



April 18, 2019

On April 17, 2019, the U.S. Treasury Department and the IRS issued a second set of guidance providing additional details about investment in Opportunity Zones. While not final, taxpayers can rely on the regulations as long as they are consistently applied.

The Opportunity Zone programs provide tax incentives to deploy capital gains into Opportunity Zone Funds that invest in certain low-income areas. Taxes on the initial capital gains invested into the fund can be deferred until the end 2026 and are eligible for additional savings if the fund investment is held for five years or more. Subsequent gains on the fund investment may be completely excluded for investments held for at least 10 years.

The proposed rules provide additional flexibility and several clarifications that will help provide needed certainty for investors looking to use the program.

- Property that has been vacant for at least five years before being purchased by the fund will be considered original use. This means that subsequent “substantial improvements” to the property will not be necessary.
- Substantial improvements require that the basis of a property (excluding the value of the land) be more than doubled.
- Funds have 31 months to make substantial improvements. For multi-phased projects, a new

31-month period begins for each set of improvements.

- If an asset is sold by the fund before 10 years, the gain can be reinvested into another zone property or business within 12 months.
- Property must be located in a designated Opportunity Zone and be used in an active trade or business. The ownership and operation (including leasing) of real property is deemed to meet this requirement. However, merely entering into a triple-net-lease with respect to real property owned by a taxpayer does not. This may require the fund to have a more active role in the upkeep and management of a zone property.
- Leased property can qualify if the tenant makes substantial improvements.
- Debt-financed distributions to investors are permitted.
- If a property straddles the border of an Opportunity Zone, it can qualify as long as the unadjusted cost of the real property inside the zone is larger than the unadjusted cost of the property outside the zone.
- If the holder of a fund interest dies, the heirs are eligible to receive the tax benefits.
- The proposed regulations provide that the 180-day investing period for section 1231 property begins on the last day of the taxpayer's taxable year.



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