Senate taxwriters mull economic development tax incentives ahead of pending expirations

Ahead of the significant debate expected in the next Congress as many of the tax code changes enacted in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) are due to sunset, members of the Senate Finance Committee held a hearing this week to consider the most effective ways to use the code to promote economic development. And while the new markets tax credit, tax-exempt bonds, and the historic rehabilitation credit received bipartisan support, the Opportunity Zone incentives enacted in the Republican-drafted TCJA came in for criticism from the committee's top Democrat.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

The new markets tax credit, which is taken as a direct credit for seven years on the taxes of investors putting money into certain economically distressed communities, was originally enacted in 2000, has been extended multiple times since then on a bipartisan basis, and is currently scheduled to sunset at the end of 2025.

The end of 2026 will bring the sunset of a key benefit for those investing in the more than 8,700 neighborhoods designated as Opportunity Zones: tax deferral on prior capital gains rolled into a Qualified Opportunity Fund. (New investments that are made in a Qualified Opportunity Fund before the end of 2026 and are held for at least 10 years will still be eligible for capital gains tax deferral, however.) But Finance Committee Chairman Ron Wyden, D-Ore., made clear at the July 30 hearing that he does not believe that the Opportunity Zone program is driving enough investment to the communities that most need it.

"There have been some success stories, but for every affordable housing development it seems like there's a casino or a crypto mining facility going up," Wyden said at the hearing, positing that the program "has helped a lot of high-wealth individuals opt out of paying taxes on investments they probably would have made with or without" the tax incentives.

Wyden also focused on the price tag of extending the Opportunity Zone provisions—something that could be a significant factor as members of both parties face the reality that extending all the expiring TCJA provisions is now estimated to cost more than $4.6 trillion, according to the nonpartisan Congressional Budget Office.

The Opportunity Zone program was estimated to cost $1.6 billion per year when it was originally enacted, Wyden said, but "going forward, it would cost $70 billion to extend." Cost concerns will require Congress to make some "tough choices" in the coming years as lawmakers determine which expiring provisions to extend, he noted.

Wyden argued that under the current Opportunity Zone program "the eligibility rules were too loose and the safeguards against waste were too lax," and even those lawmakers who support the incentive have acknowledged that improvements could be made. Advocates for the program have endorsed bipartisan legislation that would implement reporting requirements, enabling Treasury to better track the impact of Opportunity Zone investments and provide Congress insights into how it could revise the program's rules to

make it more effective. (For coverage of a similar discussion at a recent House Ways and Means Committee hearing, see *Tax News & Views*, Vol. 25, No. 19, May 24, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240524_2.html

For his part, the top Republican on the committee, Sen. Mike Crapo of Idaho, said that along with the new markets tax credit, the historic rehabilitation tax credit, tax-exempt bonds, and the low-income housing tax credit, Opportunity Zones have helped “spur local economic development,” and that as a result of the Opportunity Zone program, “private capital has flowed into areas that did not receive such levels of investment before the TCJA was enacted.” At the same time, Crapo acknowledged that “there is still more to be done” and pointed to proposed legislation on reporting requirements from Sen. Tim Scott, R-S.C.—the original sponsor of Opportunity Zone provisions in 2017—and Sen. Cory Booker, D-N.J., as a potential improvement.

Crapo also raised the issue of ensuring various economic development tax incentives are streamlined and well-coordinated, leading hearing witness Michael Novogradac to recommend legislative or regulatory changes that would allow the new markets tax credit and low-income housing tax credit to work together seamlessly. Novogradac also recommended eliminating basis adjustments required for the new markets credit, the rehabilitation credit, and the low-income housing credit.

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