Key Points

✓ **Eligible Gains invested within 180 days can be deferred in OZ Program**	✓ **Eligible gains are deferred to 2026 tax return therefore due by April 15, 2017**
✓ **There are different rules for partnerships and corporations vis-à-vis individuals**	✓ **Recent legislation would increase the deferral time if enacted**

Summary

The Opportunity Zone program was created as part of the Tax Cuts and Jobs Act, which was signed into law in December 2017. The Opportunity Zone provisions were included in the tax reform legislation to encourage long-term private investments in low-income urban and rural communities across the United States. The program allows investors to defer and reduce capital gains taxes by reinvesting those gains into Qualified Opportunity Funds (QOF) that invest in designated Opportunity Zones.

Eligible gains that qualify include both capital gains and qualified 1231 gains, but only gains that would be recognized for federal income tax purposes before January 1, 2027, and that are not from a transaction with a related person.

Timing

For investors to qualify for the deferral, the amount of the eligible gain must be timely invested (with 180 days of realizing the capital gain) in a QOF in exchange for an equity interest in the QOF (not debt). The first day of the 180-day period is the date the gain would be recognized for federal income tax purposes if you did not elect to defer the recognition of the gain.

With respect to what determines the official investment date into the QOF, it is date the Funds are transferred/wired into the QOF not the date the subscription agreement is signed.

Exceptions

Eligible gains within certain types of entities have differing rules for when the 180-day period commences. For example, if a partnership recognizes capital gains at the partnership level, the 180-day reinvestment period can be flexible. A partner may elect to apply the 180-day period with respect to the partner's distributive share of the eligible gain from the partnership beginning on the last day of the partnership's taxable year, or on the due date of the partnership's tax return, without regard to any extensions, for the taxable year, whichever ends earlier. These rules also apply to S corporations and beneficiaries of estates and non-grantor trusts.

Pending Legislation

There is pending bi-partisan Opportunity Zone legislation which is not expected to be voted on until after the November election. Included in this bill proposes are the following changes to the capital gain deferral aspect of the program:

- Extend deferral period from 2026 to 2028.
- Potentially extending the time to invest from 180 days to 1 year.

There is no guarantee that this legislation will be voted on or passed although given the bi-partisan nature of the program many experts believe it will be ultimately passed in some form.

Summary

The Opportunity Zone tax incentive program provides investors with a compelling set of current and potential future benefits. At its core, the program allows for the deferral of capital gains tax on the reinvestment of those gains into Qualified Opportunity Funds.

Looking ahead, there are proposals to build upon these existing advantages. Potential future enhancements could include extending the current 2026 deadline for recognizing deferred capital gains, increasing the 180-day window for reinvesting those gains, expanding the number of designated Opportunity Zones, and improving transparency with better data and impact reporting. Additionally, lawmakers may introduce supplementary tax credits or other incentives to further drive investment into these economically-distressed communities. As the Opportunity Zone program continues to evolve, investors stand to benefit from an increasingly attractive set of tax deferral and elimination strategies that can maximize their returns while also supporting community revitalization.

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