I

114TH CONGRESS
2D SESSION

H. R. 5082

To amend the Internal Revenue Code of 1986 to provide for the deferral of inclusion in gross income for capital gains reinvested in economically distressed zones.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2016

Mr. TIBERI (for himself, Mr. KIND, Mr. BOUSTANY, Mr. YOUNG of Indiana, Mr. REED, Mr. DOLD, Mr. YODER, Mr. CURBELO of Florida, Mr. ROSKAM, Mr. BLUMENAUER, Mr. KILMER, Mr. POLIS, Mr. SMITH of Missouri, Ms. DELBENE, Mr. LARSEN of Washington, Ms. SEWELL of Alabama, Mr. MEEHAN, Mr. NUNES, Mr. JOYCE, Mrs. TORRES, Mr. UPTON, and Mr. LARSON of Connecticut) introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To amend the Internal Revenue Code of 1986 to provide for the deferral of inclusion in gross income for capital gains reinvested in economically distressed zones.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Investing in Opportunity Act’’.

SEC. 2. OPPORTUNITY ZONES.

(a) IN GENERAL.—Chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

"Subchapter Z—Opportunity Zones

"SEC. 1400Z–1. DESIGNATION.

"(a) QUALIFIED OPPORTUNITY ZONE DEFINED.—For the purposes of this subchapter, the term 'qualified opportunity zone' means a population census tract that is a low-income community that is designated as a qualified opportunity zone.

"(b) DESIGNATION.—

"(1) GOVERNOR.—

"(A) IN GENERAL.—For purposes of subsection (a), a population census tract that is a low-income community is designated as a qualified opportunity zone if—

"(i) not later than the end of the determination period, the governor of the State in which the tract is located—

"(I) nominates the tract for designation as a qualified opportunity zone, and

"(II) notifies the Secretary in writing of such nomination, and

"(ii) the Secretary certifies such nomination and designates such tract as a qualified opportunity zone before the end of the consideration period.

"(B) EXTENSION OF PERIODS.—A governor may request that the Secretary extend either the determination or consideration period, or both (determined without regard to this subparagraph), for an additional 30 days.

"(C) DEEMED DESIGNATION IF SECRETARY FAILS TO ACT.—Unless the tracts are ineligible for designation, if the Secretary declines in writing to make such certification and designation or fails to act before the end of the consideration period, such nomination shall be deemed to be certified and designated, effective on the day after the last day of the consideration period.

"(2) SECRETARY.—If a governor fails to make the nominations and notifications by the end of the periods referred to in paragraphs (1)(A) and (1)(B), the Secretary shall designate and certify population census tracts that are low-income communities as qualified opportunity zones, as permitted by subsection (e).

"(c) OTHER DEFINITIONS.—For purposes of this subsection—

"(1) LOW-INCOME COMMUNITIES.—The term 'low-income community' has the same meaning as when used in section 45D(e).

"(2) DEFINITION OF PERIODS.—

"(A) CONSIDERATION PERIOD.—The term 'consideration period' means the 30-day period beginning on the date on which the Secretary receives notice under subsection (b)(1)(A)(i)(II), as extended under subsection (b)(1)(B).

"(B) DETERMINATION PERIOD.—The term 'determination period' means the 90-day period beginning on the date of the enactment of the Investing in Opportunity Act, as extended under subsection (b)(1)(B).

"(d) GUIDANCE FOR OPPORTUNITY ZONE NOMINATIONS.—When considering the nomination of qualified opportunity zones, governors should strive for the creation of qualified opportunity zones that are geographically concentrated and contiguous clusters of population census tracts and should give particular consideration to areas that—

"(1) are currently the focus of mutually reinforcing State, local, or private economic development initiatives to attract investment and foster startup activity,

"(2) have demonstrated success in geographically targeted development programs, such as promise zones, new market tax credit, empowerment zones, and renewal communities, and

"(3) have recently experienced significant layoffs due to business closures or relocations.

"(e) NUMBER OF DESIGNATIONS.—

"(1) IN GENERAL.—Except as provided by paragraph (2), the number of population census tracts in a State that may be designated as qualified opportunity zones under this section may not exceed 25 percent of the number of low-income communities in the State.

"(2) EXCEPTION.—If the number of low-income communities in a State is less than 100, then a total of 25 of such tracts may be designated as qualified opportunity zones.

"(f) DESIGNATION OF TRACTS CONTIGUOUS WITH LOW-INCOME COMMUNITIES.—

"(1) IN GENERAL.—A population census tract that is not a low-income community may be designated as a qualified opportunity zone under this section if—

"(A) the tract is contiguous with the low-income community that is designated as a qualified opportunity zone, and

"(B) the median family income of the tract does not exceed 125 percent of the median family income of the low-income community with which the tract is contiguous.

"(2) LIMITATION.—Not more than 5 percent of the population census tracts designated in a State as a qualified opportunity zone may be designated under paragraph (1).

"(g) PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—A designation as a qualified opportunity zone shall remain in effect for the period beginning on the date of the designation and ending at the close of the 10th calendar year beginning on or after such date of designation.

"SEC. 1400Z–2. TEMPORARY CAPITAL GAINS DEFERRAL FOR GAIN INVESTED IN OPPORTUNITY ZONES.

"(a) IN GENERAL.—

"(1) MAXIMUM AMOUNT OF GAIN.—Qualified capital gain from the sale or exchange to an unrelated person of any asset held by the taxpayer and which the taxpayer elects the application of this section shall be the amount by which the amount realized on such sale or exchange exceeds—

"(A) the sum of—

"(i) the cost of any qualified opportunity zone asset acquired by the taxpayer during the 180-day period beginning on the date of such sale, plus

"(ii) the amount invested in a qualified opportunity fund acquired by the taxpayer during the 180-day period beginning on the date of such sale, reduced by

"(B) any portion of such cost and investment previously taken into account under this section.

"(2) AMOUNT OF GAIN RECOGNIZED.—The amount recognized from the sale or exchange of an asset which is subject to paragraph (1) shall be the amount equal to the qualified capital gain multiplied by the same ratio as—

"(A) the excess of the total amount realized on such sale or exchange over the sum of the amounts determined under clauses (A)(i), (A)(ii), and (B) of paragraph (1), bears to

"(B) the total amount realized on such sale or exchange.

"(3) AMOUNT OF GAIN DEFERRED.—Except as provided by subsection (c), any amount of qualified capital gain not recognized by reason of paragraph (2) shall be recognized on the earlier of—

"(A) the date on which such qualified opportunity zone asset or investment with respect to which such qualified capital gain is allocated is disposed of, except to the extent an additional deferral is provided under paragraph (1) with respect to such disposition by reason of the acquisition of a qualified opportunity zone asset or investment in a qualified opportunity fund, or

"(B) December 31, 2025.

"(b) QUALIFIED OPPORTUNITY ZONE ASSET.—For purposes of this section:

"(1) IN GENERAL.—The term 'qualified opportunity zone asset' means—

"(A) any qualified opportunity zone stock,

"(B) any qualified opportunity zone partnership interest, and

"(C) any qualified opportunity zone business property.

"(2) QUALIFIED OPPORTUNITY ZONE STOCK.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'qualified opportunity zone stock' means any stock in a domestic corporation if—

"(i) such stock is acquired by the taxpayer after December 31, 2016, at its original issue (directly or through an underwriter) from the corporation solely in exchange for cash,

"(ii) as of the time such stock was issued, such corporation was a qualified opportunity zone business (or, in the case of a new corporation, such corporation was being organized for purposes of being a qualified opportunity zone business), and

"(iii) during substantially all of the taxpayer's holding period for such stock, such corporation qualified as a qualified opportunity zone business.

"(B) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

"(3) QUALIFIED OPPORTUNITY ZONE PARTNERSHIP INTEREST.—The term 'qualified opportunity zone partnership interest' means any capital or profits interest in a domestic partnership if—

"(A) such interest is acquired by the taxpayer after December 31, 2016, from the partnership solely in exchange for cash,

"(B) as of the time such interest was acquired, such partnership was a qualified opportunity zone business (or, in the case of a new partnership, such partnership was being organized for purposes of being a qualified opportunity zone business), and

"(C) during substantially all of the taxpayer's holding period for such interest, such partnership qualified as a qualified opportunity zone business.

"(4) QUALIFIED OPPORTUNITY ZONE BUSINESS PROPERTY.—

"(A) IN GENERAL.—The term 'qualified opportunity zone business property' means tangible property used in a trade or business of the taxpayer if—

"(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 2016, "(ii) the original use of such property in the qualified opportunity zone commences with the taxpayer or the taxpayer substantially improves the property, and

"(iii) during substantially all of the taxpayer's holding period for such property, substantially all of the use of such property was in a qualified opportunity zone.

"(B) SUBSTANTIAL IMPROVEMENT.—For purposes of subparagraph (A)(ii), property shall be treated as substantially improved by the taxpayer only if, during any 30-month period beginning after the date of acquisition of such property, additions to basis with respect to such property in the hands of the taxpayer exceed an amount equal to the adjusted basis of such property at the beginning of such 30-month period in the hands of the taxpayer.

"(C) RELATED PARTY.—For purposes of subparagraph (A)(i), the related person rule of section 179(d)(2) shall be applied pursuant to paragraph (8) of this subsection in lieu of the application of such rule in section 179(d)(2)(A).

"(5) QUALIFIED CAPITAL GAIN.—

"(A) IN GENERAL.—Except as otherwise provided in this subsection, the term 'qualified capital gain' means any gain recognized on the sale or exchange of—

"(i) a capital asset, or

"(ii) property used in the trade or business (as defined in section 1231(b)).

"(B) CERTAIN GAIN NOT QUALIFIED.—The term 'qualified capital gain' shall not include any gain which would be treated as ordinary income under section 1245 or under section 1250 if section 1250 applied to all depreciation rather than the additional depreciation.

"(C) RELATED PARTY TRANSACTIONS.—The term 'qualified capital gain' shall not include any gain attributable, directly or indirectly, in whole or in part, to a transaction with a related person.

"(6) QUALIFIED OPPORTUNITY FUND.—The term 'qualified opportunity fund' means any investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone assets that holds at least 90 percent of its assets in qualified opportunity zone assets, determined—

"(A) on the last day of the first 6-month period of the taxable year of the fund, and

"(B) on the last day of the taxable year of the fund.

"(7) QUALIFIED OPPORTUNITY ZONE BUSINESS.—

"(A) IN GENERAL.—The term 'qualified opportunity zone business' means a trade or business—

"(i) in which substantially all of the tangible property owned or leased by the taxpayer is qualified opportunity zone business property,

"(ii) which satisfies the requirements of paragraphs (2), (4), and (8) of section 1397C(b), and

"(iii) which is not described in section 144(c)(6)(B).

"(B) SPECIAL RULE.—For purposes of subparagraph (A), tangible property that ceases to be a qualified opportunity zone business property shall continue to be treated as a qualified opportunity zone business property for the lesser of—

"(i) 5 years after the date on which such tangible property ceases to be so qualified, or

"(ii) the date on which such tangible property is no longer held by the qualified opportunity zone business.

"(8) RELATED PERSONS.—For purposes of this subsection, persons are related to each other if such persons are described in section 267(b) or 707(b)(1), determined by substituting '20 percent' for '50 percent' each place it occurs in such sections.

"(c) BASIS.—

"(1) IN GENERAL.—The basis of a qualified opportunity zone asset, and of an investment in a qualified opportunity fund, immediately after its acquisition under subsection (a) shall be the amount determined under subsection (a)(1)(A), reduced by the amount recognized under subsection (a)(2).

"(2) ASSET HELD FOR 5 OR MORE YEARS.—Except as provided by paragraph (3), the basis of the qualified opportunity zone asset, and of an investment in a qualified opportunity fund, determined under paragraph (1) shall be increased by an amount equal to—

"(A) in the case that such asset is held by the taxpayer for 5 years, by 10 percent of such capital gain not recognized under subsection (a), and

"(B) in addition to the increase under subparagraph (A), in the case that such asset is held by the taxpayer for 7 years, by 5 percent of such capital gain not recognized under subsection (a).

"(3) EXEMPTION FROM CAPITAL GAINS ON GAIN OF LONG-TERM INVESTMENTS.—In the case of the sale or exchange of a qualified opportunity zone asset, and of an investment in a qualified opportunity fund, held for more than 10 years, at the election of the taxpayer the basis of such asset or investment in the hands of the taxpayer shall be the fair market value of such asset or investment (as the cases may be) at the date of such sale or exchange.

"(4) DEFERRED RECOGNITION.—In the case of recognition of capital gain under subsection (a)(2), the basis of the qualified opportunity zone asset, or investment in a qualified opportunity fund, shall be increased by the amount of capital gain so recognized.

"(d) APPLICABLE RULES.—

"(1) IN GENERAL.—For purposes of this section and except as otherwise provided in this section, rules similar to the rules applicable to deferred like kind exchanges under section 1031 shall apply except that reinvestment in opportunity zone property need not require an intermediary party.

"(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

"(A) rules requiring taxpayers to provide such information as the Secretary determines to be necessary or appropriate for the identification of both the assets sold (including basis and sale price) and the assets acquired and investments made, and

"(B) rules to prevent abuse.

"(3) DECEDENTS.—In the case of a decedent, amounts recognized under this section shall, if not properly includible in the gross income of the decedent, be includible in gross income as provided by section 691.

"(e) FAILURE OF QUALIFIED OPPORTUNITY FUND TO MAINTAIN INVESTMENT STANDARD.—

"(1) IN GENERAL.—If a qualified opportunity fund fails to meet the 90 percent requirement of subsection (b)(6), the qualified opportunity fund shall pay a penalty for each month it fails to meet the requirement in an amount equal to the product of—

"(A) the excess of—

"(i) the amount equal to 90 percent of its aggregate assets, over

"(ii) the aggregate amount of qualified opportunity zone assets held by the fund, multiplied by

"(B) the underpayment rate established under section 6621(a)(2) for such month.

"(2) SPECIAL RULE FOR PARTNERSHIPS.—In the case that the qualified opportunity fund is a partnership, the penalty imposed by paragraph (1) shall be taken into account proportionately as part of the distributive share of each partner of the partnership.

"(3) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.".

(b) BASIS ADJUSTMENTS.—Section 1016(a) of such Code is amended by striking "and" at the end of paragraph (36), by striking the period at the end of paragraph (37) and inserting ", and", and by inserting after paragraph (37) the following:

"(38) to the extent provided in section 1400Z–2(c).".

(c) REPORT TO CONGRESS.—The Secretary of the Treasury, or the Secretary's delegate, shall submit a report to Congress on the opportunity zone incentives enacted by this section beginning five years after the date of enactment of this Act and annually thereafter. The report shall include an assessment of opportunity fund investments nationally and at the State level. To the extent such information is available, the report shall include the number of opportunity funds, the amount of assets held in opportunity funds, the composition of opportunity fund investments by asset class, the percentage of qualified opportunity zone census tracts designated under subchapter Z of the Internal Revenue Code of 1986 (as added by this section) that have received opportunity fund investments. The report shall also include an assessment of the impacts and outcomes of the investments in those areas on economic indicators including job creation, poverty reduction, and new business starts, other metrics as determined by the Secretary.

(d) CLERICAL AMENDMENT.—The table of subchapters for chapter 1 of such Code is amended by adding at the end the following new items:

"SUBCHAPTER Z. OPPORTUNITY ZONES".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

○