



## OHIO OPPORTUNITY ZONES TAX CREDIT PROGRAM FAQs – 2021 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.

#### Who is the appropriate Applicant Taxpayer for the Ohio Opportunity Zone Tax Credit Application?

When completing the 2021 application, the appropriate “Applicant Taxpayer” is the entity that **directly** made the capital investment into the Ohio Qualified Opportunity Fund, even if that entity does not pay taxes directly to the State of Ohio (i.e. a revocable trust, pass-through entity or s-corporation),  
Ex 1:

The capital investment for the Ohio Qualified Opportunity Fund came from the bank account or investment portfolio of a Revocable Trust. That Revocable Trust is the appropriate Applicant Taxpayer for the purpose of the Ohio Opportunity Zone Tax Credit Application.

Ex 2:

An individual makes an investment in a Pass-Through entity that he/she holds ownership in. That Pass-Through entity then uses that individual’s investment as the capital investment into the Ohio Qualified Opportunity Fund. The Pass-Through entity is the appropriate Applicant Taxpayer for the purpose of the Ohio Opportunity Zone Tax Credit Application.

#### 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 if it is a c-corp. Since c-corps 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 2021 applications, the Taxpayer’s “qualifying taxable year” is its taxable year that includes January 1, 2020.

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 in 2020. The Fund then invests \$750,000 of that contribution in qualified opportunity zone property situated in an Ohio opportunity zone in 2020. In January 2021, 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).

If a Taxpayer invests in an Ohio Qualified Opportunity Fund in calendar year 2019, will such investments be eligible for the Ohio credit during the 2021 application period?

In general, the answer to this question is “no”. The answer is “yes” **if and only if**: the investment was made during the Taxpayer’s “qualifying taxable year” that includes January 1, 2020 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 2020. In this scenario, the Taxpayer is eligible for a tax credit based on an investment made in calendar year 2019.

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, 2019. The taxable year of July 1, 2019 to June 30, 2020 includes the January 1, 2020 measurement date, so the November 1, 2019 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 2020. The Taxpayer would be eligible for a \$9,000 tax credit (10% of the \$90,000 invested by the Fund in calendar year 2020).

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, 2019. 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, 2019 to December 31, 2019 does not include the January 1, 2020 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 late-November/early December 2020. 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 8, 2021. The webpage will be updated once the application is available, so begin checking the in late November.

#### 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. If an applicant created a username and password for the 2020 application round but has not used that password in the last three months, that password will have to be reset. The Applicant must file the application electronically, including any necessary attachments, to be considered a complete application.

#### What is the application period for the 2021 application round?

Development will accept applications for the Ohio Opportunity Zones Tax Credit beginning on January 8, 2021 at 10:00 a.m. Applications will be accepted through January 31, 2021 at 11:59 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 Development will review the applications in order, beginning with the first application submittal. If an application is determined to be ineligible, it will be removed from consideration and the subsequently filed application will be considered.

If an application is determined to be ineligible because the Applicant Taxpayer is incorrect, can a new application be filed using the correct Applicant Taxpayer?

Yes, a new application can be filed with the allowable application period. However, any new application would be reviewed in the order it is received, it would not “replace” the ineligible application’s spot in the queue.

#### **IV. Tax Credit**

Is there a limit to the amount of Ohio Opportunity Zone Tax Credit an Applicant Taxpayer can be issued?

Yes. An Applicant Taxpayer cannot be issued tax credit(s) totaling over \$1 million between the 2020 and 2021 Ohio Opportunity Tax Credit rounds.

Ex:

Taxpayer was issued an Ohio Opportunity Zone Tax Credit Certificate in the 2020 round worth \$750,000. This Taxpayer would only be able to be issued tax credits up to \$250,000 in the 2021 round before the \$1 million maximum is reached.

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. The Ohio Department of Taxation oversees the transfer process and has issued some FAQs on its website, linked here: <https://tax.ohio.gov/wps/portal/gov/tax/help-center/faqs/income-business-credits/income-business-credits>. Items #3, 4 and 5 address the Ohio Opportunity Zone Tax Credit (“Investment Credit” on the page) Program.

If the Ohio Opportunity Zone Tax Credit is issued to a pass-through entity, can one of the owners/members transfer his or her portion of the credit?

No. The statute refers to the transfer occurring for an “unclaimed certificate”, so only the entirety of the certificate, i.e. the tax credit, may be transferred.

If an application is filed in January 2021, 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).

How many tax credits will be issued in 2021?

For the 2021 tax credit round, \$23.4 million in tax credit allocation is available. Development will issue tax credits until all qualified applications have been funded, or the total amount of tax credits issued reaches the remaining available allocation, whichever comes first.

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

A c-corporation entity does not meet the definition of "Taxpayer" under ORC Section 5747.01, so it does not qualify for the tax credit. However, an s-corporation may qualify for and transfer the 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.

How do members/owners of a pass-through entity take the credit?

Any member/owner of a pass-through entity on the last day of the pass-through entity's qualifying taxable year may claim their proportionate or distributive share of the credit unless the credit is claimed at the entity level. The proportionate or distributive share of the credit must be the same as the member's/owner's percentage of membership/ownership in the pass-through entity on the last day of the pass-through entity's qualifying taxable year.

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.