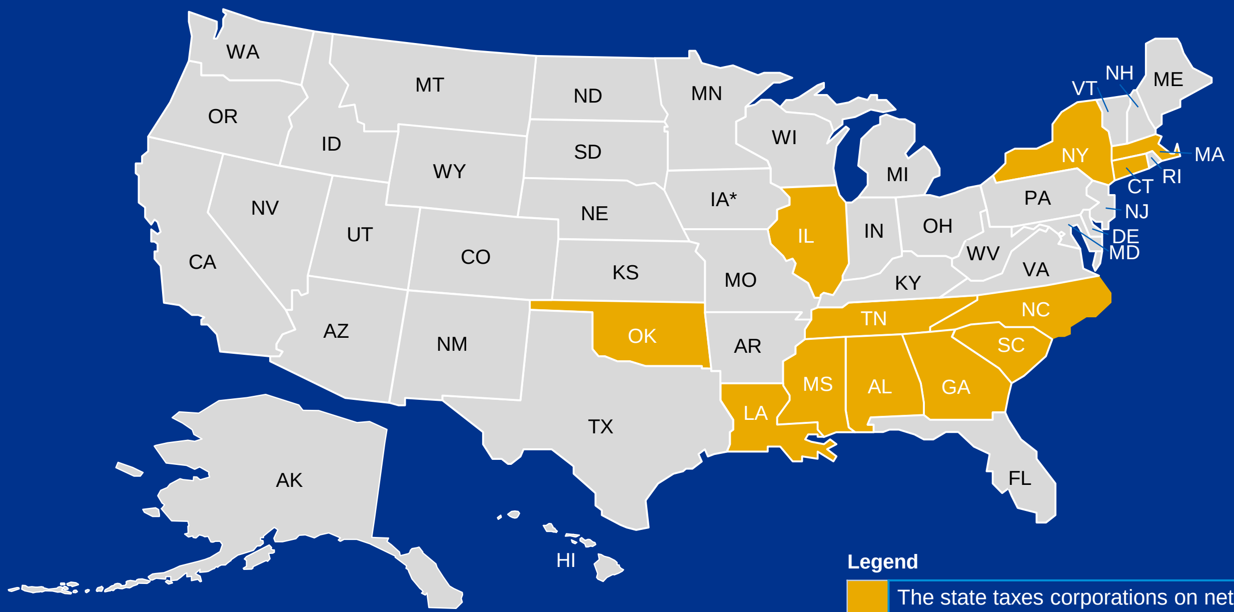
## Corporations

- 6.5% AR**
- 4.9% AZ***
- 8.84% CA
- 6.4% HI
- 12% IA
- 9.8% MN***
- 5% MS
- 7.9% NH
- 3% NC

## Individuals

- 5% AL
- 4.54% AZ***
- 7% AR**
- 13.3% CA
- 11% HI
- 8.98% IA
- 5.1% MA
- 9.85% MN***
- 5% MS
- 5.499% NC
- 3.07% PA

# State tax on corporation’s net worth or property value

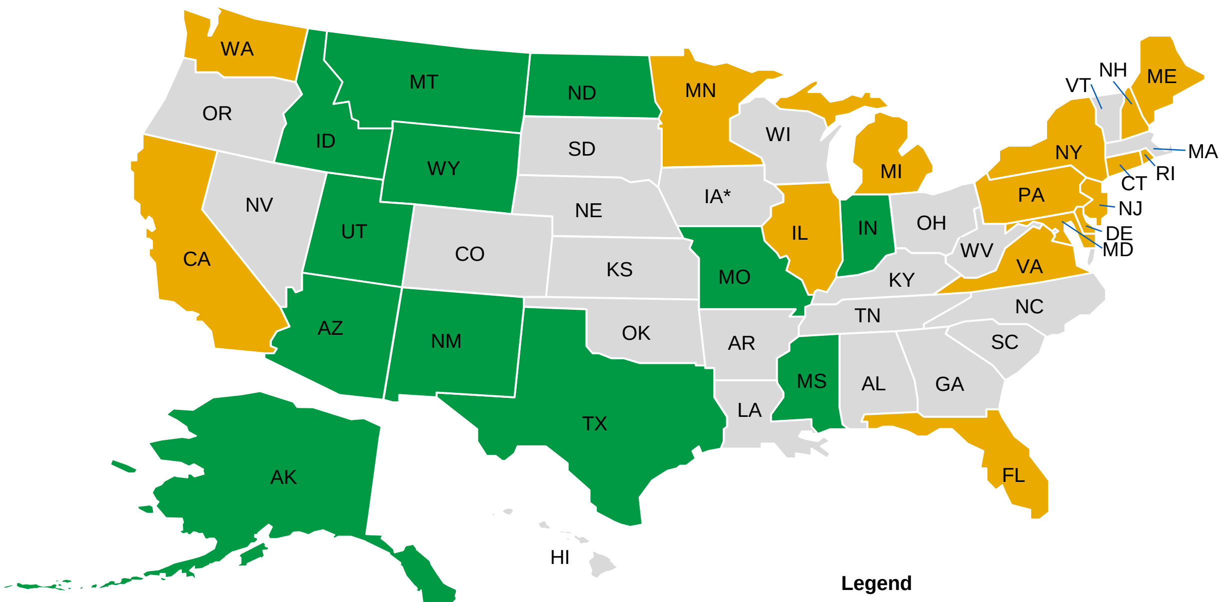



**Legend**

| | |
|---|---|
| (orange) | The state taxes corporations on net worth, investment in property, or assessed value of property for tax year 2018 along with the income tax return (this map does not indicate property taxes imposed on tangible or real property) |
| (grey) | No tax on net worth, investment in property, or assessed value of property along with income tax return |

Information is current as of July 1, 2019

# State real estate transfer taxes




**Legend**

| | |
|---|---|
| | The state and localities do not impose a real estate transfer tax or only impose a flat fee |
| | The state and/or localities also impose real estate transfer tax or similar tax on controlling interest or other indirect transfers |
| | The state and localities impose a real estate transfer tax or similar tax on real property transfers |

Information is current as of October 29, 2018

# Resources:

## Opportunity Zones Resources:

The authority to implement IRC 1400Z-1 and 1400Z-2 has been delegated to the IRS.  The CDFI Fund is supporting the IRS with the Opportunity Zone nomination and designation process under IRC 1400Z-1 only

The IRS has posted a list of **Frequently Asked Questions about Opportunity Zones** and is currently working on guidance on how the Qualified Opportunity Zone benefit under IRC 1400Z-2 (including the certification of Qualified Opportunity Funds and eligible investments in Qualified Opportunity Zones) will be administered. IRS and Treasury are giving this guidance high priority for rapid issuance over the next few months. Please send any comments or questions to **CC.ITA.Section.1400@irscounsel.treas.gov**.

# Resources (continued)

## Opportunity Zones:

**List of designated Qualified Opportunity Zones (QOZs)**: This spreadsheet was updated June 14, 2018, to reflect the final QOZ designations for all States. (See **IRS Notice 2018-48, 2018–28 Internal Revenue Bulletin 9**, July 9, 2018, for the official list of all population census tracts designated as QOZs for purposes of Internal Revenue Code §§ 1400Z-1 and 1400Z-2.)

For a map of all designated QOZs, **click here**.

— To view all designated QOZs, click on the "Layers" tab on the menu on the right hand side of the screen. Select "Opportunity Zone Tract" and unselect "2011-2015 LIC Census Tract," and zoom in to a specific area on the map. Designated QOZs will appear in blue.

— To view a specific census tract, enter the tract number in the search bar, select "2011-2015 Census Tract" by clicking on the mailbox symbol on the left of the search bar, click search, and select the census tract number that appears in the results below.

# Resources (continued)

## Additional Resources:

**IRS Revenue Procedure**: Provides information on the eligibility criteria for census tract designation as a Qualified Opportunity Zone and the nomination and designation process.

**Opportunity Zones Information Resource**, with sortable lists by State of all census tracts originally eligible for designation as a QOZ.

**Opportunity Zones Shapefile**: This Zip file contains a Geographic Information System (GIS) shapefile of all population census tracts designated as QOZs as well as all population census tracts originally eligible for designation as a QOZ. See Readme text document for additional detail.

# Resources (continued)

**IRS Info:**

**For questions on IRC 1400Z-2 related to Opportunity Funds and Opportunity Zone Investments:**

**Phone: (414) 231-2240**

**E-mail: CC.ITA.Section.1400@irscounsel.treas.gov**

# Resources and Tools

## opportunityzones.newmarkets.org

**Visit NMSC's Opportunity Zones pages for:**

A mapping tool of designated census tracts

Federal and state government resources and updates

LISC and partner resources, including presentations and webinar recordings

Opportunity Zones and Opportunity Funds FAQ

A sign-up form for our Opportunity Zones email updates

# Resources and Tools (continued)

**Other Opportunity Zones resources:**

The Investing in Opportunity Act

Community Development Financial Institutions (CDFI) Fund Opportunity Zones updates and resources

Economic Innovation Group (EIG) Opportunity Zones pages for related news, background information, and a list of bipartisan supporters

# Thank You

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# Federal Opportunity Zones – Continued Frothy Pace for the remainder of 2019 and into 2020

October, 2019


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