



June 28 Deadline to Defer 2018 Capital Gain through Opportunity Zone Investment by Matt Campbell

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A second tranche of eagerly awaited federal opportunity zone regulations were issued April 17, 2019. The regulations were largely favorable and addressed a number of issues that previously were unclear under the first set of proposed Treasury regulations. Perhaps overlooked by some is that Taxpayers that (i) have capital gain from a K-1 by a flow-through entity with a 12/31/18 year end or (ii) have net 1231 gain, have until June 28 to make a qualifying opportunity zone investment to secure deferral of 2018 capital gain from taxation. Such deferral can also reduce or eliminate the 3.8% Net Investment Income Tax applicable to some taxpayers.

What about taxpayers that already filed their 2018 income tax returns? Not to worry, such taxpayers can still achieve deferral of 2018 capital gains taxation by simply making the qualifying opportunity zone investment before June 28 and then filing an amended return to claim the capital gain deferral. Taxpayers that do so and hold the investment in the qualified opportunity zone fund later can take advantage of a 15% reduction in the original capital gain deferred if the opportunity zone fund interest is held for 7 years.

Under the second tranche of proposed Treasury Regulations, if the Opportunity Zone Fund holds an investment in a Qualified Opportunity Zone Business ("QOZB") or partnership in a tiered structure and the fund sells the QOZB or partnership interest it owns, the opportunity zone fund has up to 12 months to reinvest the proceeds from the sale to still provide the qualified opportunity fund investor continued deferral on recognition on the original capital gain equivalent amount invested in the opportunity zone fund. Note, such reinvestment does not defer the reporting of the tax gain triggered on the sale of the QOZB or partnership interest however. The proceeds of opportunity zone fund sales of QOZBs or partnership interests must be held in cash or debt instruments with maturities of

less than 18 months under the proposed Treasury regulations to qualify for this reinvestment rule.

Oklahoma residents considering an opportunity zone investment should note the state tax savings too. Qualifying investment for federal purposes will also provide capital gain deferral for Oklahoma income tax purposes since Oklahoma is a conforming state to federal tax law in the absence of specific state legislation to the contrary.

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