HB 224

Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 224 (Delegate Palakovich Carr, *et al.*)
Ways and Means Budget and Taxation

Opportunity Zone Tax Deduction Reform Act of 2020

This bill requires a person to add back to Maryland adjusted gross income or Maryland modified income the amount of capital gains excluded under the federal Qualified Opportunity Zones Program. **The bill takes effect July 1, 2020, and applies to tax year 2020 and beyond.**

Fiscal Summary

State Effect: State finances are not expected to be materially impacted in the near term.

Local Effect: Local revenues are not expected to be materially impacted in the near term. Local expenditures are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law: The Federal Tax Cuts and Jobs Act of 2017 established the Qualified Opportunity Zones Program to incentivize private investment in certain communities. Under the Act, states may nominate up to 25% of specified low-income census tracts for designation by the U.S. Treasury as opportunity zones.

The program offers three federal tax incentives related to capital gains: (1) a temporary tax deferral for capital gains reinvested in an Opportunity Fund; (2) a step up in basis for capital gains reinvested in an Opportunity Fund, which excludes up to 15% of the original capital gain from taxation; and (3) a permanent exclusion from taxable income of capital gains from the sale or exchange of an investment in an Opportunity Fund, if the investment is held for at least 10 years. Investors and investments must also meet numerous other requirements.

Qualifying investments may only be made through calendar 2026. The opportunity zone designations expire on December 31, 2028, but the tax benefits for existing investments may be claimed through at least calendar 2047.

Maryland generally conforms to federal tax law, so any capital gain deferred or excluded under the program is also deferred or excluded under the Maryland income tax.

Background: The U.S. Treasury has designated a total of 8,769 zones, of which 149 are located in Maryland. The U.S. Joint Committee on Taxation estimates the program will reduce federal revenues by about $3.4 billion annually throughout the next five federal fiscal years.

In addition to federal and state tax benefits, Chapter 211 of 2019 established the Opportunity Zone Enhancement Program. Administered by the Department of Commerce, the program provides enhanced incentives for qualifying businesses within an opportunity zone. Qualifying businesses within an opportunity zone may qualify for enhanced incentives under the following tax credit programs (1) job creation; (2) One Maryland; (3) enterprise zone; (4) biotechnology investment incentive; (5) cybersecurity investment incentive; and (6) More Jobs for Marylanders.

State Fiscal Effect: Under current law, Maryland conforms to the federal tax treatment of capital gains eligible for special treatment under the federal Qualified Opportunity Zones Program. The bill requires a person to add back the amount of capital gains that are excluded under the program, thereby making these gains taxable for State income tax purposes. In general, capital gains may be excluded under the federal program if an investment is held for at least 10 years. Accordingly, the bill will increase State revenues, but any impact is not expected to occur until fiscal 2028.

Small Business Effect: Small businesses that receive investments through the program or small business qualified investment funds may be negatively impacted by the loss of State and local tax benefits.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 263 (Senator Rosapepe) **-** Budget and Taxation.

Information Source(s): U.S. Joint Committee on Taxation, Department of Legislative Services

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