

Publications

Qualified Opportunity Zone Investors Should Consider Emerging State Incentive Programs

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Investors considering an investment intended to benefit from the federal Qualified Opportunity Zone (QOZ) program should also explore the availability of similar state programs. There has been a growing interest on the part of states to provide additional incentives to QOZ Program investors to encourage the use of the QOZ Program in their jurisdictions to spur economic development.

The QOZ Program was enacted by Congress as part of the Tax Cuts and Jobs Act in December 2017. Since its enactment, it has generated significant interest from investors seeking to take advantage of QOZ Program benefits and real estate developers and business owners seeking alternative financing sources. Under the provisions of the Internal Revenue Code (IRC) applicable to the QOZ Program, investors may reduce and defer their federal capital gains tax liability on investments made in a "Qualified Opportunity Fund." More information about the QOZ Program can be [found here](#)

In other contexts, states have piggy-backed on federal tax incentive programs by creating similar state tax incentives. This is true in the case of historic tax credits and new markets tax credits, where many states followed the lead of the federal government and have created their own state tax credit programs. Combining state subsidies with federal subsidies can make the impact of utilizing the federal tax incentive more powerful, making projects financially viable that otherwise may not be. Based on a review of recent state legislative efforts, state tax incentives appear to be an emerging component of Qualified Opportunity Fund investments.

In states where the legislature has chosen to have its state income tax code conform to the current version of the IRC, taxpayers making QOZ investments will likely see the benefits of the QOZ Program automatically taken into account when calculating their state tax liability. In other states, where the state does not conform to the IRC or

has not yet adopted the provisions of the IRC related to the QOZ Program, taxpayers investing in Qualified Opportunity Funds will not receive the same income tax benefits for purposes of their state income taxes as they will for their federal income taxes unless the state takes the affirmative step of incorporating the QOZ Program into state law. This was the case in Arkansas which, in February 2019, enacted a law to adopt the QOZ Program into its tax code for purposes of calculating state tax liability.

Some states have made efforts to provide tax incentives to QOZ investors that are above and beyond what is provided under the QOZ Program. In the case of Ohio, the legislature is considering a proposal to give a tax credit equal to 10% of the amount of the taxpayer's investment in a Qualified Opportunity Fund in Ohio during the preceding tax year, though the aggregate amount of such credits in a particular biennium would be capped at \$50 million and the aggregate amount of such credits cannot exceed \$1 million for any one taxpayer during a biennium. In March 2019, West Virginia enacted a law to exempt from corporate and personal income tax, beginning in 2020, income that is directly derived from a "Qualified Opportunity Zone Business" located in a QOZ in West Virginia during the first ten years of the business's operation. In Texas, a state that has no state income tax, a bill has been introduced proposing a refund of 25% of the sales and use tax incurred by Qualified Opportunity Fund investors, up to \$25,000, for certain costs associated with constructing or rehabilitating a building located in a QOZ in Texas. The bill also would provide a credit under Texas' state franchise tax equal to 25% of the amount invested in a Qualified Opportunity Fund for investors who have invested at least \$100,000.

Given these recent developments, it is certainly possible that more states will follow suit and use the framework of the QOZ Program to extend their own types of incentives. Investors, developers, and business owners seeking to benefit from the QOZ Program may wish to consider the availability of state incentives in order to maximize the value of their participation in the program. Investors with questions about the QOZ Program or the availability of state tax incentives should contact their Vorys attorney for additional information.