

116TH CONGRESS
2D SESSION

S. 4780

To amend the Internal Revenue Code of 1986 to provide for qualified Hurricane Laura recovery opportunity zones, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 2020

Mr. KENNEDY 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 qualified Hurricane Laura recovery opportunity zones, and for other purposes.

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 “Hurricane Laura Re-
5 covery Opportunity Zones Act”.

6 **SEC. 2. QUALIFIED HURRICANE LAURA RECOVERY OPPOR-**
7 **TUNITY ZONES.**

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

1 **“Subchapter AA—Hurricane Laura Recovery**
 2 **Opportunity Zones**

“Sec. 1400AA-1. Designation.

“Sec. 1400AA-2. Special rules for capital gains invested in Hurricane Laura Recovery Opportunity Zones.

3 **“SEC. 1400AA-1. DESIGNATION.**

4 “(a) **QUALIFIED HURRICANE LAURA RECOVERY OP-**
 5 **PORTUNITY ZONE DEFINED.**—For purposes of this chap-
 6 ter, the term ‘qualified Hurricane Laura recovery oppor-
 7 tunity zone’ means any census tract that—

8 “(1) is a low income community (as defined in
 9 section 1400Z-1(c)), and

10 “(2) is located within the Hurricane Laura dis-
 11 aster zone.

12 “(b) **QUALIFIED HURRICANE LAURA DISASTER**
 13 **ZONE.**—For purposes of this chapter, the term ‘qualified
 14 Hurricane Laura disaster zone’ means an area—

15 “(1) with respect to which a major disaster has
 16 been declared by the President under section 401 of
 17 the Robert T. Stafford Disaster Relief and Emer-
 18 gency Assistance Act before September 30, 2020, by
 19 reason of Hurricane Laura, and

20 “(2) which has been determined by the Presi-
 21 dent to warrant individual or individual and public
 22 assistance from the Federal Government under such
 23 Act by reason of Hurricane Laura.

1 “(c) PERIOD OF TREATMENT.—A census tract de-
 2 scribed in subsection (a) shall not be treated as a qualified
 3 Hurricane Laura recovery opportunity zone—

4 “(1) for any period before August 28, 2020, or

5 “(2) for any period after the close of the 10th
 6 calendar year beginning on or after such date.

7 **“SEC. 1400AA-2. SPECIAL RULES FOR CAPITAL GAINS IN-**
 8 **VESTED IN HURRICANE LAURA RECOVERY**
 9 **OPPORTUNITY ZONES.**

10 “(a) IN GENERAL.—

11 “(1) TREATMENT OF GAINS.—In the case of
 12 capital gain from the sale to, or exchange with, an
 13 unrelated person of any property held by the tax-
 14 payer, at the election of the taxpayer—

15 “(A) gross income for the taxable year
 16 shall not include so much of such gain as does
 17 not exceed the aggregate amount invested by
 18 the taxpayer in a qualified Hurricane Laura re-
 19 covery opportunity fund during the 180-day pe-
 20 riod beginning on the date of such sale or ex-
 21 change,

22 “(B) the amount of gain excluded by sub-
 23 paragraph (A) shall be included in gross income
 24 as provided by subsection (b), and

25 “(C) subsection (c) shall apply.

1 The preceding sentence shall not apply in the case
2 of any gain which is treated under this chapter as
3 ordinary income.

4 “(2) ELECTION.—No election may be made
5 under paragraph (1)—

6 “(A) with respect to a sale or exchange if
7 an election previously made with respect to such
8 sale or exchange is in effect, or

9 “(B) with respect to any sale or exchange
10 after December 31, 2030.

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

13 “(1) YEAR OF INCLUSION.—Gain to which sub-
14 section (a)(1)(B) applies shall be included in income
15 in the taxable year which includes the earlier of—

16 “(A) the date on which such investment is
17 sold or exchanged, or

18 “(B) December 31, 2030.

19 “(2) AMOUNT INCLUDIBLE.—

20 “(A) IN GENERAL.—The amount of gain
21 included in income under subsection (a)(1)(B)
22 shall be the excess of—

23 “(i) the lesser of the amount of gain
24 excluded under subsection (a)(1)(A) or the
25 fair market value of the investment as de-

1 terminated as of the date described in para-
2 graph (1), over

3 “*(ii)* the taxpayer’s basis in the in-
4 vestment.

5 “(B) DETERMINATION OF BASIS.—

6 “*(i)* IN GENERAL.—Except as other-
7 wise provided in this subparagraph or sub-
8 section (c), the taxpayer’s basis in the in-
9 vestment shall be zero.

10 “*(ii)* INCREASE FOR GAIN RECOG-
11 NIZED UNDER SUBSECTION (a)(1)(B).—
12 The basis in the investment shall be in-
13 creased by the amount of gain recognized
14 by reason of subsection (a)(1)(B) with re-
15 spect to such investment.

16 “*(iii)* INVESTMENTS HELD FOR 5
17 YEARS.—In the case of any investment
18 held for at least 5 years, the basis of such
19 investment shall be increased by an
20 amount equal to 10 percent of the amount
21 of gain deferred by reason of subsection
22 (a)(1)(A).

23 “*(iv)* INVESTMENTS HELD FOR 7
24 YEARS.—In the case of any investment
25 held by the taxpayer for at least 7 years,

1 in addition to any adjustment made under
2 clause (iii), the basis of such property shall
3 be increased by an amount equal to 5 per-
4 cent of the amount of gain deferred by rea-
5 son of subsection (a)(1)(A).

6 “(c) SPECIAL RULE FOR INVESTMENTS HELD FOR
7 AT LEAST 10 YEARS.—In the case of any investment held
8 by the taxpayer for at least 10 years and with respect to
9 which the taxpayer makes an election under this sub-
10 section, the basis of such investment shall be equal to the
11 fair market value of such investment on the date that the
12 investment is sold or exchanged.

13 “(d) QUALIFIED HURRICANE LAURA RECOVERY OP-
14 PORTUNITY FUND.—For purposes of this section—

15 “(1) IN GENERAL.—The term ‘qualified Hurri-
16 cane Laura recover opportunity fund’ means any in-
17 vestment vehicle which is organized as a corporation
18 or a partnership for the purpose of investing in
19 qualified Hurricane Laura recovery opportunity zone
20 property (other than another qualified Hurricane
21 Laura recovery opportunity fund) that holds at least
22 90 percent of its assets in qualified Hurricane Laura
23 recovery opportunity zone property, determined by
24 the average of the percentage of qualified Hurricane

1 Laura recovery opportunity zone property held in
2 the fund as measured—

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

5 “(B) on the last day of the taxable year of
6 the fund.

7 “(2) QUALIFIED HURRICANE LAURA RECOVERY
8 OPPORTUNITY ZONE PROPERTY.—

9 “(A) IN GENERAL.—The term ‘qualified
10 Hurricane Laura recovery opportunity zone
11 property’ means property which is—

12 “(i) qualified Hurricane Laura recov-
13 ery opportunity zone stock,

14 “(ii) qualified Hurricane Laura recov-
15 ery opportunity zone partnership interest,
16 or

17 “(iii) qualified Hurricane Laura re-
18 covery opportunity zone business property.

19 “(B) QUALIFIED HURRICANE LAURA RE-
20 COVERY OPPORTUNITY ZONE STOCK.—

21 “(i) IN GENERAL.—Except as pro-
22 vided in clause (ii), the term ‘qualified
23 Hurricane Laura recovery opportunity
24 zone stock’ means any stock in a domestic
25 corporation if—

1 “(I) such stock is acquired by the
2 qualified Hurricane Laura recovery
3 opportunity fund after December 31,
4 2020, at its original issue (directly or
5 through an underwriter) from the cor-
6 poration solely in exchange for cash,

7 “(II) as of the time such stock
8 was issued, such corporation was a
9 qualified Hurricane Laura recovery
10 opportunity zone business (or, in the
11 case of a new corporation, such cor-
12 poration was being organized for pur-
13 poses of being a qualified Hurricane
14 Laura recovery opportunity zone busi-
15 ness), and

16 “(III) during substantially all of
17 the qualified Hurricane Laura recov-
18 ery opportunity fund’s holding period
19 for such stock, such corporation quali-
20 fied as a qualified Hurricane Laura
21 recovery opportunity zone business.

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

1 “(C) QUALIFIED HURRICANE LAURA RE-
2 COVERY OPPORTUNITY ZONE PARTNERSHIP IN-
3 TEREST.—The term ‘qualified Hurricane Laura
4 recovery opportunity zone partnership interest’
5 means any capital or profits interest in a do-
6 mestic partnership if—

7 “(i) such interest is acquired by the
8 qualified Hurricane Laura recovery oppor-
9 tunity fund after December 31, 2020, from
10 the partnership solely in exchange for cash,

11 “(ii) as of the time such interest was
12 acquired, such partnership was a qualified
13 Hurricane Laura recovery opportunity
14 zone business (or, in the case of a new
15 partnership, such partnership was being
16 organized for purposes of being a qualified
17 Hurricane Laura recovery opportunity
18 zone business), and

19 “(iii) during substantially all of the
20 qualified Hurricane Laura recovery oppor-
21 tunity fund’s holding period for such inter-
22 est, such partnership qualified as a quali-
23 fied Hurricane Laura recovery opportunity
24 zone business.

1 “(D) QUALIFIED HURRICANE LAURA RE-
2 COVERY OPPORTUNITY ZONE BUSINESS PROP-
3 ERTY.—

4 “(i) IN GENERAL.—The term ‘quali-
5 fied Hurricane Laura recovery opportunity
6 zone business property’ means tangible
7 property used in a trade or business of the
8 qualified Hurricane Laura recovery oppor-
9 tunity fund if—

10 “(I) such property was acquired
11 by the qualified Hurricane Laura re-
12 covery opportunity fund by purchase
13 (as defined in section 179(d)(2)) after
14 December 31, 2020,

15 “(II) the original use of such
16 property commences with the qualified
17 Hurricane Laura recovery opportunity
18 fund or the qualified Hurricane Laura
19 recovery opportunity fund substan-
20 tially improves the property, and

21 “(III) during substantially all of
22 the qualified Hurricane Laura recov-
23 ery opportunity fund’s holding period
24 for such property, substantially all of
25 the use of such property was in a

1 qualified Hurricane Laura recovery
2 opportunity zone.

3 “(ii) SUBSTANTIAL IMPROVEMENT.—

4 For purposes of clause (i)(II), property
5 shall be treated as substantially improved
6 by the qualified Hurricane Laura recovery
7 opportunity fund only if, during any 30-
8 month period beginning after the date of
9 acquisition of such property, additions to
10 basis with respect to such property in the
11 hands of the qualified Hurricane Laura re-
12 covery opportunity fund exceed an amount
13 equal to the adjusted basis of such prop-
14 erty at the beginning of such 30-month pe-
15 riod in the hands of the qualified Hurri-
16 cane Laura recovery opportunity fund.

17 “(iii) RELATED PARTY.—For pur-
18 poses of clause (i)(I)—

19 “(I) property shall not be treated
20 as acquired by purchase if acquired
21 from a related person (within the
22 meaning of subsection (e)(2)), and

23 “(II) section 179(d)(2) shall be
24 applied without regard to subpara-
25 graph (A) thereof.

1 “(3) QUALIFIED HURRICANE LAURA RECOVERY
2 OPPORTUNITY ZONE BUSINESS.—

3 “(A) IN GENERAL.—The term ‘qualified
4 Hurricane Laura recovery opportunity zone
5 business’ means a trade or business—

6 “(i) in which substantially all of the
7 tangible property owned or leased by the
8 taxpayer is qualified Hurricane Laura re-
9 covery opportunity zone business property
10 (determined by substituting ‘qualified Hur-
11 ricane Laura recovery opportunity zone
12 business’ for ‘qualified Hurricane Laura
13 recovery opportunity fund’ each place it
14 appears in paragraph (2)(D)),

15 “(ii) which satisfies the requirements
16 of paragraphs (2), (4), and (8) of section
17 1397C(b), and

18 “(iii) which is not described in section
19 144(c)(6)(B).

20 “(B) SPECIAL RULE.—For purposes of
21 subparagraph (A), tangible property that ceases
22 to be a qualified Hurricane Laura recovery op-
23 portunity zone business property shall continue
24 to be treated as a qualified Hurricane Laura re-

1 covery opportunity zone business property for
2 the lesser of—

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

6 “(ii) the date on which such tangible
7 property is no longer held by the qualified
8 Hurricane Laura recovery opportunity
9 zone business.

10 “(e) APPLICABLE RULES.—

11 “(1) TREATMENT OF INVESTMENTS WITH
12 MIXED FUNDS.—In the case of any investment in a
13 qualified Hurricane Laura recovery opportunity fund
14 only a portion of which consists of investments of
15 gain to which an election under subsection (a) is in
16 effect—

17 “(A) such investment shall be treated as 2
18 separate investments, consisting of—

19 “(i) one investment that only includes
20 amounts to which the election under sub-
21 section (a) applies, and

22 “(ii) a separate investment consisting
23 of other amounts, and

1 “(B) subsections (a), (b), and (c) shall
2 only apply to the investment described in sub-
3 paragraph (A)(i).

4 “(2) RELATED PERSONS.—For purposes of this
5 section, persons are related to each other if such
6 persons are described in section 267(b) or 707(b)(1),
7 determined by substituting ‘20 percent’ for ‘50 per-
8 cent’ each place it occurs in such sections.

9 “(3) DECEDENTS.—In the case of a decedent,
10 amounts includible in gross income under this sec-
11 tion shall, if not properly includible in the gross in-
12 come of the decedent, be includible in gross income
13 as provided by section 691.

14 “(4) REGULATIONS.—The Secretary shall pre-
15 scribe such regulations as may be necessary or ap-
16 propriate to carry out the purposes of this section,
17 including—

18 “(A) rules for the certification of qualified
19 Hurricane Laura recovery opportunity funds for
20 the purposes of this section,

21 “(B) rules to ensure a qualified Hurricane
22 Laura recovery opportunity fund has a reason-
23 able period of time to reinvest the return of
24 capital from investments in qualified Hurricane
25 Laura recovery opportunity zone stock and

1 qualified Hurricane Laura recovery opportunity
 2 zone partnership interests, and to reinvest pro-
 3 ceeds received from the sale or disposition of
 4 qualified Hurricane Laura recovery opportunity
 5 zone property, and

6 “(C) rules to prevent abuse.

7 “(f) FAILURE OF QUALIFIED HURRICANE LAURA
 8 RECOVERY OPPORTUNITY FUND TO MAINTAIN INVEST-
 9 MENT STANDARD.—

10 “(1) IN GENERAL.—If a qualified Hurricane
 11 Laura recovery opportunity fund fails to meet the
 12 90-percent requirement of subsection (d)(1), the
 13 qualified Hurricane Laura recovery opportunity fund
 14 shall pay a penalty for each month it fails to meet
 15 the requirement in an amount equal to the product
 16 of—

17 “(A) the excess of—

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

20 “(ii) the aggregate amount of quali-
 21 fied Hurricane Laura recovery opportunity
 22 zone property held by the fund, multiplied
 23 by

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

1 “(2) SPECIAL RULE FOR PARTNERSHIPS.—In
2 the case that the qualified Hurricane Laura recovery
3 opportunity fund is a partnership, the penalty im-
4 posed by paragraph (1) shall be taken into account
5 proportionately as part of the distributive share of
6 each partner of the partnership.

7 “(3) REASONABLE CAUSE EXCEPTION.—No
8 penalty shall be imposed under this subsection with
9 respect to any failure if it is shown that such failure
10 is due to reasonable cause.”.

11 (b) BASIS ADJUSTMENTS.—Section 1016(a) of the
12 Internal Revenue Code of 1986 is amended by striking
13 “and” at the end of paragraph (37), by striking the period
14 at the end of paragraph (38) and inserting “, and”, and
15 by inserting after paragraph (38) the following:

16 “(39) to the extent provided in subsections
17 (b)(2) and (c) of section 1400AA-2.”.

18 (c) CLERICAL AMENDMENT.—The table of sub-
19 chapters for chapter 1 of the Internal Revenue Code of
20 1986 is amended by adding at the end the following new
21 item:

 “SUBCHAPTER AA. HURRICANE LAURA RECOVERY OPPORTUNITY ZONE”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect on the date of the enactment
24 of this Act.

1 **SEC. 3. SENSE OF THE CONGRESS RELATING TO MAINTAIN-**
2 **ING CAPITAL GAINS RATES.**

3 It is the sense of Congress that the rate of tax on
4 income from capital gains (as in effect on the date of the
5 enactment of this Act) should not be changed.

○