

Ohio Senate passes bill to create tax credit for Opportunity Zone investments



David M. Kall | Friday, April 5, 2019

We have been following a new federal program that provides federal tax benefits for qualifying investments in geographically designated Opportunity Zones. As part of federal tax reform in 2017, Congress created the Opportunity Zone program to encourage investment in low-income areas. Last October the IRS and Treasury Department issued [proposed regulations](#) to provide investors with further guidance on the program. Now, the Ohio General Assembly is seriously considering a tax credit against the Ohio income tax with similar policy objectives in mind.

Opportunity Zone Program and Tax Benefits

In a recent [article](#) we explained how the Opportunity Zone program works and the corresponding tax benefits. The program is a bit complex, but basically requires investors to take three steps to qualify:

- The investor must realize eligible capital gain income, meaning almost any capital gain income subject to a few exceptions.
- Within 180 days (subject to certain exceptions), the investor must defer the capital gain and reinvest the capital gain in an "Opportunity Fund."
- The Opportunity Fund must invest more than 90 percent of its assets in a Qualified Opportunity Zone Property (qualified property) within an Opportunity Zone, either through operating a Qualified Opportunity Zone Business (qualified business) itself or

investing in a subsidiary that operates a qualified business.

Through the Opportunity Zone program, an investor following the steps listed above may defer any tax owed on capital gains until Dec. 31, 2026, or at an earlier time when the investor disposes of their Opportunity Fund investment. In addition, the investor may exclude 10 percent of their deferred gain after five years of investment and an additional 5 percent on the deferred gain after seven years. If the investor holds their interest in the Opportunity Fund for 10 years, then the appreciation on that Opportunity Fund investment is generally free from federal income tax. These tax benefits are implemented through step-ups in the investor's basis in the Opportunity Fund investment at the five, seven, and 10 year marks.

Ohio Senate Proposes Tax Credit

On April 3, 2019, the Ohio Senate unanimously passed [Senate Bill 8](#) which, if enacted, would create a 10 percent tax credit against the Ohio income tax for Opportunity Fund investments. The Legislative Service Commission [bill analysis](#) explains that the nonrefundable tax credit would be equal to 10 percent of the investor's investment in the Opportunity Fund, subject to a \$1 million limit. Total credits for all taxpayers over the next biennium could not exceed \$50 million. The credit is also available to investors that do not have capital gains to invest.

According to Ohio Senator Kirk Schuring, "(The bill) will drive private investment dollars into areas of the state that are in dire need of an economic boost." "These investments, incentivized by the 10 percent tax credit, will provide our state a healthy return on investment through economic growth, job creation and new tax dollars coming into our state and local governments."

Some observers may note that the federal tax benefits under the Opportunity Zone program already provide Ohio income tax benefits because federal adjusted gross income is the starting point for the Ohio income tax. Ostensibly, the Ohio credit is designed to incentivize Opportunity Zone investments in Ohio with further income tax benefits and better tax benefits for investments in Ohio Opportunity Zones relative to Opportunity Fund investments in other states. We will keep you posted as bill moves on to the Ohio House of Representatives.



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