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OBBBA Extends, Modifies Opportunity Zone Program

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One of the highly anticipated provisions of the One Big Beautiful Bill Act (OBBBA) is the extension and expansion of the Opportunity Zone (OZ) program, which was originally enacted under the Tax Cuts and Jobs Act of 2017 (TCJA). The biggest change under the OBBBA was the permanent extension of the program, which included some timing details. Capital gains invested in Qualified Opportunity Funds (QOFs) will now be deferred for five years with a 10% forgiveness at Year Five (subject to the rural funds provision described below).

Beyond that big development, the OBBBA changes fall into three general categories. The first category is the methodology for selecting new OZ census tracts from the pool of eligible tracts. The next selection process will begin July 1, 2026, and the new zones will replace the existing zones effective January 1, 2027. Subsequent updates will occur every 10 years thereafter. The current census tracts will be subject to a grandfathering provision and will remain eligible through the end of 2028. Governors selecting OZ census tracts, however, will have a smaller pool of eligible tracts than they did during the TCJA selection round. Also, the OBBBA defines “low-income” more narrowly and imposes a new median family income cap. In addition, Puerto Rico is now subject to the same 25% of low-income tracts cap as the states, and the contiguous parcels provision has been eliminated.

Another notable change under the OBBBA is the creation of “Qualified Rural Opportunity Funds” and “Qualified Rural Opportunity Zone Businesses,” which involve specific benefits for investments in OZs that are in “rural” areas. Capital gains invested in QROFs receive a 30% tax forgiveness at Year Five, triple the benefit for non-rural OZ investments. Rural assets are also subject to a lower “substantial improvement” threshold than non-rural assets, making the projects easier to qualify.

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QROFs must invest at least 90% of their assets in business property or equity in QROZBs. To qualify as a "rural" asset, substantially all of the use of the asset for substantially all of the fund's holding period was in a qualified opportunity zone comprised entirely of a rural area. A QROZB must hold "substantially all" of its assets as rural assets.

The last category of note is the imposition of a number of reporting requirements, intended to increase visibility for the social and economic impacts of the program and to allow the Internal Revenue Service (IRS) to more easily track investments. QOFs have a new annual reporting obligation that requires tracking the census tracts where OZ funds are invested, as well as housing units and jobs created by the investment. QOFs will also have to provide information to the IRS about investors who dispose of an investment in a QOF in a year. Failure to file these reports carries penalties of $500 a day, but subject to limitations of $10,000 for most QOFs, although funds with assets over $10 billion are subject to a higher maximum and intentional disregard for filing obligations carries a higher penalty and higher cap. These reporting requirements apply to all funds, not just new ones.

The U.S. Treasury Department also has some new reporting obligations. Annually, Treasury will need to report the number of QOFs, where investments have been made, and the impacts reported from those investments. In Years Six and Eleven, Treasury must release a report comparing designated tracts to comparable, non-designated tracts.

For the most part, the changes take effect January 1, 2027.

What this means to you

Investors thinking of an OZ investment should consider the most advantageous timing. QOFs should develop a plan for compliance with reporting obligations.

Contact us

If you have questions regarding these new OZ provisions, please contact Joe Bredehoft, Doug Jones, Rebecca Mitich, Emily Chad, or your Husch Blackwell attorney.

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