sifma

Invested in America

January 28, 2020

The Honorable Guy Guzzone, Chair
Senate Budget and Taxation Committee
3 West
Miller Senate Office Building
Annapolis, MD 21401

RE: SB 216 – An act relating to taxation – Oppose unless amended

Dear Chair Guzzone and Members of the Senate Budget and Taxation Committee:

The Securities Industry and Financial Markets Association ("SIFMA")[1] is a national trade association which brings together the shared interests of hundreds of broker-dealers, banks and asset managers. We appreciate the opportunity to provide comments on SB 216, legislation which would impose an additional 17% tax on "Maryland taxable income that is attributable to investment management services."

It is our understanding that this bill is intended to close a perceived tax gap related to the taxable income of certain investment fund managers at the federal level, known as "carried interest." While we have reservations about the policy of attempting to remedy perceived gaps in federal tax law at the state level, our primary concern is that the bill, in its current form, is far broader than necessary to achieve its intended purpose, and it would harm a broad class of employees of financial services firms who do not receive carried interest or benefit from preferential rates.

As you carry out discussions over this bill, we respectfully request that you consider the following adverse consequences of SB 216:

- <u>SB 216 extends beyond private equity funds to employees who receive company stock as part of their compensation</u>.

  The 17% surtax appears to apply to individual employees who have an equity interest in a business, including a partnership, an S corporation, or any other entities that are providing investment, acquisition or financing advice. This broad definition appears to fit many broker-dealer, asset manager and investor advisor employees who receive company stock as part of an employee compensation plan. Employees in many industries receive company stock. It seems unnecessarily punitive to penalize financial services employees with an unprecedented 17% surtax when employees in other industries that receive company stock remain eligible for retirement incentives that often include lower rates on long term capital gains.

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[1] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $18.5 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

Moreover, the surtax seems to apply even when such employees pay ordinary income rates, such as when an employee sells company stock held for less than one year or receives non-qualified dividends. The bill should, at the very least, contain an exclusion for interests held in a public company, and an exclusion for employees of a publicly traded company. In addition, we think you should consider a *de minimis* threshold of ownership and you should exempt ownership interests held through a qualified plan, such as a 401(k) plan, so that employees who own small equity interests in a much larger company are not subject to punitive taxation on their retirement assets.

- SB 216 applies to a broad class of employees who support investment managers.

  SB 216 broadly defines investment services to include "any activity in support of" any investment management service. We are concerned that this language could be interpreted to include not only highly paid investment managers but their assistants and many other categories of employees, such as human resources personnel, who indirectly support an investment manager and who own a small stake in a financial services company as part of an employee stock compensation plan. So interpreted, the bill would unfairly prevent these employees from benefiting from the retirement incentives that employees in every other industry enjoy. Maryland investment management companies would also lose an important means to align the incentives of their employees and shareholders.

- SB 216 improperly extends to proprietary trading firms, family offices and other businesses.

  The definition of "investment management services" would also seem to apply to proprietary trading firms, family offices and other businesses that are investing and managing assets using only the capital provided by their owners. This goes far beyond perceived gaps in federal tax law. Employees of these businesses should be exempt.

- SB 216 fails to consider that not all taxable income from carried interest is taxed at a preferential rate at the federal level.

  Similarly, SB 216 would, in some instances, result in over-taxation. The legislation does not draw a distinction between long-term capital gains and other types of income that are taxed at ordinary rates. This could result in individuals paying the higher federal tax rate and also paying the 17% surtax. The legislation should be modified to make clear that any additional tax is imposed only when the taxpayer's income qualifies as long-term capital for U.S. federal income tax purposes.

- SB 216 discourages investment management firms from locating in Maryland.

  The 17% surtax is likely to discourage investment management firms from locating in Maryland. Those that remain in the State would likely have a harder time attracting and retaining employees. This runs counter to the State's interest in promoting economic development and job growth.

- SB 216 could make it harder for Maryland residents and institutional investors to invest.

  The additional tax on investment management services could also make it more difficult for Maryland pension funds and other businesses to find local asset managers. At a minimum, the increased costs of investing resulting from the surtax is likely to be shared at least in part by the business' clients.

In short, we believe that SB 216 is an overly broad "fix" for a narrow concern that would impose a significant burden on Maryland residents and the firms that employ them. We would encourage you to not move forward with the legislation.

We appreciate your willingness to consider our concerns. Please do not hesitate to contact me at 212-313-1233 or nlancia@sifma.org with any questions.

Sincerely,

Managing Director
State Government Affairs
SIFMA