
Capital Gain Exclusion - Investment in a Wisconsin Qualified Opportunity Fund

Fact Sheet 1121

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This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by [sec. 227.112\(1\)](#), Wis. Stats.

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

Under the federal opportunity zone program, a taxpayer may defer paying federal tax on capital gains by investing the gains in a qualified fund that invests in an opportunity zone. The following federal tax benefits apply:

- The taxpayer defers paying tax on capital gains until the earlier of the date the investment is sold or December 31, 2026.
- On the date the investment is sold or December 31, 2026, whichever is earlier, the taxpayer may exclude from income:
 - 10% of the deferred gains from investment in a qualified fund if held for at least five years
 - 15% of the deferred gains from investment in a qualified fund if held for at least seven years
 - 100% of the deferred gains and any earnings from the investment in a qualified fund if held for at least ten years

The amount of capital gains excluded from federal adjusted gross income are also excluded from a taxpayer's Wisconsin adjusted gross income.

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 that invests in a Wisconsin qualified opportunity zone.

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 in a Wisconsin qualified opportunity fund if held for at least five years. **Note:** this is in addition to the federal 10% exclusion.
 - 15% of the deferred gains from investment in a Wisconsin qualified opportunity fund if held for at least seven years. **Note:** this is in addition to the federal 15% exclusion.

- The subtraction from income does not apply to capital gains excluded or deferred under the qualified Wisconsin business program described in secs. 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)

The Wisconsin capital gain basis adjustment for an investment in a Wisconsin qualified opportunity fund that invests in a Wisconsin qualified opportunity zone provides the following benefits:

For taxable years beginning on or after January 1, 2020, the basis increase allowed to a corporation under federal law for its investment in a Wisconsin qualified opportunity fund is increased by the following:

- 10% of the deferred gains from investment in a Wisconsin qualified opportunity fund if held for at least five years. **Note:** this is in addition to the federal 10% basis increase.
- 15% of the deferred gains from investment in a Wisconsin qualified opportunity fund if held for at least seven years. **Note:** this is in addition to the federal 15% basis increase.

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.

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](#)
- For additional information regarding filing income or franchise tax returns:
 - Email your questions or comments to 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 March 6, 2020: Sections 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 26 USC secs. 1400Z-1 and 1400Z-2.

Laws enacted and in effect after March 6, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to March 6, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

Certification Statement

As the Secretary of the Wisconsin Department of Revenue (DOR), I have reviewed this guidance document or proposed guidance document and I certify that it complies with secs. 227.10 and 227.11, Wis. Stats. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

DEPARTMENT OF REVENUE



Peter Barca
Secretary of Revenue

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