



OHIO OPPORTUNITY ZONES TAX CREDIT PROGRAM
FAQs – 2020 Application Round

I. Taxpayer and Ohio Qualified Opportunity Fund

Who is considered a “Taxpayer” for purposes of receiving an Ohio Opportunity Zones Tax Credit?

The definition of “Taxpayer” in Ohio Revised Code (“ORC”) Section 5747.01 would allow for an individual, a trust, an estate, or a pass-through entity that elects to file a return on behalf of its investors to receive a tax credit from the program.

Are only Taxpayers that reside in Ohio eligible for the tax credit?

No. A nonresident Taxpayer could participate if they otherwise meet the requirements of ORC Section 122.84.

Must a Taxpayer qualify for Federal Opportunity Zone tax benefits to apply for the Ohio Opportunity Zone Tax Credit?

No. The Ohio program is separate from the federal program and provides a benefit to Taxpayers on the front end of the investment. Furthermore, a Taxpayer does not need to invest capital gains in an Ohio Qualified Opportunity Fund to be eligible for a tax credit.

How does a fund meet the definition of an “Ohio Qualified Opportunity Fund” for the tax credit program?

To be an “Ohio Qualified Opportunity Fund”, a fund must:

- 1) Meet the definition of a “qualified opportunity fund” under 26 U.S.C. 1400Z-2, and
- 2) Hold 100% of its invested assets in qualified opportunity zone property situated in an Ohio opportunity zone. The fund does not need to invest all its assets, but those that are invested must be invested in qualified opportunity zone property situated in an Ohio opportunity zone.

Can a corporation invest in an Ohio Qualified Opportunity Fund?

Yes, but the corporation would not be eligible to receive a tax credit. Since corporations do not meet the definition of “Taxpayer” under ORC 5747.01, they do not qualify for the tax credit.

II. Investments in an Ohio Qualified Opportunity Fund

When must a Taxpayer make an investment in an Ohio Qualified Opportunity Fund to apply for the tax credit?

The investment by the Taxpayer must occur in the Taxpayer’s “qualifying taxable year”. This is defined by the Taxpayer’s taxable year that includes the first day of the calendar year when the Ohio Qualified Opportunity Fund transfers the Taxpayer’s investment to qualified opportunity zone property

situated in an Ohio opportunity zone. For 2020 applications, the Taxpayer's "qualifying taxable year" is its taxable year that includes January 1, 2019.

How does a Taxpayer's investment qualify for tax credit eligibility?

First, a Taxpayer must invest in an Ohio Qualified Opportunity Fund. Second, that Fund must invest all or a portion of the Taxpayer's investment in qualified opportunity zone property situated in an Ohio opportunity zone in the calendar year preceding the application.

The credit is equal to 10 percent of the Taxpayer's investment that has been invested in qualified opportunity zone property situated in an Ohio opportunity zone by the Fund.

Ex:

A Taxpayer contributes \$1 million to an Ohio Qualified Opportunity Fund. The Fund then invests \$750,000 of that contribution in qualified opportunity zone property situated in an Ohio opportunity zone in 2019. In January 2020, the Taxpayer can apply for a 10% tax credit on the \$750,000 invested. The tax credit in this scenario calculates to \$75,000 (10% of the \$750,000).

The Ohio Opportunity Zone Tax Credit program was signed into law on July 17, 2019 and effective October 17, 2019. Will investments prior to this date be eligible?

Yes. For 2020 applications, any Taxpayer investment made during the taxable year that includes January 1, 2019 and is subsequently invested in qualified opportunity zone property situated in an Ohio opportunity zone by the Ohio Qualified Opportunity Fund during calendar year 2019 would qualify for a tax credit.

If a Taxpayer invests in an Ohio Qualified Opportunity Fund in calendar year 2018, will such investments be eligible for the Ohio credit during the 2020 application period?

The answer is "yes" if: the investment was made during the Taxpayer's "qualifying taxable year" that includes January 1, 2019 AND the Ohio Qualified Opportunity Fund then invested all or a portion of the Taxpayer's investment in qualified opportunity zone property situated in an Ohio opportunity zone in calendar year 2019. In this scenario, the Taxpayer is eligible for a tax credit based on an investment made in calendar year 2018.

Ex 1:

Taxpayer has a taxable year of July 1 – June 30. The Taxpayer makes an investment of \$100,000 in an Ohio Qualified Opportunity Fund on November 1, 2018. The taxable year of July 1, 2018 to June 30, 2019 includes the January 1, 2019 measurement date, so the November 1, 2018 investment was made in a "qualifying taxable year" and is an eligible investment. The Ohio Qualified Opportunity Fund then invests \$90,000 of the Taxpayer's investment into qualified opportunity zone property situated in an Ohio opportunity zone during calendar year 2019. The Taxpayer would be eligible for a \$9,000 tax credit (10% of the \$90,000 invested by the Fund in calendar year 2019).

Ex 2:

Taxpayer has a taxable year of January 1 – December 31. The Taxpayer makes an investment in an Ohio Qualified Opportunity Fund on December 1, 2018. This investment would not be eligible for a tax credit regardless of when the Ohio Qualified Opportunity Fund utilized the investment, because the taxable

year of January 1, 2018 to December 31, 2018 does not include the January 1, 2019 measurement date to be considered a “qualifying taxable year”.

III. Application Process

When will the Ohio Opportunity Zone Tax Credit Application be available?

The application is expected to be available in mid-December. Taxpayers will be able to input and save information on their individual applications but will not be able to submit the application to Development until the application period opens on January 2, 2020. The webpage will be updated once the application is available, so begin checking the site in mid-December.

What will the Ohio Opportunity Zone Tax Credit Application look like?

The Application will be an electronic format, accessible via the Ohio Development Services Agency (“Development”) online application portal. The Applicant must file the application electronically, including any necessary attachments, to be considered a complete application.

What is the application period for 2020?

ODSA will accept applications for the Ohio Opportunity Zones Tax Credit beginning on January 2, 2020 at 10:00 a.m. Applications will be accepted through January 31, 2020 at 5:00 p.m.

The program’s statute refers to the applications being reviewed “...in the order in which applications are received.” How will this be implemented?

Program applications will be filed electronically through the Development online application portal. Each submitted application will be recorded at the date and time of its submittal, and ODSA will review the applications in order, beginning with the first application submittal.

If an application is filed in January 2020, when will the tax credit be issued?

The program statute requires that a tax credit be issued within 60 days after the receipt of a complete application (assuming tax credit allocation remains).

IV. Tax Credit

Is the Ohio Opportunity Zone Tax Credit refundable or nonrefundable?

It is a nonrefundable tax credit, which means that the tax credit received can only be utilized to reduce tax credit liability. Any unused tax credit amount may be carried forward and utilized by the Taxpayer for the following five taxable years.

Is the Ohio Opportunity Zone Tax Credit transferrable?

Yes. A Taxpayer that holds an unclaimed certificate (i.e. one that has not been partially/completely utilized by the Taxpayer) may transfer the right to claim the certificate.

How many tax credits will be issued in 2020?

ODSA will issue tax credits until all qualified applications have been funded, or the total amount of tax credits issued reaches \$50 million, whichever comes first.

Can a corporate entity qualify for the credit and transfer its certificate to another individual taxpayer?

A corporate entity does not meet the definition of "Taxpayer" under ORC Section 5747.01, so it does not qualify for the tax credit.

Is there a credit clawback or recapture provision?

The ORC does not contemplate recapture of tax credits issued under the Ohio Opportunity Zone Tax Credit program.

Is there any annual reporting requirement for the Taxpayers that are issued a tax credit?

No. The statute requires Development to submit an annual report to the governor, the president and minority leader of the senate, and the speaker and minority leader of the house of representatives on the tax credit, but there is no requirement to collect an annual report from Taxpayers participating in the Ohio Opportunity Zone Tax Credit program.