115TH CONGRESS
1ST SESSION

S. 293

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2017

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

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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 opportunity 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. DEFERRAL FOR CAPITAL GAINS INVESTED IN OPPORTUNITY ZONES.

"(a) SPECIAL RULES WHEN GAIN FROM SALE OF PROPERTY INVESTED IN OPPORTUNITY ZONE PROPERTY.—

"(1) EXCLUSION OF GAIN INVESTED IN OPPORTUNITY ZONE PROPERTY.—In the case of gain from the sale to, or exchange with, an unrelated person of any property held by the taxpayer, at the election of the taxpayer—

"(A) gross income for the taxable year shall not include so much of such gain as does not exceed the aggregate cost of all qualified opportunity zone property acquired by the taxpayer during the 180-day period beginning on the date of such sale or exchange, and

"(B) the amount of gain excluded by subparagraph (A) shall be included in gross income as provided by paragraph (2).

"(2) DEFERRAL OF GAIN INVESTED IN OPPORTUNITY ZONE PROPERTY.—

"(A) YEAR OF INCLUSION.—Except as provided by subparagraph (C), gain to which paragraph (1)(B) applies shall be included in income in the taxable year in which the qualified opportunity zone property related to such gain is sold or exchanged in the amount determined under subparagraph (B).

"(B) AMOUNT INCLUDIBLE.—The amount of gain determined under this clause shall be—

"(i) 100 percent of such gain in the case of the sale or exchange of the qualified opportunity zone property with respect to which gain is deferred under paragraph (1) that is held for less than 5 years,

"(ii) 90 percent of such gain in the case of the sale or exchange of the qualified opportunity zone property with respect to which gain is deferred under paragraph (1) that is held for at least 5 years but less than 7 years, and

"(iii) 85 percent of such gain in the case of the sale or exchange of the qualified opportunity zone property with respect to which gain is deferred under paragraph (1) that is held for at least 7 years.

"(C) PROPERTY HELD AFTER 2026 TREATED AS SOLD.—For purposes of subparagraph (A), any qualified opportunity zone property that has not been sold or exchanged on or before December 31, 2026, shall be treated as sold on December 31, 2026.

"(3) EXCLUSION OF GAIN ON QUALIFIED OPPORTUNITY ZONE PROPERTY HELD FOR AT LEAST 10 YEARS.—Except as provided in paragraph (2), in the case of the sale or exchange of qualified opportunity zone property, or an investment in a qualified opportunity fund, held for at least 10 years, gross income for the taxable year shall not include any gain from the sale or exchange of such property or investment.

"(4) ONE ELECTION PER PROPERTY.—No election may be made under paragraph (1) with respect to a sale or exchange if an election previously made with respect to such sale or exchange is in effect.

"(b) BASIS RULES RELATING TO QUALIFIED OPPORTUNITY ZONE PROPERTY.—

"(1) REDUCED BY GAIN DEFERRED UNDER SUBSECTION (a)(1).—The basis of a qualified opportunity zone property immediately after its acquisition under subsection (a) shall be reduced by the amount of gain deferred by reason of subsection (a)(1)(A) with respect to such property.

"(2) INCREASE FOR GAIN RECOGNIZED UNDER SUBSECTION (a)(2).—The basis of qualified opportunity zone property shall be increased by the amount of gain recognized by reason of subsection (a)(2) with respect to such property.

"(3) SUBSEQUENT INCREASE IN BASIS FOR PROPERTY HELD FOR AT LEAST 5 YEARS BUT LESS THAN 10 YEARS.—In the case of qualified opportunity zone property held for at least 5 years but less than 10 years—

"(A) PROPERTY HELD FOR 5 YEARS.—For qualified opportunity zone property held for at least 5 years, the basis of such property shall be increased by an amount equal to 10 percent of the amount of gain deferred by reason of subsection (a)(1)(A) with respect to such property.

"(B) PROPERTY HELD FOR 7 YEARS.—For qualified opportunity zone property held for at least 7 years, the basis of such property shall be increased by an amount equal to 5 percent of the amount of gain deferred by reason of subsection (a)(1)(A) with respect to such property.

"(c) QUALIFIED OPPORTUNITY ZONE PROPERTY.— For purposes of this section:

"(1) IN GENERAL.—The term 'qualified opportunity zone property' means property which is—

"(A) qualified opportunity zone stock,

"(B) qualified opportunity zone partnership interest,

"(C) qualified opportunity zone business property, or

"(D) an interest in a qualified investment fund.

"(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, 2017, 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, 2017, 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, 2017, "(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 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 property (other than another qualified opportunity fund) that holds at least 90 percent of its assets in qualified opportunity zone property, 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.

"(6) 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.

"(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) 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.

"(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.

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

"(A) rules providing for proportionate inclusion in income and increases in basis for purposes of subsections (a) and (b) in cases in which a sale or exchange of any qualified opportunity zone property with respect to which gain is deferred under subsection (a)(1)(A) is less than all of such property,

"(B) 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

"(C) rules to prevent abuse.

"(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 (c)(5), 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 property 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(b).''.

(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 5 years after the date of enactment of this Act and annually thereafter. The report shall include an assessment of investments held by qualified opportunity funds nationally and at the State level. To the extent such information is available, the report shall include the number of qualified opportunity funds, the amount of assets held in qualified opportunity funds, the composition of qualified 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 qualified 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, and 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 item:

"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.

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