

TAX

OHIO'S 10% INVESTMENT KICKER: NEW OHIO OPPORTUNITY ZONE TAX CREDIT PROGRAM

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Ohio's recently enacted budget bill, H.B. 166, codified at Section 122.84 of the Ohio Revised Code (the Ohio OZ Law), establishes the new Ohio Opportunity Zone Investment Credit (the Ohio OZ Tax Credit). The Ohio OZ Tax Credit is an income tax credit against state income taxes that may provide the additional return needed to make marginal projects feasible or enable other projects to offer a more attractive prospect after-tax rate of return than before and consequently improve investment pricing. Although opportunity zone projects need to be feasible projects in and of themselves after considering tax attributes and benefits, this added state tax benefit of up to 10 percent of qualifying investments is significant.

While there has been much interest in the federal opportunity zone program in general, it is often the state's addition of a complimentary state-level program that provides these projects with additional sources to their capital stacks, and the additional boost in return that drives competitive pricing on the equity interest and induces additional investors to invest in the first place. Even though many states have proposed legislation providing a corresponding state-level opportunity zone incentive, few states have enacted opportunity zone-related incentive legislation.

Background

The federal Tax Cuts and Jobs Act of 2017 allowed states to designate zones that meet certain criteria as "opportunity zones." These designations as opportunity zones were complete as of April 2018 and certified as such by the Secretary of the Treasury. The designated opportunity zones cannot be changed in the absence of additional legislative action. Taxpayers making investments into the designated opportunity zones through a qualified opportunity fund, or QOF, qualify for numerous federal tax advantages and benefits, including the following:

- **Temporary deferral of taxes on earned capital gains.** Gains utilized to make initial opportunity zone investment are deferred until the end of 2026 or until the sale of the QOF investment, whichever comes first;
- **Basis step up of invested earned capital gains.** An investor's original basis in his or her respective gains may be eligible for up to a 15% step up in basis or, stated differently, up to a 15% break in such taxpayer's gains taxes;

- **Permanent exclusion of taxable income on new capital gains.** If the taxpayer holds his or her investment in a QOF for at least 10 years, such taxpayer will not pay any taxes on the gains produced by such QOF investment.

Key Aspects of Ohio Opportunity Zone Tax Credit Program

1. Authorizes a nonrefundable tax credit equal to 10% of a taxpayer's qualifying investment in an Ohio qualified opportunity zone fund ("Ohio QOF");
2. Ohio OZ Credits are limited to \$1 million per fiscal biennium per taxpayer and total tax credits granted statewide to \$50 million per biennium. This means that a maximum investment of \$500,000,000 in Ohio opportunity zones will receive this incentive.
3. Must be invested in an Ohio QOF which is a qualified opportunity fund that holds 100 percent of its invested assets in qualified opportunity zone property situated in an Ohio opportunity zone. This means that taxpayers who would like to obtain any Ohio OZ Credits should ensure that their investment is into QOFs that will invest in stock or interests in exclusively Ohio situated businesses or opportunity zone property.
4. The Ohio OZ Credit awards are certificated and may be transferred once to another person but still must be claimed by the transferee within the original five-year carryforward period that would be applicable to the original taxpayer.

How to apply

To be eligible for the Ohio OZ Tax Credit, the applicant taxpayer must be subject to Ohio income tax and make an investment in an Ohio QOF. For the Ohio QOF to be deemed an eligible Ohio QOF for purposes of the tax credit, such Ohio QOF must be designated and qualify as a QOF under federal opportunity zone law, and such QOF must hold 100% of such QOF's invested assets in qualified opportunity zone property situated in a designated Ohio opportunity zone.

Under the Ohio OZ Law, the taxpayer seeking the tax credit must apply between January 1 and February 1 following the year in which the taxpayer makes the qualifying opportunity zone investment. Per the Ohio Development Services Agency's website, which is the agency overseeing this program, the first application period for the tax credit will be available from January 2, 2020 through January 31, 2020. A link to the application is available [here](#).

In the application, the taxpayer must include the total investment that the taxpayer made in Ohio QOFs and a certification from an employee

CLIENT ALERT

or officer of the fund which certifies such taxpayer's investment, the amount invested, the amount of that investment directed to opportunity zone projects and a description of each project in which such Ohio opportunity zone fund invested. The Ohio Development Services Agency, which is overseeing this program, will consider applications in the order in which they are received. Given that there is a cap on availability, the entire amount available in the first 2020-21 biennium could be allocated to taxpayers by February of 2020 (unless state legislation authorizing additional cap is later authorized). The Ohio Development Services Agency may provide additional guidance but some resources have been provided [here](#) and [here](#).

Given that compliance with the federal opportunity zone law is complex and largely a prerequisite for qualification for the Ohio opportunity zone tax credit program, obtaining professional advice from a knowledgeable attorney and consulting your accountant is highly recommended. For example, a notable but technical exception to compliance with federal opportunity zone law is that any capital (rather than just capital from earned gains) invested into an Ohio QOF could be eligible for the Ohio OZ Tax Credit incentive.

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