BONAVENTURE

ADVISOR GUIDE · CPA · TAX COUNSEL · FINANCIAL ADVISOR

A scenario guide for advisors

Eight client situations, the tax problem in each, and where Opportunity Zone treatment does or does not help.



Each row below is a starting point for a conversation, not a recommendation. Eligibility turns on the character of the gain, the identity of the buyer and the dates involved — all questions of fact about your client. The most common failure is not choosing the wrong structure. It is assuming the whole gain qualifies when only part of it does.

The benefit, stated precisely

Deferral is not forgiveness. For an investment made after December 31, 2026, the deferred gain is included in income on the fifth anniversary of the investment, reduced by a 10% basis step-up or 30% for a qualifying rural fund. Separately, an affirmative election after a ten-year hold can exclude appreciation on the investment itself. An investment made on or before December 31, 2026 remains under the original regime, running against the fixed December 31, 2026 inclusion date, and should be modeled as producing little or no deferral. Which regime applies turns on the investment date, not the date of the gain.

CLIENT SITUATION	THE TAX PROBLEM	WHERE OPPORTUNITY ZONE TREATMENT HELPS
Sale of a business — stock sale	Often the largest single capital gain of the client's life, landing in one tax year with no natural offset.	**Eligible where the gain is capital and the buyer unrelated. Confirm first that no §1202 exclusion applies (deferring excluded QSBS gain destroys a better benefit), that no §338(h)(10) or §336(e) election recharacterizes the sale as an asset sale, and how any earn-out is reported.**
Sale of a business — asset sale	The price is allocated across asset classes, and only part of the allocation is capital in character.	**§1245 recapture and non-compete allocations are ordinary and ineligible. Unrecaptured §1250 gain on real property is capital and is eligible. Goodwill is generally capital, ordinary only to the extent of prior §197 amortization. Get the allocation before quoting a number.**
A 1031 exchange in trouble	The exchange fails, the gain is stranded, and tax falls due on a sale the client thought was deferred.	**Cleanest when the exchange fails at the 45-day identification stage, while most of the 180 days remain. A late failure is not automatically fatal: where the exchange straddles tax years, gain is generally recognized when the intermediary releases the proceeds, which can open a later window. Establish the recognition date before telling a client they are out of time.**
Concentrated single-stock position	The client will not diversify because the embedded gain makes selling feel unaffordable, and the position keeps growing.	**The gain is deferred and future growth on the reinvested amount may be excluded after ten years. Model the year-five inclusion: tax comes due while the interest is illiquid.**
Crypto and digital-asset gains	Capital gains all the same, but often short-term, spread across many lots and commonly poorly substantiated.	**Eligible where the gain is capital. A short-term gain keeps its character into the inclusion year, so the tax deferred is larger. Gains of a §475(f) mark-to-market trader are ordinary and ineligible. Basis substantiation is the practical obstacle.**
A gain arriving on a K-1	The partner often learns of the gain months after the partnership recognized it — sometimes after 180 days from the sale date would already have run.	**By default, the 180-day clock starts on the last day of the partnership's tax year. The partner can elect to start it earlier or later. See below.**

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Succession and estate planning	Families assume that holding until death washes out the deferred gain the way it washes out other unrealized appreciation.	**If an investor passes away while holding a QOF investment, their heirs will step into their shoes in that investment. They will still owe the deferred tax at the five-year date from the decedent's investment, but they also get to preserve the original investment date for tracking the ten-year benefit.**
A large one-time windfall	A gain the client did not plan for, with roughly six months to address it.	**Eligible only where capital in character — most litigation recoveries are ordinary under the origin-of-the-claim doctrine and are not a sale or exchange. Installment and earn-out proceeds carry their own window per payment. The binding constraint is the calendar, not the product.**

The 180-day window for a gain reported on a K-1

While investors who realize gains in their own name have 180 days from the realization to make an OZ investment, investors who realize gains in partnerships that issue K-1s have additional flexibility. If a gain is realized in a partnership, the investor may begin their 180-day period as late as the date on which the partnership's K-1 is due to investors (usually March 15 of the following year), meaning that an investment sold in a partnership in January of 2027 could potentially be eligible for QOF investment as late as September 2028, over 600 days from the date of the original gain.

Treatment of §1231 gains

If an investor plans to invest in a QOF using §1231 gains, it is important to know that each §1231 gain can be invested separately, and the investor does not have to go through the typical §1231 loss netting process. This means that for years that investors have both §1231 gains and losses, they can invest their gains and recognize only their §1231 losses.

Five things that are easy to get wrong

- **Only the capital-gain portion is eligible.** §1245 recapture, inventory, non-compete allocations and the compensation element of an earn-out are ordinary and out. Unrecaptured §1250 gain is capital and in.
- **The related-party test is not the one advisors assume.** It applies §267(b) and §707(b)(1) with 20% substituted for 50%. Sales to a spouse, sibling, ancestor or lineal descendant are out; sales to nieces, nephews, cousins and in-laws generally are not. The 20% entity threshold catches far more closely-held-entity sales than expected.
- **Investing more than the gain splits the interest.** Under the mixed-funds rule the excess is a separate, non-qualifying investment with no exclusion on its appreciation.
- **The exclusion is an affirmative election.** Holding ten years does not deliver it automatically, and it is capped at thirty years from the investment date. Non-conforming states deny both the deferral and the exclusion, so those clients owe state tax currently.
- **The filings are the client's, not only the fund's.** Form 8949 to make the election, Form 8997 every year the investment is held. Form 8996 is the fund's own certification. Penalties under the 2025 amendments are materially larger than under the original regime.

> *When a client calls with a gain, the first question is not which vehicle. It is which date the clock started on, and whether it has already run.*

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