

**NEW OPPORTUNITY: MAKE SURE YOUR COMMUNITIES ARE INCLUDED**

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The 2017 Tax Cuts and Jobs Act, enacted December 22, 2017, offers a new tax incentive for the benefit of low-income communities with the creation of qualified opportunity zones. It is anticipated that the qualified opportunity zones will encourage investments that will be used to start businesses, develop abandoned properties or provide low-income housing in low-income, economically distressed communities. In order to benefit from this new incentive, it is imperative that the low-income community (“LIC”) census tracts or the population census tracts contiguous to LIC census tracts be included in your state’s gubernatorial nominations to the Treasury Secretary, which are due by **March 21, 2018** (with a possible 30 day extension being added).

Generally, the way the incentive works is that taxpayers who have a capital gain resulting from a sale or exchange may reinvest such gain in a “qualified opportunity fund” within 180 days of the sale or exchange and *defer recognition of the gain*. *It is also possible that (a) some of the gain could be permanently excluded, and (b) all of the appreciation on the taxpayer’s investment in the fund could also be excluded from taxable income, depending on the time period of the investment*. The opportunity funds will use the proceeds of the reinvestments to acquire partnership interests or stock in a qualified business that owns or leases property in qualified opportunity zones or to purchase and/or substantially improve certain property in qualified opportunity zones. The opportunity funds may invest in start-ups, abandoned properties or low-income housing; however, they may not invest in any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

To take advantage of this incentive, the businesses or property must be in a qualified opportunity zone. Qualified opportunity zones are LIC census tracts as defined under the new markets tax credit regulations and based on 2011-2015 American Community Survey data from the US Census Bureau. In addition to the LIC census tracts, population census tracts with median family income that does not exceed 125 percent of the median family income of a contiguous qualified opportunity zone may also be designated as qualified opportunity zones. If you want to determine if a proposed project is located in an eligible census tract or what eligible census tracts are located in your area, the Department of Treasury’s Community Development Financial Institutions Fund has developed resources located at <https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx> to assist with identifying eligible census tracts.

Up to 25 percent of the LIC census tracts in a state may be designated as qualified opportunity zones. Of that 25%, only 5% may qualify as opportunity zones by virtue of being contiguous with a qualified opportunity zone. Based on the noted American Survey data, the State of Mississippi currently has 401 eligible LIC census tracts. Thus, approximately 101 LIC census tracts may be nominated by Governor Bryant to be designated as qualified opportunity zones.

The Treasury Secretary has provided to governors some clarification on the nomination process, including the following information that was part of the Conference Report on the 2017 Tax Cuts Act. This report suggested that the governors give primary consideration to LIC census tracts that “(1) are currently the focus of mutually reinforcing state, local, or private economic development initiatives to attract investment and foster startup activity; (2) have demonstrated success in geographically targeted development programs such as promise zones, the new markets tax credit, empowerment zones, and renewal communities; and (3) have recently experienced significant layoffs due to business closures or relocations.” Beyond these factors, there is no further indication as to specific criteria that Treasury will use to determine whether an eligible census tract will be certified as a qualified opportunity zone. For more information, we suggest you contact your governor’s office or your state’s lead economic development agency. In Mississippi, if you wish for a LIC in your area to be considered for nomination by the Governor Bryant, you must complete the application found at <https://www.mississippi.org/opportunity-zone-application/>. Note that the Mississippi Development Authority will begin reviewing the applications no later than **March 5, 2018**.