

# OBBBA Makes QOZ Program (But Not Deferral) Permanent

By: Ezra Dyckman and Aaron S. Gaynor

Originally Published in the New York Law Journal

---

The qualified opportunity zone (QOZ) program has been among the most popular provisions of the Tax Cuts and Jobs Act of 2017 (TCJA). It was perhaps, then, no surprise that the recently enacted One Big Beautiful Bill Act (OBBBA) has made the QOZ program permanent. While the OBBBA amendments allow for new QOZ investments beyond 2026, they did nothing to extend (or make permanent) the deferral of gain currently reinvested under the program.

## A Brief Refresher

Pursuant to the TCJA, Treasury designated certain low-income census tracts and adjacent parcels as QOZs. Each of those designations will expire (unless re-designated) at some point during 2028. Under the program, generally a taxpayer must make a “qualifying investment” with respect to a capital gain to a “qualified opportunity fund” (QOF) within a certain time period. (Other kinds of gain may qualify.) Generally, a QOF is a corporation or partnership (including most multi-member LLCs) that meets certain investment requirements for property located in a QOZ.

Generally, the relevant time period for the reinvestment of a capital gain is the date of recognition and 179 days thereafter. However, in the case a partner in a partnership, under the “K-1 rule” set forth in the regulations, that partner has three alternative periods during which that partner can reinvest that partner’s share of the gain: (i) the same period as the partnership; (ii) the last day of the partnership’s taxable year (generally Dec. 31) in which the gain was recognized and 179 days thereafter; or (iii) the un-extended due date of the partnership’s return (generally March 15 of the following year) and 179 days thereafter.

If a taxpayer makes a qualifying investment, that taxpayer is generally entitled to two Federal income tax benefits:

(1) The reinvested gain is deferred (*i.e.*, tax is not due) until Dec. 31, 2026, unless it is triggered prior to that date.

(2) If the taxpayer holds a qualifying investment in a QOF for ten years or longer, then the taxpayer’s subsequent disposition of that QOF interest (or the underlying property) will be effectively free from further Federal income tax *with respect to the additional gain on that investment*. (For the avoidance of doubt, the deferred gain is always taxable on Dec. 31, 2026,

regardless of how long the taxpayer holds the investment.) There is a limit on this benefit: The disposition must occur on or before Dec. 31, 2047.

Importantly, these tax benefits attach only to a qualifying investment of gain. No benefits attach (not even the ten-year benefit) to investments of "fresh cash" into a QOF!

It is also worth noting that for New York income tax purposes, there is no deferral benefit, but there is still a "ten-year" benefit. However, there have been legislative proposals for New York to "decouple" from that benefit as well.

### OBBBA Amendments

Perhaps the most important aspect of the OBBBA amendments was what was not changed: The deferral deadline for gains currently reinvested into a QOF. Any gains currently deferred under the program will still become taxable no later than Dec. 31, 2026. It is probably best to think of OBBBA as establishing a new QOZ program, effective Jan. 1, 2027.

OBBBA allows for new QOZs (that is, a new map of qualified areas to invest) to be designated on July 1, 2026, effective Jan. 1, 2027, for ten years. The process is to repeat every decade indefinitely. Additionally, what can qualify as a QOZ has been restricted.

Beginning on Jan. 1, 2027, any gain reinvested into a QOF is deferred for five years unless otherwise triggered. Unlike the current regime, there is no "drop dead" date (*a la* Dec. 31, 2026). Additionally, with respect to any gain that is deferred for that entire five-year period, 10% of that gain is effectively "forgiven," and is not subject to Federal income upon the date the deferral ends.

*Example:* On Feb. 1, 2027, a taxpayer reinvests \$1,000,000 into a QOF. No event causes the deferred gain to otherwise be recognized during the five-year deferral period. On Feb. 1, 2032, \$900,000 (90% of the deferred gain) becomes taxable. The remaining \$100,000 (10%) is permanently excluded from Federal taxation.

OBBBA makes a tweak to the ten-year benefit. Although the fundamental rule remains unchanged—that a taxpayer can dispose of a QOF interest held for ten years or longer without additional Federal income tax—it changes the limitation on the benefit. Unlike the current rules, there is no time limitation per se, but the valuation for the benefit is locked in after 30 years.

*Example:* (Continued from above.) Taxpayer continues to hold the QOF investment on Feb. 1, 2057 (i.e., 30 years after investment), at which time the QOF investment has a value of \$20,000,000. On Jan. 1, 2070, Taxpayer sells the QOF investment for \$27,000,000. However, the value of the exclusion is locked in at the 30th anniversary of the investment, and, therefore taxpayer is able to exclude only up to \$20,000,000 in gain from Federal income tax. The additional \$7,000,000 would be subject to Federal income tax.

Finally, OBBBA has added robust reporting requirements for QOFs and their subsidiary QOZ businesses. Taxpayers should be mindful of these requirements, as they impose material penalties for those who fail to report.

### Timing Quirks and Transition Issues

The permanent extension of the QOZ program creates some unusual timing quirks, but also provides taxpayers with optionality.

Some gains that are recognized as early as the beginning of 2026 could be deferred under the OBBBA QOZ rules in 2027. Suppose that on Jan. 1, 2026, a partnership sells property and recognizes gain. Under the K-1 rule, a partner in that partnership would have until as late as Sept. 10, 2027, to reinvest that gain into a QOF.

That reinvested gain would be deferred until 2032 (at which point only 90% would be recognized), instead of only until Dec. 31, 2026. If that partner had recognized the gain directly (that is, not through a partnership) on Jan. 1, 2026, that partner could have reinvested the gain only until June 29 of that year, and deferred that gain only until Dec. 31, 2026 (meaning no deferral benefit at all!).

An additional time quirk arises during the period between Jan. 1, 2027, and various points in 2028 when the old QOZs have yet to expire, but the new QOZs are effective. It is not clear whether during this period, a QOF can make investments in property in the expiring QOZs.

This quirk highlights a larger issue: What is to happen to all of the existing QOFs that are invested in current QOZs after the QOZs expire? The regulations provide for a rule that says the expiration of a QOZ will not disrupt the ten-year benefit. However, even though the ten-year benefit is "safe," based on the current rules, the relevant penalties would seem to apply, as QOFs would no longer own property located in a QOZ after the current QOZs expire.

While the OBBBA amendments present an exciting "opportunity" for real estate investors moving forward, questions remain as the existing program winds down.

\* \* \* \* \*

Ezra Dyckman and Aaron S. Gaynor are partners of Roberts & Holland LLP.

---

Reprinted with permission from the August 26, 2025 edition of the New York Law Journal © 2026 ALM Media Properties, LLC. All rights re-served. Further duplication without permission is prohibited. ALMReprints.com 877-257-3382 – reprints@alm.com.

---