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## Capital Gain Exclusion - Investment in a Wisconsin Qualified Opportunity Fund

Fact Sheet 1121

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This fact sheet provides an overview of the capital gain exclusion or basis adjustment for an investment in a Wisconsin qualified opportunity fund.

### Federal Opportunity Zone

The federal Tax Cuts and Jobs Act of 2017 (sec. 13823 of [Public Law 115-97](#)) created a federal opportunity zone program. Under this program, taxpayers may qualify for one or more of the following federal tax benefits:

- **Defer Paying Tax on Capital Gains**

Taxpayers who meet the requirements under secs. [1400Z-1](#) and [1400Z-2](#), Internal Revenue Code (IRC), may defer paying tax on their capital gains by investing the gains in a qualified opportunity fund (QOF) as defined under sec. 1400Z-2(d)(1), IRC. The deferred gain must be included in income in the taxable year which includes the earlier of:

- the date on which the QOF investment is sold or exchanged, or
- December 31, 2026.

- **Reduce the Taxable Amount of the Deferred Capital Gains**

Taxpayers who defer paying tax on their capital gains by investing in a QOF and hold the QOF investment for at least 5 years can exclude 10% of the deferred gains from taxable income. **Note:** To qualify for this federal tax benefit, the QOF investment must have been made prior to January 1, 2022.

Taxpayers who defer paying tax on their capital gains by investing in a QOF and hold the QOF investment for at least 7 years can exclude an additional 5% of the deferred gain from taxable income. **Note:** To qualify for this federal tax benefit, the QOF investment must have been made prior to January 1, 2020.

- **Exclude All Gains from the Sale of a QOF Investment**

Taxpayers who defer paying tax on their capital gains by investing in a QOF and hold the QOF investment for at least 10 years can make an election under sec. 1400Z-2(c), IRC. This election allows the taxpayer to use the fair market value (FMV) of the QOF investment on the date it is sold or exchanged as the basis.

For more information about the federal qualified opportunity zone program, see the Internal Revenue Service's website: [Invest in a Qualified Opportunity Fund](#).

**Note:** As a result of [2017 Wis. Act 231](#), Wisconsin adopted sec. 13823 of federal Public Law 115-97, so the federal tax benefits apply for Wisconsin purposes, regardless of the opportunity zone's location.

## Wisconsin Opportunity Zone – Individuals, Tax-Option (S) Corporations, and Insurance Companies

Wisconsin provides a subtraction from income, in addition to the federal exclusion, for an investment in a Wisconsin qualified opportunity fund.

Individuals, including individual partners or members of a partnership, limited liability company, or limited liability partnership are eligible for this Wisconsin subtraction.

- For taxable years beginning on or after January 1, 2020, a taxpayer may subtract from federal adjusted gross income (individuals and tax-option (S) corporations) or federal taxable income (insurance companies) the following amounts:
  - 10% of the deferred gains from investment made after December 31, 2017 and before January 1, 2022 in a Wisconsin qualified opportunity fund if held for at least five years. **Note:** This is in addition to the federal 10% exclusion and applies to investments made after December 31, 2017.
  - 15% of the deferred gains from investment made after December 31, 2017 and before January 1, 2020 in a Wisconsin qualified opportunity fund if held for at least seven years. **Note:** This is in addition to the federal 15% exclusion and applies to investments made after December 31, 2017.
- The subtraction from income does not apply to capital gains excluded or deferred under the qualified Wisconsin business program described in sec. [71.05\(25\)](#) and [\(26\)](#), Wis. Stats.
- An individual partner, member, or shareholder may not claim the Wisconsin subtractions above if the partnership or tax-option (S) corporation makes the election to pay tax at the entity level.
- An individual may claim the 30% long-term capital gain exclusion in addition to the Wisconsin subtractions above.

## Wisconsin Opportunity Zone – Corporations (Excluding Tax-Option (S) Corporations)

Wisconsin provides a capital gain basis adjustment, in addition to the federal exclusion, for an investment in a Wisconsin qualified opportunity fund. For taxable years beginning on or after January 1, 2020, the basis increase allowed to a corporation for its investment in a Wisconsin qualified opportunity fund is increased by the following:

- 10% of the deferred gains from investment made after December 31, 2017 and before January 1, 2022 in a Wisconsin qualified opportunity fund if held for at least five years. **Note:** This is in addition to the federal 10% basis increase and applies to investments made after December 31, 2017.
- 15% of the deferred gains from investment made after December 31, 2017 and before January 1, 2020 in a Wisconsin qualified opportunity fund if held for at least seven years. **Note:** This is in addition to the federal 15% basis increase and applies to investments made after December 31, 2017.

## Definitions

- "Wisconsin qualified opportunity fund" means a qualified opportunity fund, as defined in 26 USC [1400Z-2\(d\)\(1\)](#), that holds at least 90 percent of its assets in Wisconsin qualified opportunity zone property, as measured on the last day of the first 6-month period of the fund's taxable year and the last day of the fund's taxable year.
- "Wisconsin qualified opportunity zone" means a population census tract located in Wisconsin that is designated as a qualified opportunity zone under 26 USC [1400Z-1](#).
- "Wisconsin qualified opportunity zone property" means qualified opportunity zone property, as defined in 26 USC [1400Z-2\(d\)\(2\)](#), except that qualified opportunity zone business property, as defined in 26 USC [1400Z-2\(d\)\(2\)\(D\)](#) and [\(3\)\(A\)\(i\)](#), must be located in a Wisconsin qualified opportunity zone.

## Certification

- A Wisconsin qualified opportunity fund must annually certify to each investor and the Department of Revenue that it is a qualified fund for the fund's taxable year by
  - filing Form WQOF, *Wisconsin Qualified Opportunity Fund Certificate*, with the department and
  - furnishing a copy of Form WQOF to each investor.
- This certification must be completed by January 31 following the end of the fund's taxable year.
- Form WQOF must be filed electronically.
- The e-file links and related instructions are on the partnership and corporation tax forms [webpages](#) for the applicable year.

**Note:** Any failure by the Wisconsin qualified opportunity fund may result in the Wisconsin subtraction or basis adjustment being denied for the investors.

## Penalties

If a Wisconsin qualified opportunity fund is liable for a penalty under section [1400Z-2\(f\)](#) of the Internal Revenue Code, the fund is also liable for a Wisconsin penalty equal to 33 percent of the federal penalty.

## Resources

- For additional information regarding Wisconsin opportunity zones:
  - Refer to the Wisconsin Housing and Economic Development Authority [website](#)
  - Common questions: [Qualified Opportunity Zones](#)
- For additional information regarding filing income or franchise tax returns:
  - Email your questions or comments to [DORIncome@wisconsin.gov](mailto:DORIncome@wisconsin.gov)
  - Contact our Customer Service Bureau at (608) 266-2486
  - Contact any [Department of Revenue office](#)

### Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of January 31, 2023: secs. 71.01(13), 71.05(8)(b)1., 71.05(25m), 71.26(3)(vm), 71.34(1k)(p), 71.45(2)(a)21., and 71.83(1)(e), [Wis. Stats.](#), and secs. 1400Z-1 and 1400Z-2, [IRC](#).

Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to this date, that is contrary to the information in this document is superseded by this document, according to sec. 73.16(2)(a), Wis. Stats.

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