

## Working Draft TIR 19-XX: Massachusetts Treatment of Investments in Qualified Opportunity Zones

### I. Introduction/Background

On December 22, 2017, Public Law 115-97, commonly known as the Tax Cuts and Jobs Act (“TCJA”), was signed into law. To encourage long term investment in low-income communities, the TCJA added Internal Revenue Code (“Code” or “IRC”) Subchapter Z, §§ 1400Z-1 and 1400Z-2, effective December 22, 2017. Under Subchapter Z, taxpayers may elect to defer gain from the sale or exchange of any property to an unrelated party by reinvesting that gain within 180 days of the sale or exchange in a “qualified opportunity fund,” an investment vehicle organized as a corporation or partnership for the purpose of investing in “qualified opportunity zones.”<sup>[1]</sup> A “qualified opportunity zone” is a population census tract that is a low income community nominated by a state governor and designated by the U.S. Treasury as a qualified opportunity zone.<sup>[2]</sup> No election may be made for any sale or exchange after Dec. 31, 2026.<sup>[3]</sup> This TIR provides guidance on the Massachusetts tax treatment of new Subchapter Z of the Code.

### II. Deferral of Federal Gain Invested in Qualified Opportunity Zones

Under Subchapter Z of the Code, gain may be deferred from a sale or exchange to the extent it is invested in a qualified opportunity fund.<sup>[4]</sup> The deferred federal gain must be included in income upon the earlier of (i) the tax year in which the taxpayer’s investment in the qualified opportunity fund is sold or exchanged, and (ii) tax year 2026, if the taxpayer’s investment in the qualified opportunity fund is not sold or exchanged by December 31, 2026.<sup>[5]</sup> In either case, the amount of gain includable in the taxpayer’s federal gross income is the excess of: the amount of gain excluded or the fair market value of the investment in the qualified opportunity fund, whichever is less, over the taxpayer’s federal basis in the investment.<sup>[6]</sup>

The taxpayer’s federal basis in a qualified opportunity fund investment depends on the holding period of the investment. The initial basis of a qualified opportunity fund investment, and the basis until the investment is held for five years, is zero.<sup>[7]</sup> If the investment is held for at least five years, the zero basis is increased by 10 percent of the deferred gain.<sup>[8]</sup> The basis is increased an additional 5 percent if the investment is held for at least seven years.<sup>[9]</sup> If deferred gain is recognized on December 31, 2026, before the investment is actually sold, the taxpayer’s basis is increased by the amount of gain recognized for purposes of calculating any future gain recognized on the actual sale or exchange of the investment.<sup>[10]</sup> Finally, if the investment is held for at least 10 years, the taxpayer may elect to treat the basis as the fair market value of the investment on the date that the investment is finally sold or exchanged, allowing the taxpayer to recognize no further appreciation upon the sale or exchange beyond that already recognized as a result of the mandatory recognition date of December 31, 2026.<sup>[11]</sup>

### III. Massachusetts Corporate Excise Ramifications

For corporate excise purposes, Massachusetts generally conforms to the Code as currently in effect, except where expressly decoupled. G.L. c. 63, § 1. Therefore, for corporate excise purposes Massachusetts follows Subchapter Z of the Code, §§ 1400Z-1 and 1400Z-2. Accordingly, Massachusetts corporate excise taxpayers who elect to defer gain under Subchapter Z will likewise defer such gain for Massachusetts purposes. In addition, the federal basis adjustment rules discussed in Section II above will apply for Massachusetts corporate excise purposes, taking into account the rules for determining Massachusetts basis set forth in G.L. c. 63, § 31N and 830 CMR 63.31N.1(3)(b).

#### IV. Massachusetts Personal Income Tax Ramifications

For personal income tax purposes, Massachusetts generally conforms to the provisions of the Code as amended on January 1, 2005 and in effect for the taxable year, with the exception of certain Code provisions not herein relevant. G.L. c. 62, § 1. Therefore, any federal tax law changes incorporated into the Code after January 1, 2005 are, as a general rule, not adopted, including Subchapter Z of the Code, §§ 1400Z-1 and 1400Z-2. Accordingly, gain from the sale or exchange of property that is deferred under Subchapter Z for federal purposes must be recognized in the year of the sale or exchange for Massachusetts personal income tax purposes. In addition, the federal basis adjustments discussed in this TIR would not apply in calculating any future gain that may be recognized upon the sale or exchange of an investment in a qualified opportunity fund.

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