

114TH CONGRESS
2D SESSION

S. 2868

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 SENATE OF THE UNITED STATES

APRIL 27, 2016

Mr. SCOTT (for himself, Mr. BOOKER, Mr. GARDNER, Mr. PETERS, Mr. BLUNT, and Mr. BENNET) introduced the following bill; which was read twice and referred to the Committee on Finance

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Investing in Oppor-
5 tunity Act”.

6 **SEC. 2. OPPORTUNITY ZONES.**

7 (a) IN GENERAL.—Chapter 1 of the Internal Rev-
8 enue Code of 1986 is amended by adding at the end the
9 following:

1 **“Subchapter Z—Opportunity Zones**

“Sec. 1400Z-1. Designation.

“Sec. 1400Z-2. Temporary capital gains deferral.

2 **“SEC. 1400Z-1. DESIGNATION.**

3 “(a) **QUALIFIED OPPORTUNITY ZONE DEFINED.—**

4 For the purposes of this subchapter, the term ‘qualified
5 opportunity zone’ means a population census tract that
6 is a low-income community that is designated as a quali-
7 fied opportunity zone.

8 “(b) **DESIGNATION.—**

9 “(1) **GOVERNOR.—**

10 “(A) **IN GENERAL.—**For purposes of sub-
11 section (a), a population census tract that is a
12 low-income community is designated as a quali-
13 fied opportunity zone if—

14 “(i) not later than the end of the de-
15 termination period, the governor of the
16 State in which the tract is located—

17 “(I) nominates the tract for des-
18 ignation as a qualified opportunity
19 zone, and

20 “(II) notifies the Secretary in
21 writing of such nomination, and

22 “(ii) the Secretary certifies such nomi-
23 nation and designates such tract as a

1 qualified opportunity zone before the end
2 of the consideration period.

3 “(B) EXTENSION OF PERIODS.—A gov-
4 ernor may request that the Secretary extend ei-
5 ther the determination or consideration period,
6 or both (determined without regard to this sub-
7 paragraph), for an additional 30 days.

8 “(C) DEEMED DESIGNATION IF SEC-
9 RETARY FAILS TO ACT.—Unless the tracts are
10 ineligible for designation, if the Secretary de-
11 clines in writing to make such certification and
12 designation or fails to act before the end of the
13 consideration period, such nomination shall be
14 deemed to be certified and designated, effective
15 on the day after the last day of the consider-
16 ation period.

17 “(2) SECRETARY.—If a governor fails to make
18 the nominations and notifications by the end of the
19 periods referred to in paragraphs (1)(A) and (1)(B),
20 the Secretary shall designate and certify population
21 census tracts that are low-income communities as
22 qualified opportunity zones, as permitted by sub-
23 section (e).

24 “(c) OTHER DEFINITIONS.—For purposes of this
25 subsection—

1 “(1) LOW-INCOME COMMUNITIES.—The term
2 ‘low-income community’ has the same meaning as
3 when used in section 45D(e).

4 “(2) DEFINITION OF PERIODS.—

5 “(A) CONSIDERATION PERIOD.—The term
6 ‘consideration period’ means the 30-day period
7 beginning on the date on which the Secretary
8 receives notice under subsection
9 (b)(1)(A)(i)(II), as extended under subsection
10 (b)(1)(B).

11 “(B) DETERMINATION PERIOD.—The term
12 ‘determination period’ means the 90-day period
13 beginning on the date of the enactment of the
14 Investing in Opportunity Act, as extended
15 under subsection (b)(1)(B).

16 “(d) GUIDANCE FOR OPPORTUNITY ZONE NOMINA-
17 TIONS.—When considering the nomination of qualified op-
18 portunity zones, governors should strive for the creation
19 of qualified opportunity zones that are geographically con-
20 centrated and contiguous clusters of population census
21 tracts and should give particular consideration to areas
22 that—

23 “(1) are currently the focus of mutually rein-
24 forcing State, local, or private economic development

1 initiatives to attract investment and foster startup
2 activity,

3 “(2) have demonstrated success in geographi-
4 cally targeted development programs, such as prom-
5 ise zones, new market tax credit, empowerment
6 zones, and renewal communities, and

7 “(3) have recently experienced significant lay-
8 offs due to business closures or relocations.

9 “(e) NUMBER OF DESIGNATIONS.—

10 “(1) IN GENERAL.—Except as provided by
11 paragraph (2), the number of population census
12 tracts in a State that may be designated as qualified
13 opportunity zones under this section may not exceed
14 25 percent of the number of low-income communities
15 in the State.

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

20 “(f) DESIGNATION OF TRACTS CONTIGUOUS WITH
21 LOW-INCOME COMMUNITIES.—

22 “(1) IN GENERAL.—A population census tract
23 that is not a low-income community may be des-
24 ignated as a qualified opportunity zone under this
25 section if—

1 “(A) the sum of—

2 “(i) the cost of any qualified oppor-
3 tunity zone asset acquired by the taxpayer
4 during the 180-day period beginning on
5 the date of such sale, plus

6 “(ii) the amount invested in a quali-
7 fied opportunity fund acquired by the tax-
8 payer during the 180-day period beginning
9 on the date of such sale, reduced by

10 “(B) any portion of such cost and invest-
11 ment previously taken into account under this
12 section.

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

18 “(A) the excess of the total amount real-
19 ized on such sale or exchange over the sum of
20 the amounts determined under subparagraphs
21 (A)(i), (A)(ii), and (B) of paragraph (1), bears
22 to

23 “(B) the total amount realized on such
24 sale or exchange.

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

5 “(A) the date on which such qualified op-
6 portunity zone asset or investment with respect
7 to which such qualified capital gain is allocated
8 is disposed of, except to the extent an addi-
9 tional deferral is provided under paragraph (1)
10 with respect to such disposition by reason of the
11 acquisition of a qualified opportunity zone asset
12 or investment in a qualified opportunity fund,
13 or

14 “(B) December 31, 2025.

15 “(b) QUALIFIED OPPORTUNITY ZONE ASSET.—For
16 purposes of this section:

17 “(1) IN GENERAL.—The term ‘qualified oppor-
18 tunity zone asset’ means—

19 “(A) any qualified opportunity zone stock,

20 “(B) any qualified opportunity zone part-
21 nership interest, and

22 “(C) any qualified opportunity zone busi-
23 ness property.

24 “(2) QUALIFIED OPPORTUNITY ZONE STOCK.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the term ‘qualified oppor-
3 tunity zone stock’ means any stock in a domes-
4 tic corporation if—

5 “(i) such stock is acquired by the tax-
6 payer after December 31, 2016, at its
7 original issue (directly or through an un-
8 derwriter) from the corporation solely in
9 exchange for cash,

10 “(ii) as of the time such stock was
11 issued, such corporation was a qualified
12 opportunity zone business (or, in the case
13 of a new corporation, such corporation was
14 being organized for purposes of being a
15 qualified opportunity zone business), and

16 “(iii) during substantially all of the
17 taxpayer’s holding period for such stock,
18 such corporation qualified as a qualified
19 opportunity zone business.

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

23 “(3) QUALIFIED OPPORTUNITY ZONE PARTNER-
24 SHIP INTEREST.—The term ‘qualified opportunity

1 zone partnership interest’ means any capital or prof-
2 its interest in a domestic partnership if—

3 “(A) such interest is acquired by the tax-
4 payer after December 31, 2016, from the part-
5 nership solely in exchange for cash,

6 “(B) as of the time such interest was ac-
7 quired, such partnership was a qualified oppor-
8 tunity zone business (or, in the case of a new
9 partnership, such partnership was being orga-
10 nized for purposes of being a qualified oppor-
11 tunity zone business), and

12 “(C) during substantially all of the tax-
13 payer’s holding period for such interest, such
14 partnership qualified as a qualified opportunity
15 zone business.

16 “(4) QUALIFIED OPPORTUNITY ZONE BUSINESS
17 PROPERTY.—

18 “(A) IN GENERAL.—The term ‘qualified
19 opportunity zone business property’ means tan-
20 gible property used in a trade or business of the
21 taxpayer if—

22 “(i) such property was acquired by
23 the taxpayer by purchase (as defined in
24 section 179(d)(2)) after December 31,
25 2016,

1 “(ii) the original use of such property
2 in the qualified opportunity zone com-
3 mences with the taxpayer or the taxpayer
4 substantially improves the property, and

5 “(iii) during substantially all of the
6 taxpayer’s holding period for such prop-
7 erty, substantially all of the use of such
8 property was in a qualified opportunity
9 zone.

10 “(B) SUBSTANTIAL IMPROVEMENT.—For
11 purposes of subparagraph (A)(ii), property shall
12 be treated as substantially improved by the tax-
13 payer only if, during any 30-month period be-
14 ginning after the date of acquisition of such
15 property, additions to basis with respect to such
16 property in the hands of the taxpayer exceed an
17 amount equal to the adjusted basis of such
18 property at the beginning of such 30-month pe-
19 riod in the hands of the taxpayer.

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

25 “(5) QUALIFIED CAPITAL GAIN.—

1 “(A) IN GENERAL.—Except as otherwise
2 provided in this subsection, the term ‘qualified
3 capital gain’ means any gain recognized on the
4 sale or exchange of—

5 “(i) a capital asset, or

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

8 “(B) CERTAIN GAIN NOT QUALIFIED.—
9 The term ‘qualified capital gain’ shall not in-
10 clude any gain which would be treated as ordi-
11 nary income under section 1245 or under sec-
12 tion 1250 if section 1250 applied to all depre-
13 ciation rather than the additional depreciation.

14 “(C) RELATED PARTY TRANSACTIONS.—
15 The term ‘qualified capital gain’ shall not in-
16 clude any gain attributable, directly or indi-
17 rectly, in whole or in part, to a transaction with
18 a related person.

19 “(6) QUALIFIED OPPORTUNITY FUND.—The
20 term ‘qualified opportunity fund’ means any invest-
21 ment vehicle organized as a corporation or a part-
22 nership for the purpose of investing in qualified op-
23 portunity zone assets that holds at least 90 percent
24 of its assets in qualified opportunity zone assets, de-
25 termined—

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

3 “(B) on the last day of the taxable year of
4 the fund.

5 “(7) QUALIFIED OPPORTUNITY ZONE BUSI-
6 NESS.—

7 “(A) IN GENERAL.—The term ‘qualified
8 opportunity zone business’ means a trade or
9 business—

10 “(i) in which substantially all of the
11 tangible property owned or leased by the
12 taxpayer is qualified opportunity zone busi-
13 ness property,

14 “(ii) which satisfies the requirements
15 of paragraphs (2), (4), and (8) of section
16 1397C(b), and

17 “(iii) which is not described in section
18 144(e)(6)(B).

19 “(B) SPECIAL RULE.—For purposes of
20 subparagraph (A), tangible property that ceases
21 to be a qualified opportunity zone business
22 property shall continue to be treated as a quali-
23 fied opportunity zone business property for the
24 lesser of—

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

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

7 “(8) RELATED PERSONS.—For purposes of this
8 subsection, persons are related to each other if such
9 persons are described in section 267(b) or 707(b)(1),
10 determined by substituting ‘20 percent’ for ‘50 per-
11 cent’ each place it occurs in such sections.

12 “(c) BASIS.—

13 “(1) IN GENERAL.—The basis of a qualified op-
14 portunity zone asset, and of an investment in a
15 qualified opportunity fund, immediately after its ac-
16 quisition under subsection (a) shall be the amount
17 determined under subsection (a)(1)(A), reduced by
18 the amount recognized under subsection (a)(2).

19 “(2) ASSET HELD FOR 5 OR MORE YEARS.—Ex-
20 cept as provided by paragraph (3), the basis of the
21 qualified opportunity zone asset, and of an invest-
22 ment in a qualified opportunity fund, determined
23 under paragraph (1) shall be increased by an
24 amount equal to—

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

5 “(B) in addition to the increase under sub-
6 paragraph (A), in the case that such asset is
7 held by the taxpayer for 7 years, by 5 percent
8 of such capital gain not recognized under sub-
9 section (a).

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

19 “(4) DEFERRED RECOGNITION.—In the case of
20 recognition of capital gain under subsection (a)(2),
21 the basis of the qualified opportunity zone asset, or
22 investment in a qualified opportunity fund, shall be
23 increased by the amount of capital gain so recog-
24 nized.

25 “(d) APPLICABLE RULES.—

1 “(1) IN GENERAL.—For purposes of this sec-
2 tion and except as otherwise provided in this section,
3 rules similar to the rules applicable to deferred like
4 kind exchanges under section 1031 shall apply ex-
5 cept that reinvestment in opportunity zone property
6 need not require an intermediary party.

7 “(2) REGULATIONS.—The Secretary shall pre-
8 scribe such regulations as may be necessary or ap-
9 propriate to carry out the purposes of this section,
10 including—

11 “(A) rules requiring taxpayers to provide
12 such information as the Secretary determines to
13 be necessary or appropriate for the identifica-
14 tion of both the assets sold (including basis and
15 sale price) and the assets acquired and invest-
16 ments made, and

17 “(B) rules to prevent abuse.

18 “(3) DECEDENTS.—In the case of a decedent,
19 amounts recognized under this section shall, if not
20 properly includible in the gross income of the dece-
21 dent, be includible in gross income as provided by
22 section 691.

23 “(e) FAILURE OF QUALIFIED OPPORTUNITY FUND
24 TO MAINTAIN INVESTMENT STANDARD.—

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

7 “(A) the excess of—

8 “(i) the amount equal to 90 percent of
9 its aggregate assets, over

10 “(ii) the aggregate amount of quali-
11 fied opportunity zone assets held by the
12 fund, multiplied by

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

15 “(2) SPECIAL RULE FOR PARTNERSHIPS.—In
16 the case that the qualified opportunity fund is a
17 partnership, the penalty imposed by paragraph (1)
18 shall be taken into account proportionately as part
19 of the distributive share of each partner of the part-
20 nership.

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

1 (b) BASIS ADJUSTMENTS.—Section 1016(a) of such
2 Code is amended by striking “and” at the end of para-
3 graph (36), by striking the period at the end of paragraph
4 (37) and inserting “, and”, and by inserting after para-
5 graph (37) the following:

6 “(38) to the extent provided in section 1400Z–
7 2(c).”.

8 (c) REPORT TO CONGRESS.—The Secretary of the
9 Treasury, or the Secretary’s delegate, shall submit a re-
10 port to Congress on the opportunity zone incentives en-
11 acted by this section beginning five years after the date
12 of enactment of this Act and annually thereafter. The re-
13 port shall include an assessment of opportunity fund in-
14 vestments nationally and at the State level. To the extent
15 such information is available, the report shall include the
16 number of opportunity funds, the amount of assets held
17 in opportunity funds, the composition of opportunity fund
18 investments by asset class, the percentage of qualified op-
19 portunity zone census tracts designated under subchapter
20 Z of the Internal Revenue Code of 1986 (as added by this
21 section) that have received opportunity fund investments.
22 The report shall also include an assessment of the impacts
23 and outcomes of the investments in those areas on eco-
24 nomic indicators including job creation, poverty reduction,

1 and new business starts, other metrics as determined by
2 the Secretary.

3 (d) CLERICAL AMENDMENT.—The table of sub-
4 chapters for chapter 1 of such Code is amended by adding
5 at the end the following new items:

“SUBCHAPTER Z. OPPORTUNITY ZONES”.

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

○