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Tax Reform's New Incentives for Investments in Low-Income Communities: Part 1

State Governors Given Responsibility for Nominations of Opportunity Zones

HIGHLIGHTS:

- A new tax incentive in the recently enacted Tax Cuts and Jobs Act would allow investors selling appreciated securities or other investment property to defer tax on those gains to the extent that the proceeds are reinvested in an Opportunity Zone Fund. Further tax incentives would allow for exclusion of both some of the deferred gain and any post acquisition gain if the Fund is held long enough.
- Each of the 50 states and the District of Columbia (as well as U.S. possessions) will have an opportunity to nominate a minimum of 25 Opportunity Zones located within the state, district or territory.
- Eligible zones must generally must be nominated by the governor of a state within a 90-day period starting on the Act's date of enactment (by March 21, 2018, unless a 30-day extension is applied for and granted).

The Tax Cuts and Jobs Act (the Act), signed into law on Dec. 22, 2017, contains new tax incentives for making investments in low-income communities. The first tax incentive would allow investors selling appreciated securities or other investment property to defer tax on those gains to the extent that all of the proceeds are reinvested in an Opportunity Zone Fund. In addition to deferring gains that are reinvested in Opportunity Zone Funds, the provision would reduce such gain subject to tax for those who hold their investments at least five years and would reduce it even further if held at least seven years. The second tax incentive would exempt from tax any post-acquisition gains on investments in the Opportunity Zone Funds themselves – if they are held at least 10 years.

Under the Act, each of the 50 states and the District of Columbia (as well as U.S. possessions) will have an opportunity to nominate a minimum of 25 Opportunity Zones located within the state, district and territory. Eligible zones must generally must be nominated by the chief executive of a state **within a 90-day period starting on the Act's date of enactment** and under rules described below. The nominated zones must either be "low-income communities" as defined below or "contiguous" to designated low-income communities subject to certain statutory limitations.

Because of the short period within nominations must be made, this Holland & Knight client alert focuses primarily on the rules applicable to the Opportunity Zone nomination and designation process. Subsequent alerts will focus on the rules for Opportunity Zone Fund formation and how the tax incentives for Opportunity Fund investors will work.

Continue reading.

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