# There is No Sunset in the Land of OZ – Opportunity Zones Renewed by One Big Beautiful Bill Act

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On July 4, 2025, President Trump signed H.R. 1—referred to as the "One Big Beautiful Bill Act" (**OBBBA**)—which permanently renewed and modified the federal Opportunity Zone tax incentive program that was set to expire at the end of 2026.

The enactment of the Tax Cuts and Jobs Act of 2017 (**TCJA**), President Trump's last significant overhaul of the Internal Revenue Code, introduced taxpayers to Opportunity Zones, a federal tax incentive intended to stimulate private investment in certain economically distressed communities defined by designated census tracts. Born out of bipartisan support, the Opportunity Zone (**OZ**) program has received a mixed response. On one hand, supporters have pointed to an estimated total OZ investment of more than $100 billion in disinvested communities over the program's lifetime as evidence of the OZ incentive's status as a significant economic development tool.[1] On the other, critics have urged for the program to be revamped given concerns about whether the program actually incentivizes investment that impacts those communities with the greatest needs.[2]

With the sunset of the OZ incentive looming on the horizon, OBBBA has now made the incentive permanent and enacted other significant modifications and enhancements intended to encourage investment, broaden the incentive's impact, and increase reporting and transparency. Below is a summary of these changes along with our insights. It is anticipated that Treasury will issue additional regulatory and administrative guidance to interpret and implement these changes. Frost Brown Todd will continue to monitor such guidance as it is published.

## Quick Summary of the Current OZ Tax Incentive

Currently, taxpayers can elect to temporarily defer eligible capital gain through December 31, 2026, by timely investing such gain into


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a qualified opportunity fund (formed by the taxpayer or a third party) (**QOF**). A QOF must satisfy certain asset requirements by investing in qualifying assets within designated OZ census tracts that meet defined income thresholds and that were selected by the states and territories in which the tracts are located. Initially, the OZ incentive also provided a potential ten percent basis boost (10% of their qualifying deferred gain investment) if a taxpayer held their qualifying investment in a QOF for at least five years prior to the end of the temporary deferral period (i.e., December 31, 2026) and an additional five percent if they held their investment for at least seven years prior to the end of the deferral period. However, the temporary deferral incentive became less attractive, and the basis boost incentive eventually timed out as the December 31, 2026, deferral deadline moved closer.

Despite the dwindling benefit of temporary deferral and the loss of the potential basis boost, the OZ program has still been attractive to many investors because of arguably the most important tax incentive under the program—the potential exclusion of appreciation on the taxpayer's sale of their interest in a QOF (or the QOF's sale of an underlying asset) if the taxpayer holds their QOF interest for at least ten years. As a result of this incentive, a taxpayer could potentially liquidate their OZ investment tax free from a federal income tax perspective,[3] including any federal tax on both depreciation recapture and any appreciation in the investment's value, after holding their investment for at least ten years.

## Decennial Designation of New OZ Census Tracts

OBBBA makes the OZ tax incentive permanent in two primary ways. First, the legislation repeals the December 31, 2026 sunset deadline on sales and exchange transactions that can generate eligible gain [4] for OZ investment (i.e., eligible gain must be recognized for federal income tax purposes before January 1, 2027). Second, with existing OZ tract designations set to expire on December 31, 2028, OBBBA permits states and territories to conduct a rolling decennial nomination of new OZ census tracts for certification and designation by Treasury beginning July 1, 2026 (the initial "decennial


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determination date"), and each subsequent July 1 that is 10 years after the preceding decennial determination date.[5] Each newly designated OZ tract shall retain its qualified status starting on January 1 following the date such OZ tract was designated by Treasury and ending on the day before the date that is 10 years after the start date of the OZ tract's designation.

The legislation enhances the income requirements for census tracts to qualify as a "low-income community" for purposes of being designated as an OZ census tract under the OZ program, meaning that several of the originally designated OZ tracts would not qualify under the new requirements.[6] Because it is not clearly prohibited in the Act, it is assumed that an existing OZ census tract could be re-designated if it satisfies the enhanced requirements for a qualifying low-income community. It is anticipated that the stricter "low-income community" requirements for OZ census tracts will significantly reduce the amount of census tracts eligible for designation in the next decennial round.

Absent re-designation, a taxpayer wanting to make a qualifying investment in an existing OZ tract would need to make such investment on or before December 31, 2026. It is important to note, however, that the legislation is not clear how a QOF's investment in an existing OZ tract that is not designated in the next decennial round of OZ tract selections will be treated for compliance purposes after December 31, 2026. Some clarity is provided by the fact that, unlike the prior version of the legislation that passed the House, OBBBA did not change the expiration date of currently designated OZ census tracts, meaning such tracts will retain their designated status until December 31, 2028. It is anticipated that Treasury will provide additional guidance to address this transition period. Project sponsors, business owners and potential OZ investors should be aware of the potential opportunities and challenges that the expiration of existing OZ tract designations presents for existing or planned projects in those expiring OZ tracts.

## New Deferral Period and Basis Boost

As discussed above, currently, the OZ tax incentive program only provides taxpayers with a temporary deferral period through


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December 31, 2026, for qualifying OZ investments made in a QOF on or before December 31, 2026. Additionally, OZ investors have already timed out of any basis boost incentive for such investments. OBBBA does not extend the deferral deadline or enhance existing incentives for qualifying OZ investments that taxpayers make in a QOF on or before December 31, 2026. Such investments would be subject to the same pre-OBBBA OZ rules and requirements, with the primary remaining tax incentive being the potential exclusion of appreciation on a taxpayer's QOF investment from federal income tax should the taxpayer hold its QOF investment for at least 10 years.

While OBBBA repealed the December 31, 2026, deadline on transactions that can generate eligible gain for OZ investment, this does not mean that eligible gains generated on or prior to December 31, 2026, would have to be invested on or before that date if the investment of such gains can still be timely made in a QOF after that date. Therefore, taxpayers will now be able to elect to defer all, or a portion, of the eligible gain recognized from a sale or transaction that occurred on or after January 1, 2027, and even eligible gain that arose prior to that date as long as it can still be timely invested on or after that date, by investing a corresponding amount of such eligible gain in a QOF.

Moreover, OBBBA provides taxpayers with a new five-year rolling temporary deferral period with respect to their investment in a QOF. Rather than setting the same deferral period ending date for all OZ investors like under the prior version of the OZ program, OBBBA creates a rolling five-year deferral period that ends with respect to any taxpayer on the date that is five years after the date when the taxpayer made their initial investment in a QOF. Further, if the taxpayer holds their QOF investment throughout the five-year period, they also receive a ten percent (10% of their deferred gain investment in the QOF) basis increase in their investment.

For example, if a taxpayer elects to defer $1 million of eligible gain by timely investing the full amount in a QOF, the taxpayer could then temporarily defer that gain for five years as long as the taxpayer held its investment in the QOF throughout the five-year period. When the deferral period ends the taxpayer would only be required


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to recognize $900,000 of the deferred gain as income for federal tax purposes due to the 10% basis increase. The 10% basis boost increases to thirty percent for qualifying investments in a Qualified Rural Opportunity Fund (discussed in more detail below).

## Encouraging Investment in Rural Areas

OBBBA creates a new class of QOF within the OZ incentive program called a Qualified Rural Opportunity Fund (**Rural QOF**) to encourage qualifying OZ investment in rural areas. A Rural QOF is a QOF that: (i) holds at least 90% of its assets in qualified OZ property which is qualified OZ business property used primarily in a designated OZ comprised entirely of a rural area, or (ii) holds an equity interest in a qualified OZ business entity that operates primarily in a designated OZ comprised entirely of a rural area. The legislation defines a "rural area" for OZ purposes as any area other than a city or town that has a population of greater than 50,000 inhabitants, and any urbanized area contiguous and adjacent to such a city or town.

The legislation provides certain enhanced benefits for taxpayers that invest in a Rural QOF. First, as mentioned above, an investor in a Rural QOF is entitled to a 30% basis boost (i.e., 30% of their deferred gain investment in the Rural QOF) with respect to their investment as long as the investor holds their investment in the Rural QOF at least five years. Second, the required threshold for substantially improving existing structures in a Rural OZ so that such assets can constitute qualified OZ business property is reduced to 50% (i.e., the taxpayer's investment in the property must increase the investor's adjusted basis in the property by 50%) from the 100% substantial improvement threshold for existing structures that are located in a designated OZ census tract that does not qualify as a rural area.

## Enhanced Reporting Requirements

In response to continued advocacy for increased reporting requirements regarding the OZ program, OBBBA implements a variety of new or enhanced reporting requirements to Treasury that QOFs and QOZBs must comply with regarding their OZ investment


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holdings and business activity. These requirements are intended to increase transparency regarding the type and location of investments that OZ investors are making under the OZ program, and to provide additional information regarding OZ investments and operations so that the federal government can effectively evaluate the efficacy and economic impact of the OZ incentives. OBBBA also imposes potential civil penalties for any taxpayers that fail to comply with these increased reporting obligations.

## No Forced Exit From OZ Investment

Under the current OZ regulations, taxpayers that invest in a QOF on or before December 31, 2026, and hold their investment for at least ten years, must sell their OZ investments on or before December 31, 2047, in order to achieve the tax-free gain benefit under the OZ program. This requirement created a cliff for holding a QOF investment beyond which a taxpayer could no longer recognize any appreciation exclusion.

For qualifying investments in a QOF made on or after January 1, 2027, OBBBA no longer provides a cliff date for OZ investors to sell their OZ investment to realize the tax-free gain incentive after holding their investment for more than ten years. Investments made in 2027 and beyond now have the option to elect that the basis of their OZ investment for purposes of calculating any exclusion of appreciation and depreciation recapture shall be equal to (i) the fair market value of such OZ investment if it is sold before the thirty year anniversary of when the investment was made; or (ii) the fair market value of such OZ investment on the thirty year anniversary of when the investment was made if it is sold on or after such thirty year anniversary. Accordingly, unlike under current law, taxpayers are not required to sell their OZ investments made on or after January 1, 2027, in order to unlock the tax-free gain incentive for OZ investments held for ten years. OBBBA simply caps the potential basis step-up election under the incentive at the fair market value of the investment at the thirty year anniversary of the investment should taxpayers choose to hold the OZ investment beyond the thirty-year period. Any additional appreciation in value beyond that capped amount would simply be subject to tax when the


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investment is sold.

## What Opportunity Zone Provisions Did Not Make It Into OBBBA?

Given the size and complexity of the proposed legislation, and the relative speed with which the various versions of the proposed legislation moved through both the House and Senate, it is also helpful to summarize those provisions that may have been included in prior versions of the legislation, or otherwise discussed, that were ultimately **not** included in OBBBA.

## No OZ Benefit for Ordinary Income Investment

As discussed above, in order for a taxpayer to be eligible for the OZ incentives, a taxpayer must elect to defer all or a portion of their eligible gains (i.e., capital gains or qualified 123 gains) by investing a corresponding amount in a QOF. The reconciliation bill that passed the House contained provisions that permitted taxpayers to elect to defer some limited amount of ordinary income by investing in a QOF. However, those provisions were ultimately removed from OBBBA.

## No Requirement Regarding OZ Census Tract Designations in Rural Areas

Prior versions of the legislation included a requirement that at least thirty-three percent of the new OZ designations be in census tracts located in rural areas. That requirement was removed from OBBBA.

## Fund to Fund Investment Still Not Permitted

OBBBA does not explicitly permit a QOF to invest directly in another QOF.

## No Additional or Enhanced Incentives for Investment in Affordable Housing


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It was hoped that revisions to the OZ federal tax incentive program would include additional enhancements or benefits to encourage OZ investment in affordable and workforce housing, but no such enhancements were included in OBBBA with respect to the OZ incentive. However, OBBBA did make permanent expansions to the low-income housing tax credit, increasing 9% allocations by 12% starting in 2026 and lowering the private activity bond financing threshold from 50% to 25% for properties placed in service after December 31, 2025.

## Questions? Let's Talk

If you have questions about how the Opportunity Zone federal tax incentive, as renewed and modified under OBBBA, may impact your community development projects, real estate projects, or business investment opportunities, please don't hesitate to reach out. Members of Frost Brown Todd's Tax, Commercial Finance, or Real Estate Practice Groups are here to help you navigate the new landscape.

## Contact

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We're closely monitoring Treasury Department guidance and executive orders relevant to Opportunity Zone investment and can assist you with structuring, planning, due diligence, and advice and strategies tailored to your project needs.

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1] Francis, R. (June 16, 2025). "EIG Applauds Senate Tax Bill's Opportunity Zones Provision". Economic Innovation Group. https://eig.org/eig-applauds-senate-oz-provision/


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[2] Theodos, B. and Meixell, B. (May 12, 2025). "Opportunity Zones Need to be Retooled to Achieve Impact". Urban Insitute. https://www.urban.org/urban-wire/opportunity-zones-need-be-retooled-achieve-impact

[3] Several states have conformed their state tax codes with the OZ statutes to provide similar benefits at the state level. Some states have even taken additional steps to implement similar enhanced incentives at the state level to further encourage investment in OZ tracts within their state. Frost Brown Todd has experience navigating these state level benefits in working on OZ projects for clients across the country.

[4] Only gains that are treated as capital gains or qualified IRC Section 1231 gains for federal income tax purposes are eligible for OZ investment.

[5] Each state and territory are still subject to limitation in that they can only nominate up to 25% of their eligible census tracts for designation.

[6] OBBBA changed the "low-income community" median family income threshold from 80% to 70% of the statewide or metropolitan area median family income. OBBBA also repealed the special blanket OZ census tract designation for Puerto Rico. Puerto Rico will need to nominate specific census tracts that meet the "low-income community" requirements for the next round of OZ census tract designations.

## More OBBBA Coverage

The One Big Beautiful Bill Act stands to fundamentally reshape the fiscal landscape across key sectors, introducing both immediate compliance challenges and long-term planning imperatives for businesses. This collection of articles sheds light on the OBBBA's key components to help you better understand and prepare for the changes ahead while taking advantage of the new tools (and tradeoffs) offered by the OBBBA.

View Collection


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