

OBBBA and Qualified Opportunity Zones (QOZs)

The Top Five Things That You Need to Know

The “One Big Beautiful Bill Act” (“OBBBA”)¹ makes qualified opportunity zones (“QOZs”) a permanent part of the Internal Revenue Code. Along with this permanent extension, OBBBA makes changes to the QOZ program and imposes new reporting requirements.

The OBBBA changes require considered analysis to fully understand their applications, including interactions with current rules. For now, presented below is a brief summary of certain of the changes as they appear on the face of the act.²

As a quick refresher: Under current law, a taxpayer can defer until 2026 taxation of certain gains by making a “qualifying investment”³ into a “qualified opportunity fund” (“QOF”).⁴ Most QOFs invest in a QOZ by acquiring an interest in a subsidiary corporation or partnership known as a “QOZ business,” and that QOZ business acquires and develops property located in a QOZ. If certain requirements are met, a taxpayer may effectively exclude from gross income gain on the ultimate disposition of its QOF interest (or the underlying property).

1. NO ADDITIONAL GAIN DEFERRAL FOR CURRENT QOF INVESTORS

Although OBBBA made the QOZ program “permanent,” that permanence does nothing further to extend the December 31, 2026, outside date for

recognition of all gain that has already been deferred. Moreover, any new qualifying investments made in 2025 or 2026, will defer gain only until that date.

Qualifying investments made in 2027 with respect to gain recognized in 2026 will be subject to the new rules. (An example below gives more details.)

2. NEW QUALIFYING INVESTMENTS PERMITTED ON OR AFTER JANUARY 1, 2027 — SUBJECT TO SLIGHTLY DIFFERENT RULES

The QOZ program is now permanently part of the law, but with some modifications.

Prior to the enactment of OBBBA, deferral of any gain by means of a qualifying investment had a “drop dead” date of December 31, 2026, regardless of when the taxpayer made the investment. If taxpayers make new qualifying investments of gain in QOFs on or after January 1, 2027 (“OBBBA QOZ investments”), the rules are different.⁵ Any OBBBA QOZ investment will defer gain until the sooner of the disposition of the taxpayer’s QOF interest or the fifth anniversary of the date of investment.⁶

A taxpayer that makes an OBBBA QOZ investment will be able to effectively exclude 10% of its deferred gain

¹ For technical reasons, the name of the act is actually “An Act to provide for reconciliation pursuant to title II of H. Con. Res. 14.”

² Among other changes not covered here are certain favorable changes for investment in rural areas.

³ See Treas. Reg. § 1.1400Z2(a)-1(b)(34).

⁴ See generally § 1400Z-2(d)(1).

⁵ Section 1400Z-2(a)(2). All section citations are to the Internal Revenue Code of 1986, as modified by OBBBA, or the Treasury Regulations thereunder.

⁶ Section 1400Z-2(b)(1).

from gross income if that taxpayer holds the investment for the entire five-year deferral period.

Finally, as under the current program, a taxpayer making an OBBBA QOZ investment that holds that investment for 10 years or longer is eligible to effectively exclude any additional gain from the disposition of that investment.⁷ However, OBBBA puts a limitation on that benefit: With respect to any OBBBA QOZ investment that is held for 30 years or longer, the maximum excludible gain is determined by reference to the fair market value of the investment on the 30th anniversary of the date of the investment.⁸

As mentioned above, qualifying investments made in 2027 with respect to gain recognized in 2026 will be subject to these new rules. For example, if a taxpayer recognizes gain on December 1, 2026, but makes a qualifying investment of that gain on February 1, 2027, that gain can be deferred until February 1, 2032 (not the previous drop dead date of December 31, 2026), and that qualifying investment would be subject to the new rules.

3. REPORTING REQUIREMENTS FOR EXISTING AND NEW QOFS AND QOZ BUSINESSES

Beginning with 2026 (for most taxpayers), OBBBA imposes reporting requirements on *existing* and *new* QOFS and QOZ businesses.

Many of the reporting requirements OBBBA imposes on QOFS reflect information that the IRS already collects from QOFS on Form 8996 (a form that has to be attached to each QOF's tax return each year).⁹ However, there are now additional requirements, including listing the number of residential units held by, and the number of employees of, a QOF's subsidiary QOZ business. Additionally, in the case of any investor that disposes of an interest in a QOF, that QOF will have to furnish a statement to both the IRS and that investor.¹⁰

QOZ businesses will also have to report information to QOFS, although the specific information to report has been left to the IRS's discretion.¹¹

Penalties for noncompliance are severe. With respect to a QOF, a failure to provide the relevant information returns generally carries a \$500 (or \$2,500, in the case of intentional disregard) a day penalty.¹² With respect to both QOFS and QOZ businesses, the general penalty for failing to provide payee statements of \$250 per payee applies.¹³

4. DESIGNATION OF NEW QOZS

Part of making the QOZ program permanent was providing for ongoing designation (and expiration of designation) of QOZs. Beginning July 1, 2026, new QOZs are to be designated on that date and every 10 years thereafter, with those designations applying for a 10-year period. Each period commences on the January 1 after the date of designation (the "applicable start date").¹⁴

5. QOZ BUSINESSES NOW TIED TO APPLICABLE START DATES

Prior to OBBBA, QOFS and QOZ businesses had to keep a jumble of overlapping and inconsistent timelines straight. OBBBA makes matters yet more difficult by adding the concept of applicable start date.

Generally speaking, with respect to any QOZ that is designated pursuant to OBBBA, property will not qualify as QOZ business property in the hands of a QOZ business unless that property is acquired after the applicable start date. For example, if a QOZ is designated on July 1, 2026, in order for property in that QOZ to qualify as QOZ business property, the QOZ business must acquire it *after* (not "on or after") January

⁷ Section 1400Z-2(c)(1).

⁸ Section 1400Z-2(c)(1). Gain is not triggered on the 30th anniversary of an OBBBA QOZ investment — rather, the amount of the exclusion is merely "locked in" on that date. This rule sort-of mirrors a current rule in the regulations that sets a "drop dead" date for the exclusion from gain of December 31, 2047. Treas. Reg. § 1.1400Z2(c)-1(c).

⁹ Section 6039K.

¹⁰ Section 6039K(b)(8) and (c).

¹¹ Section 6039L.

¹² Section 6726.

¹³ Sections 6722 and 6724(d)(2)(NN) and (OO).

¹⁴ Section 1400Z-1(c)(2)(C) and (e). There was also a change to the definition of "low-income communities," which definition is incorporated into the definition of QOZ. Additionally, the definition of QOZ no longer permits designation of census tracts adjacent to, but not themselves, low-income communities.

1, 2027, the relevant applicable start date.¹⁵ Moreover, for purposes of a QOF's acquisition of stock or a partnership interest in a corporation or a partnership that is intended to be a QOZ business, that stock or

partnership interest seems to be QOZ stock or a QOZ partnership interest only if it is acquired after (again, not "on or after") the applicable start date of the QOZ business property in the underlying QOZ business.¹⁶

This update is not intended to provide legal advice with respect to any particular situation, and no legal or business decision should be based solely on its content.

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¹⁵ Section 1400Z-2(d)(2)(D)(i)(I). The text perhaps should have read "on or after," but, unless and until there is a technical correction or guidance, it would be wise to stick with the "after" reading.

¹⁶ Section 1400Z-2(d)(B)(i)(I), (d)(C)(i)(I), and (d)(2)(E). We write "seems" because the provision is not clear in its wording, but that appears to be the intent.