

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

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Investing in Oppor-
5 tunity Act”.

6 **SEC. 2. OPPORTUNITY ZONES.**

7 (a) IN GENERAL.—Chapter 1 of the Internal Rev-
8 enue Code of 1986 is amended by adding at the end the
9 following:

1 **“Subchapter Z—Opportunity Zones**

“Sec. 1400Z-1. Designation.

“Sec. 1400Z-2. Deferral for capital gains invested in opportunity zones.

2 **“SEC. 1400Z-1. DESIGNATION.**

3 “(a) QUALIFIED OPPORTUNITY ZONE DEFINED.—

4 For the purposes of this subchapter, the term ‘qualified
5 opportunity zone’ means a population census tract that
6 is a low-income community that is designated as a quali-
7 fied opportunity zone.

8 “(b) DESIGNATION.—

9 “(1) GOVERNOR.—

10 “(A) IN GENERAL.—For purposes of sub-
11 section (a), a population census tract that is a
12 low-income community is designated as a quali-
13 fied opportunity zone if—

14 “(i) not later than the end of the de-
15 termination period, the governor of the
16 State in which the tract is located—

17 “(I) nominates the tract for des-
18 ignation as a qualified opportunity
19 zone, and

20 “(II) notifies the Secretary in
21 writing of such nomination, and

22 “(ii) the Secretary certifies such nomi-
23 nation and designates such tract as a

1 qualified opportunity zone before the end
2 of the consideration period.

3 “(B) EXTENSION OF PERIODS.—A gov-
4 ernor may request that the Secretary extend ei-
5 ther the determination or consideration period,
6 or both (determined without regard to this sub-
7 paragraph), for an additional 30 days.

8 “(C) DEEMED DESIGNATION IF SEC-
9 RETARY FAILS TO ACT.—Unless the tracts are
10 ineligible for designation, if the Secretary de-
11 clines in writing to make such certification and
12 designation or fails to act before the end of the
13 consideration period, such nomination shall be
14 deemed to be certified and designated, effective
15 on the day after the last day of the consider-
16 ation period.

17 “(2) SECRETARY.—If a governor fails to make
18 the nominations and notifications by the end of the
19 periods referred to in paragraphs (1)(A) and (1)(B),
20 the Secretary shall designate and certify population
21 census tracts that are low-income communities as
22 qualified opportunity zones, as permitted by sub-
23 section (e).

24 “(c) OTHER DEFINITIONS.—For purposes of this
25 subsection—

1 “(1) LOW-INCOME COMMUNITIES.—The term
2 ‘low-income community’ has the same meaning as
3 when used in section 45D(e).

4 “(2) DEFINITION OF PERIODS.—

5 “(A) CONSIDERATION PERIOD.—The term
6 ‘consideration period’ means the 30-day period
7 beginning on the date on which the Secretary
8 receives notice under subsection
9 (b)(1)(A)(i)(II), as extended under subsection
10 (b)(1)(B).

11 “(B) DETERMINATION PERIOD.—The term
12 ‘determination period’ means the 90-day period
13 beginning on the date of the enactment of the
14 Investing in Opportunity Act, as extended
15 under subsection (b)(1)(B).

16 “(d) GUIDANCE FOR OPPORTUNITY ZONE NOMINA-
17 TIONS.—When considering the nomination of qualified op-
18 portunity zones, governors should strive for the creation
19 of qualified opportunity zones that are geographically con-
20 centrated and contiguous clusters of population census
21 tracts and should give particular consideration to areas
22 that—

23 “(1) are currently the focus of mutually rein-
24 forcing State, local, or private economic development

1 initiatives to attract investment and foster startup
2 activity,

3 “(2) have demonstrated success in geographi-
4 cally targeted development programs, such as prom-
5 ise zones, new market tax credit, empowerment
6 zones, and renewal communities, and

7 “(3) have recently experienced significant lay-
8 offs due to business closures or relocations.

9 “(e) NUMBER OF DESIGNATIONS.—

10 “(1) IN GENERAL.—Except as provided by
11 paragraph (2), the number of population census
12 tracts in a State that may be designated as qualified
13 opportunity zones under this section may not exceed
14 25 percent of the number of low-income communities
15 in the State.

16 “(2) EXCEPTION.—If the number of low-income
17 communities in a State is less than 100, then a total
18 of 25 of such tracts may be designated as qualified
19 opportunity zones.

20 “(f) DESIGNATION OF TRACTS CONTIGUOUS WITH
21 LOW-INCOME COMMUNITIES.—

22 “(1) IN GENERAL.—A population census tract
23 that is not a low-income community may be des-
24 ignated as a qualified opportunity zone under this
25 section if—

1 “(A) the tract is contiguous with the low-
 2 income community that is designated as a
 3 qualified opportunity zone, and

4 “(B) the median family income of the tract
 5 does not exceed 125 percent of the median fam-
 6 ily income of the low-income community with
 7 which the tract is contiguous.

8 “(2) LIMITATION.—Not more than 5 percent of
 9 the population census tracts designated in a State as
 10 a qualified opportunity zone may be designated
 11 under paragraph (1).

12 “(g) PERIOD FOR WHICH DESIGNATION IS IN EF-
 13 FECT.—A designation as a qualified opportunity zone
 14 shall remain in effect for the period beginning on the date
 15 of the designation and ending at the close of the 10th cal-
 16 endar year beginning on or after such date of designation.

17 **“SEC. 1400Z-2. DEFERRAL FOR CAPITAL GAINS INVESTED**
 18 **IN OPPORTUNITY ZONES.**

19 “(a) SPECIAL RULES WHEN GAIN FROM SALE OF
 20 PROPERTY INVESTED IN OPPORTUNITY ZONE PROP-
 21 ERTY.—

22 “(1) EXCLUSION OF GAIN INVESTED IN OPPOR-
 23 TUNITY ZONE PROPERTY.—In the case of gain from
 24 the sale to, or exchange with, an unrelated person of

1 any property held by the taxpayer, at the election of
 2 the taxpayer—

3 “(A) gross income for the taxable year
 4 shall not include so much of such gain as does
 5 not exceed the aggregate cost of all qualified
 6 opportunity zone property acquired by the tax-
 7 payer during the 180-day period beginning on
 8 the date of such sale or exchange, and

9 “(B) the amount of gain excluded by sub-
 10 paragraph (A) shall be included in gross income
 11 as provided by paragraph (2).

12 “(2) DEFERRAL OF GAIN INVESTED IN OPPOR-
 13 TUNITY ZONE PROPERTY.—

14 “(A) YEAR OF INCLUSION.—Except as
 15 provided by subparagraph (C), gain to which
 16 paragraph (1)(B) applies shall be included in
 17 income in the taxable year in which the quali-
 18 fied opportunity zone property related to such
 19 gain is sold or exchanged in the amount deter-
 20 mined under subparagraph (B).

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

23 “(i) 100 percent of such gain in the
 24 case of the sale or exchange of the quali-
 25 fied opportunity zone property with respect

1 to which gain is deferred under paragraph
 2 (1) that is held for less than 5 years,

3 “(ii) 90 percent of such gain in the
 4 case of the sale or exchange of the quali-
 5 fied opportunity zone property with respect
 6 to which gain is deferred under paragraph
 7 (1) that is held for at least 5 years but less
 8 than 7 years, and

9 “(iii) 85 percent of such gain in the
 10 case of the sale or exchange of the quali-
 11 fied opportunity zone property with respect
 12 to which gain is deferred under paragraph
 13 (1) that is held for at least 7 years.

14 “(C) PROPERTY HELD AFTER 2026 TREAT-
 15 ED AS SOLD.—For purposes of subparagraph
 16 (A), any qualified opportunity zone property
 17 that has not been sold or exchanged on or be-
 18 fore December 31, 2026, shall be treated as
 19 sold on December 31, 2026.

20 “(3) EXCLUSION OF GAIN ON QUALIFIED OP-
 21 PORTUNITY ZONE PROPERTY HELD FOR AT LEAST 10
 22 YEARS.—Except as provided in paragraph (2), in the
 23 case of the sale or exchange of qualified opportunity
 24 zone property, or an investment in a qualified oppor-
 25 tunity fund, held for at least 10 years, gross income

1 for the taxable year shall not include any gain from
 2 the sale or exchange of such property or investment.

3 “(4) ONE ELECTION PER PROPERTY.—No elec-
 4 tion may be made under paragraph (1) with respect
 5 to a sale or exchange if an election previously made
 6 with respect to such sale or exchange is in effect.

7 “(b) BASIS RULES RELATING TO QUALIFIED OPPOR-
 8 TUNITY ZONE PROPERTY.—

9 “(1) REDUCED BY GAIN DEFERRED UNDER
 10 SUBSECTION (a)(1).—The basis of a qualified oppor-
 11 tunity zone property immediately after its acquisi-
 12 tion under subsection (a) shall be reduced by the
 13 amount of gain deferred by reason of subsection
 14 (a)(1)(A) with respect to such property.

15 “(2) INCREASE FOR GAIN RECOGNIZED UNDER
 16 SUBSECTION (a)(2).—The basis of qualified oppor-
 17 tunity zone property shall be increased by the
 18 amount of gain recognized by reason of subsection
 19 (a)(2) with respect to such property.

20 “(3) SUBSEQUENT INCREASE IN BASIS FOR
 21 PROPERTY HELD FOR AT LEAST 5 YEARS BUT LESS
 22 THAN 10 YEARS.—In the case of qualified oppor-
 23 tunity zone property held for at least 5 years but
 24 less than 10 years—

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

8 “(B) PROPERTY HELD FOR 7 YEARS.—For
 9 qualified opportunity zone property held for at
 10 least 7 years, the basis of such property shall
 11 be increased by an amount equal to 5 percent
 12 of the amount of gain deferred by reason of
 13 subsection (a)(1)(A) with respect to such prop-
 14 erty.

15 “(c) QUALIFIED OPPORTUNITY ZONE PROPERTY.—
 16 For purposes of this section:

17 “(1) IN GENERAL.—The term ‘qualified oppor-
 18 tunity zone property’ means property which is—

19 “(A) qualified opportunity zone stock,

20 “(B) qualified opportunity zone partner-
 21 ship interest,

22 “(C) qualified opportunity zone business
 23 property, or

24 “(D) an interest in a qualified investment
 25 fund.

1 “(2) QUALIFIED OPPORTUNITY ZONE STOCK.—

2 “(A) IN GENERAL.—Except as provided in
3 subparagraph (B), the term ‘qualified oppor-
4 tunity zone stock’ means any stock in a domes-
5 tic corporation if—

6 “(i) such stock is acquired by the tax-
7 payer after December 31, 2017, at its
8 original issue (directly or through an un-
9 derwriter) from the corporation solely in
10 exchange for cash,

11 “(ii) as of the time such stock was
12 issued, such corporation was a qualified
13 opportunity zone business (or, in the case
14 of a new corporation, such corporation was
15 being organized for purposes of being a
16 qualified opportunity zone business), and

17 “(iii) during substantially all of the
18 taxpayer’s holding period for such stock,
19 such corporation qualified as a qualified
20 opportunity zone business.

21 “(B) REDEMPTIONS.—A rule similar to
22 the rule of section 1202(c)(3) shall apply for
23 purposes of this paragraph.

24 “(3) QUALIFIED OPPORTUNITY ZONE PARTNER-
25 SHIP INTEREST.—The term ‘qualified opportunity

1 zone partnership interest’ means any capital or prof-
 2 its interest in a domestic partnership if—

3 “(A) such interest is acquired by the tax-
 4 payer after December 31, 2017, from the part-
 5 nership solely in exchange for cash,

6 “(B) as of the time such interest was ac-
 7 quired, such partnership was a qualified oppor-
 8 tunity zone business (or, in the case of a new
 9 partnership, such partnership was being orga-
 10 nized for purposes of being a qualified oppor-
 11 tunity zone business), and

12 “(C) during substantially all of the tax-
 13 payer’s holding period for such interest, such
 14 partnership qualified as a qualified opportunity
 15 zone business.

16 “(4) QUALIFIED OPPORTUNITY ZONE BUSINESS
 17 PROPERTY.—

18 “(A) IN GENERAL.—The term ‘qualified
 19 opportunity zone business property’ means tan-
 20 gible property used in a trade or business of the
 21 taxpayer if—

22 “(i) such property was acquired by
 23 the taxpayer by purchase (as defined in
 24 section 179(d)(2)) after December 31,
 25 2017,

1 “(ii) the original use of such property
2 in the qualified opportunity zone com-
3 mences with the taxpayer or the taxpayer
4 substantially improves the property, and

5 “(iii) during substantially all of the
6 taxpayer’s holding period for such prop-
7 erty, substantially all of the use of such
8 property was in a qualified opportunity
9 zone.

10 “(B) SUBSTANTIAL IMPROVEMENT.—For
11 purposes of subparagraph (A)(ii), property shall
12 be treated as substantially improved by the tax-
13 payer only if, during any 30-month period be-
14 ginning after the date of acquisition of such
15 property, additions to basis with respect to such
16 property in the hands of the taxpayer exceed an
17 amount equal to the adjusted basis of such
18 property at the beginning of such 30-month pe-
19 riod in the hands of the taxpayer.

20 “(C) RELATED PARTY.—For purposes of
21 subparagraph (A)(i), the related person rule of
22 section 179(d)(2) shall be applied pursuant to
23 paragraph (8) of this subsection in lieu of the
24 application of such rule in section 179(d)(2)(A).

1 “(5) QUALIFIED OPPORTUNITY FUND.—The
 2 term ‘qualified opportunity fund’ means any invest-
 3 ment vehicle organized as a corporation or a part-
 4 nership for the purpose of investing in qualified op-
 5 portunity zone property (other than another quali-
 6 fied opportunity fund) that holds at least 90 percent
 7 of its assets in qualified opportunity zone property,
 8 determined—

9 “(A) on the last day of the first 6-month
 10 period of the taxable year of the fund, and

11 “(B) on the last day of the taxable year of
 12 the fund.

13 “(6) QUALIFIED OPPORTUNITY ZONE BUSI-
 14 NESS.—

15 “(A) IN GENERAL.—The term ‘qualified
 16 opportunity zone business’ means a trade or
 17 business—

18 “(i) in which substantially all of the
 19 tangible property owned or leased by the
 20 taxpayer is qualified opportunity zone busi-
 21 ness property,

22 “(ii) which satisfies the requirements
 23 of paragraphs (2), (4), and (8) of section
 24 1397C(b), and

1 “(iii) which is not described in section
2 144(c)(6)(B).

3 “(B) SPECIAL RULE.—For purposes of
4 subparagraph (A), tangible property that ceases
5 to be a qualified opportunity zone business
6 property shall continue to be treated as a quali-
7 fied opportunity zone business property for the
8 lesser of—

9 “(i) 5 years after the date on which
10 such tangible property ceases to be so
11 qualified, or

12 “(ii) the date on which such tangible
13 property is no longer held by the qualified
14 opportunity zone business.

15 “(d) APPLICABLE RULES.—

16 “(1) IN GENERAL.—For purposes of this sec-
17 tion and except as otherwise provided in this section,
18 rules similar to the rules applicable to deferred like
19 kind exchanges under section 1031 shall apply ex-
20 cept that reinvestment in opportunity zone property
21 need not require an intermediary party.

22 “(2) RELATED PERSONS.—For purposes of this
23 subsection, persons are related to each other if such
24 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.

1 “(e) FAILURE OF QUALIFIED OPPORTUNITY FUND
2 TO MAINTAIN INVESTMENT STANDARD.—

3 “(1) IN GENERAL.—If a qualified opportunity
4 fund fails to meet the 90-percent requirement of
5 subsection (c)(5), the qualified opportunity fund
6 shall pay a penalty for each month it fails to meet
7 the requirement in an amount equal to the product
8 of—

9 “(A) the excess of—

10 “(i) the amount equal to 90 percent of
11 its aggregate assets, over

12 “(ii) the aggregate amount of quali-
13 fied opportunity zone property held by the
14 fund, multiplied by

15 “(B) the underpayment rate established
16 under section 6621(a)(2) for such month.

17 “(2) SPECIAL RULE FOR PARTNERSHIPS.—In
18 the case that the qualified opportunity fund is a
19 partnership, the penalty imposed by paragraph (1)
20 shall be taken into account proportionately as part
21 of the distributive share of each partner of the part-
22 nership.

23 “(3) REASONABLE CAUSE EXCEPTION.—No
24 penalty shall be imposed under this subsection with

1 respect to any failure if it is shown that such failure
2 is due to reasonable cause.”.

3 (b) BASIS ADJUSTMENTS.—Section 1016(a) of such
4 Code is amended by striking “and” at the end of para-
5 graph (36), by striking the period at the end of paragraph
6 (37) and inserting “, and”, and by inserting after para-
7 graph (37) the following:

8 “(38) to the extent provided in section 1400Z–
9 2(b).”.

10 (c) REPORT TO CONGRESS.—The Secretary of the
11 Treasury, or the Secretary’s delegate, shall submit a re-
12 port to Congress on the opportunity zone incentives en-
13 acted by this section beginning 5 years after the date of
14 enactment of this Act and annually thereafter. The report
15 shall include an assessment of investments held by quali-
16 fied opportunity funds nationally and at the State level.
17 To the extent such information is available, the report
18 shall include the number of qualified opportunity funds,
19 the amount of assets held in qualified opportunity funds,
20 the composition of qualified opportunity fund investments
21 by asset class, the percentage of qualified opportunity zone
22 census tracts designated under subchapter Z of the Inter-
23 nal Revenue Code of 1986 (as added by this section) that
24 have received qualified opportunity fund investments. The
25 report shall also include an assessment of the impacts and

1 outcomes of the investments in those areas on economic
 2 indicators including job creation, poverty reduction, and
 3 new business starts, and other metrics as determined by
 4 the Secretary.

5 (d) CLERICAL AMENDMENT.—The table of sub-
 6 chapters for chapter 1 of such Code is amended by adding
 7 at the end the following new item:

“SUBCHAPTER Z. OPPORTUNITY ZONES”.

8 (e) EFFECTIVE DATE.—The amendments made by
 9 this section shall take effect on the date of the enactment
 10 of this Act.

○