

BaltimoreCounty_FAV_SB0216

Uploaded by: Byrne, Julia

Position: FAV



JOHN A. OLSZEWSKI, JR.
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BILL NO.: SB 216

TITLE: Income Tax – Carried Interest – Additional Tax

SPONSOR: Senator Pinsky

COMMITTEE: Budget and Taxation

POSITION: **SUPPORT**

DATE: January 29, 2020

Baltimore County **SUPPORTS** Senate Bill 216 – Income Tax – Carried Interest – Additional Tax. This bill imposes a 17% State income tax on the distributive share, or pro-rata share of a pass-through entity’s taxable income. However, this tax does not apply if, during the taxable year, at least 80% of the average fair market value of the specified assets of the entity consist of real estate.

Under current rules, taxation of the carried interest is held until profits are realized on the fund’s underlying assets, a loophole which means carried interest is taxed at a lesser rate than ordinary income. Estimates by the Congressional Budget Office suggest that this legislation would increase State tax revenues by over \$40 million a year. This bill potentially offers a financial boost to both the State’s Transportation Trust Fund and Higher Education Investment Fund, a benefit in line with Baltimore County prioritization of education and public transportation.

SB 216 also provides an increase in local highway user revenue funds. Providing aid to local highways is an issue crucial to Baltimore County, and a boost in these funds would provide much-needed transportation support to our residents.

Accordingly, Baltimore County requests a **FAVORABLE** report on SB 216. For more information, please contact Chuck Conner, Chief Legislative Officer, at 443-900-6582.

MDDCAFLCIO_SUPPORT_SB216

Uploaded by: EDWARDS, DONNA

Position: FAV



MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

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**SB 216 – Income Tax – Carried Interest – Additional Tax
Senate Budget and Taxation Committee
January 29, 2020**

SUPPORT

**Donna S. Edwards
President
Maryland State and DC AFL-CIO**

Chairman and members of the Committee, thank you for the opportunity to provide testimony in support of SB 216 – Income Tax – Carried Interest – Additional Tax. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 340,000 union members in the state of Maryland, I offer the following comments.

Hedge fund and investment managers pay a lower tax rate than restaurant servers, state and county workers, nurses, bus operators, teachers, and everyone else in Maryland that works for a living. Carried interest income is taxed much lower than income derived from wages. This special treatment for those who earn their money by investing the income of others undermines the value of all of our labor.

SB 216 corrects this inequality by applying a 17% state income surtax on the pass-through income that is attributable to investment management services provided in Maryland. The Fiscal and Policy shows that the State will gain an additional \$44 million per year in revenue, providing much needed resources to help fund our priorities.

It is time to bring our tax laws in line with our values. The dignity of all workers should be honored, and investment fund managers need to pay their fair share.

We urge a favorable report on SB 216.

AFT_FAV_SB216

Uploaded by: English, Marietta

Position: FAV



A Union of Professionals
AFT-Maryland

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Marietta English
PRESIDENT

Kenya Campbell
SECRETARY-TREASURER

**Written Testimony from the AFT-Maryland
SB 216 - Income tax – Carried Interest – Additional Tax
Senate Budget and Taxation Committee
January 29, 2020**

SUPPORT

Good afternoon Mr. Chair and members of the Senate Budget and Taxation Committee. On behalf of the 20,000 state, municipal, and public education workers residing in Maryland, AFT-Maryland enthusiastically calls for a favorable report for SB 216, the bill that closes the tax loophole which allowed investment fund managers to be taxed at an artificially low tax rate.

AFT-Maryland is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We have historically supported bills such as these in previous years precisely because of this principle. We believe that in order to have a strong democracy that protects the common good, each community must have the proper resources to provide needed services. This means local and state governments, as well as the federal government, should design fair, efficient, and transparent revenue systems that require the wealthy and corporations to live up to their responsibilities. Currently, the tax treatment of private equity and hedge funds does not meet this standard.

However, this year, with the public having very important discussions on how the state can pay for fundamental residential and educational services—including, but not limited to, funds needed to adequately meet the needs of our state’s students as judged by the Kirwan Commission, as well as resources necessary to assure proper staffing in state agencies—, passage of bills like these that work to close tax loopholes is vital. Maryland can no longer afford loopholes such as these where a limited few—largely quite privileged and wealthy—are given fiscal advantages that are unavailable to the typical resident. According to a study by the Institute on Taxation and Economic Policy, Maryland has the 38th most unfair state and local tax system in the country. This means a disproportionate share of state and local taxes are paid by middle and low income residents. To wit, the study found that in 2015 the richest one percent in the state—those tax filers making more than \$481,000 per year—paid 6.7% of their family income in state and local taxes. The bottom 99 percent paid taxes ranging from a high of 10.3% (for those making between \$44,000 and \$67,000) to a low 8.5 percent (for those making between \$11,000 and \$211,000) of their family income in state and local taxes. No income group pays less as a share of their family income in state and local taxes than the top one percent in the state.¹

It is for these reasons, AFT-Maryland calls for a favorable report of SB 216 from this committee.

¹ Institute on Taxation and Economic Policy, “Who Pays? Maryland” (2015)
<http://www.itep.org/whopays/states/maryland.php>

SB 216 - Testimony of Support (1)

Uploaded by: Francaviglia, Joe

Position: FAV



Testimony in Support of Senate Bill 216 - Income Tax - Carried Interest - Additional Tax

Budget and Taxation Committee - January 29th, 2020 - 1:00 pm

Strong Schools Maryland supports Senate Bill 216, a bill providing a 17% tax on specific entities taxable income that is attributable to investment management services provided in the State.

Strong Schools Maryland is a nonpartisan, nonprofit, 501(c)(3) organization whose sole mission is to establish a world-class public education system for every student in Maryland. We are composed of thousands of volunteers and supporters in nearly every county in the state. Our supporters consist of parents, grandparents, small business owners, retirees, students, teachers, and Marylanders from every background and age. We have built support for implementing and fully funding the 10-year phase in of the Kirwan Commission's recommendations.

A strong public school system is critical to the long term success of our state. In order to build strong schools in every Maryland community, we must implement a new, equitable, accountable, and sustainable funding formula based on the Kirwan Commission's recommendations. A sustainable funding source is critical in order to keep the promise our state has made to families as well as meet our constitutional obligation of a thorough and efficient public education system supported and maintained by taxation¹. To that end, Strong Schools Maryland supports Senate Bill 216 to contribute to the several sources of revenue, both current and new, that will be required to fully fund the Kirwan recommendations.

When we invest in our public schools, we make our economy stronger, we reduce crime, lower healthcare costs, and provide opportunities for all Marylanders to lead a life of their choice. It is critical that we support efforts that will help fund a public school system that will allow every child, regardless of where they live or which public school they attend, to receive a world-class education. It is not just the right and moral choice, it is the smart economic investment as well.

We urge the committee to issue a favorable report for Senate Bill 216.

¹ Constitution of the State of Maryland, Article 8, Section 1

SB 216_ACY_Support_Gardiner

Uploaded by: Gardiner, Shamoyia

Position: FAV

ADVOCATES



FOR CHILDREN AND YOUTH

To: Chair Guzzone and members of the Budget and Taxation Committee
From: Shamoyia Gardiner, Education Policy Director
Re: Senate Bill 216: Income Tax - Carried Interest - Additional Tax
Date: January 29, 2020
Position: Support

Advocates for Children and Youth (ACY) is a member organization of the Maryland Fair Funding Coalition. ACY generally supports the policy recommendations offered by the Commission on Innovation and Excellence in Education, including but not limited to: each of the Blueprint's four guiding principles; early supports and interventions for young children and their families; college and career readiness; additional supports and services for students who need them; additional resources, supports, and services for children living in high-need communities; equitable learning outcomes; and equitable distribution of funding across and within jurisdictions.

For years, Maryland has funded public education in a regressive manner, allocating resources to jurisdictions inequitably. This has resulted in some jurisdictions with students who face significant non-academic and academic barriers to learning being underfunded while jurisdictions with less severe student need receiving funds above and beyond what they require.¹ Disturbingly, this regressive funding model has racialized implications, with the three jurisdictions serving half of the students of color in Maryland being the most persistently underfunded: Caroline and Prince George's counties, as well as Baltimore City.²

Students, families, and communities in every jurisdiction of Maryland stand to benefit from the passage of the Commission's recommendations into law, **provided that they are accompanied by a sustainable, dedicated funding source.** The Blueprint for Maryland's Future Fund is integral to ushering in a new era of public education in Maryland; one which starts with a world-class system of public education and ensures equitable access to opportunities so all students thrive.

Senate Bill 216 will require wealthy fund managers to pay their fair share of taxes on special income, generating more than \$45 million in new annual revenue for the state. With the expectation that this new revenue will be directed in large part to the Blueprint for Maryland's Future Fund, ACY strongly urges a favorable report on SB 216.

¹ The Urban Institute. "Do Poor Kids Get Their Fair Share of School Funding?" https://www.urban.org/sites/default/files/publication/90586/school_funding_brief.pdf May 2017.
² The Education Trust, 2017.

MD Commitee testimony 2020.docx

Uploaded by: Khan, Charles

Position: FAV



Wednesday, January 29, 2020

Budget and Taxation Committee - Bill Hearing SB-216

1:00 PM - West Miller Senate Building, Room 3, Annapolis, MD

Testimony: Charles Khan, Organizing Director, Strong Economy For All Coalition

Good afternoon members of the Senate Budget and Tax Committee. My name is Charles Khan, and I serve as the Organizing Director of the Strong Economy for All Coalition. Chairman Guzzone, thank you for the opportunity to present testimony today.

Strong Economy for All is a labor-community coalition working on issues of economic fairness, jobs, income inequality and effective government policies to promote broad prosperity.

We are made up of some of New York's most effective unions and community organizations, within NY and across the country

Strong for All was established to fight for policies and programs that will address income inequality, and we'd like to say clearly and directly that fair-share tax policies are essential to addressing economic inequality in the United States, properly funding needed investments in our future, and assuring broader prosperity for all Americans.



We urge the General Assembly to take action to repatriate revenue lost to the federal-level carried interest loophole and bring it to Maryland for new investments in schools, jobs, housing, and essential government services. We urge passage of legislation introduced to close the loophole, and suggest that the General Assembly consider incorporation of its language into this year's state budget.

Across the country states stand to gain hundreds of millions if not billions of dollars by acting where the federal government has failed. Elected officials on both sides of the aisle have called for closing something known as the "carried interest loophole," a legal fiction used by wealthy financiers to lower their federal tax rates below those paid by many working Americans.¹

Unfortunately the Federal Tax Cut and Jobs Act in 2017 created even more loopholes and reinforced the incredible levels of inequality that already exist across the country.

The loophole is one of the clearest symbols of the inequity that exists in our economy and our tax code. It is among one of the most widely known and widely hated Wall St. loopholes.

¹

www.usatoday.com/story/opinion/2015/09/15/hedge-fund-carried-interest-donald-trump-jeb-bush-editorials-debates/72268922/



Hedge Fund and Private Equity funds are structured as partnerships. The fund manager is the known general partner of the funds, they make decisions about the fund and provide investment expertise. The investors are known as limited partners they supply the capital. It's important to note that general partners invest almost none of their own money. For the services the investment manager provides, he/she charges certain fees.

In both hedge funds and private equity funds, the standard fee structure is "2 and 20". 2% of the total assets per year are taken as the management fee, which is supposed to cover operating costs and 20% of all gains are taken by the fund manager as the performance fee.

This 20% performance fee is where the magic happens for Hedge Funds and Private Equity. Instead of paying the ordinary income rate for what amounts to be a fee for services. They instead claim the capital gains rate which should only be available to the investor. Their justification is that they have invested "sweat equity". Which if you are wondering is not a real or measurable form or equity. By doing this they can pay the 20% long term capital gains rate as opposed to the 37% top rate for ordinary income.²

² <https://www.fas.org/sgp/crs/misc/RS22689.pdf>



This loophole at the federal level amounts to an estimated \$18 billion per year, according to a 2016 analysis by law professor Victor Fleischer.³

Maryland's private equity and hedge funds are very conservatively estimated to be earning \$264 million per year in under-taxed carried interest.

What that means is Senate Bill 216— to recapture this lost revenue by adding a 17% tax on only miscatergorized long term capital gains would add an estimated \$45 million additional dollars to Maryland's general fund every year.

Really closing the carried interest loophole can be boiled down to a fairness issue. Small businesses pay their share of taxes. Hedge Funds don't. Nurses, Teachers and Construction workers pay their share Private Equity Firms don't.

The Strong Economy for All Coalition urges the Legislature to take action to repatriate revenue lost to the federal-level carried interest loophole and bring it to Maryland for new investments in schools, jobs, housing, clean energy infrastructure and essential governments services.

3

www.nytimes.com/2015/06/06/business/dealbook/how-a-carried-interest-tax-could-raise-180-billion.html?_r=0

JewsUnitedforJustice_Fav_SB216#

Uploaded by: Nathan, Sara

Position: FAV

**TESTIMONY IN SUPPORT OF
CARRIED INTEREST LOOPHOLE - SB 216**

Wednesday, January 29, 2020

TO: Chairman Guzzone, Vice Chair Rosapepe, and members of the Budget and Taxation Committee
FROM: Sara Nathan, sonathan06@yahoo.com, 807 Fairland Rd Silver Spring MD 20904

My name is Sara Nathan. I live in Silver Spring in District 14. This testimony is in support of SB216 on behalf of Jews United for Justice. Rabbi Hillel teaches us that we can't separate ourselves from our community; we all have a responsibility for each other's wellbeing and care, including wealthy fund managers.

Brandon learned the number 9! That's a huge accomplishment. He counted eight little plastic bears and then he correctly said "nine" when his teacher added one more. His teacher wrote the number 9 and Brandon said, "nine." We cheered. But Brandon is already 5 years old. It was the 79th day of kindergarten. His peers were learning the numbers 16-20. Some were identifying numbers that are greater or less. Students in a more affluent school might be counting to 100. Brandon is already behind and perpetually trying to catch up.

That's why Governor Hogan and the General Assembly need to fully implement the recommendations from the Kirwan Commission to provide full-day, quality pre-K for 3- and 4-year-olds with highly-trained, well-paid teachers. We need to provide more resources for high-poverty schools – health care, counseling, and social workers to support families. **Passing SB216 is an important part of generating the revenue necessary to fund the Blueprint for Maryland's Future.**

When a student starts out behind, there is a greater risk that he will continue to lag and not meet the basic requirements for a high school diploma. If our school system only prepares Brandon and his peers to be store cashiers or fast food workers, they will quickly be replaced by self-checkout machines, touch screen ordering, and credit card chip readers. They have a right to a decent education and this funding is central to providing that. It is not enough for Hogan to piece-meal cobble together a lesser version of the recommendations.

Over half of MCPS students are African American or Latinx, a third qualify for free or reduced-price meals and roughly a fifth are learning English as a second language. Those students should not face further barriers to their thriving caused by inadequate education funding. The students in the graduating class of 2032, our current kindergarteners, deserve equal opportunity.

Passing SB 216, asking wealthy fund managers to pair their fair share of taxes, would generate nearly \$80 million per year, according to a 2017 fiscal note. We must create a more equitable tax system to raise the funds necessary to provide a great education to all Maryland students. Passing SB216 and closing loopholes that allow the wealthy to abdicate their responsibility to Maryland's next generation is an important step in bringing that vision to life. I respectfully urge a favorable report on SB216.

SB216_JewsUnitedforJustice_Support

Uploaded by: Nathan, Sara

Position: FAV

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CARRIED INTEREST LOOPHOLE - SB 216**

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SB216_Fair Funding Coalition_FAV

Uploaded by: Schumitz, Kali

Position: FAV

MARYLAND FAIR FUNDING COALITION

Testimony in Support of Senate Bill 216 Senate Budget and Taxation Committee

Tax Income of Investment Managers at the Same Rate

The Maryland Fair Funding Coalition is a growing coalition of 25 organizations across the state that are committed to the state raising revenue to provide the resources it needs to make significant new investments in education funding and other essential services.

The Fair Funding Coalition supports proposals focused on eliminating loopholes and tax breaks that benefit special interests and fixing our upside-down tax code, which allows the wealthiest individuals to pay the smallest share of their income in state and local taxes. Fixing our tax system will support significant new state investments in education and ensure that large corporations and wealthy individuals are paying their share for the public services we all rely on.

Our coalition supports SB216, which will close the carried interest loophole that allows wealthy fund managers to pay a special, low tax rate on this income.

This special treatment violates core principles of effective tax policy by taxing similar activities at different rates, shifting tax responsibility away from those who can best afford to pay, and costing the state millions of dollars that could be used to support our schools and other vital public investments.

This legislation would eliminate this special tax break and ask wealthy fund managers to pay their fair share. It would also increase revenue by more than \$40 million annually, according to the fiscal note provided by the Department of Legislative Services. This is new revenue that could significantly contribute to the state's share of the proposed funding needed for the Kirwan commission policy recommendations.

The Kirwan Commission's proposals can only succeed if policymakers back them with sufficient resources. With a wide range of state services stretched thin, the best way to support needed investments in education is to reform Maryland's tax code to make it more effective and more equitable. This is a once-in-a-generation opportunity to invest in our children and our economy.

Therefore, we urge a favorable report on SB216.

SB216_Pinsky_Sponsor

Uploaded by: Senator Pinsky, Senator Pinsky

Position: FAV

PAUL G. PINSKY
Legislative District 22
Prince George's County

Chair
Education, Health, and
Environmental Affairs Committee



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The Senate of Maryland
ANNAPOLIS, MARYLAND 21401

SB216 Closing the Carried Interest Loophole

Carried interest is a loophole in the tax code that allows the managers of hedge funds to pay a lower rate than most individuals.

A hedge fund manager takes 20 percent of all gains on the fund's investments. The tax code treats that income as a "long-term capital gain," which is taxed at a lower rate than ordinary income (which is 39.6% at the maximum).

This income really should be taxed at the normal rate 39.6% because it is not a capital gain (selling stocks, etc. at a gain). Congress was supposed to fix this loophole but has not done so and it is unclear whether they will plug the loophole. This bill (which is supported by the New York Times) would have these funds taxed at the normal rate 39.6% in Maryland until Congress moves ahead with plugging the loophole. According to the fiscal note it would raise over \$70 million in extra revenue in Maryland.

Donald Trump, Hillary Clinton, Bernie Sanders, and Jeb Bush all called for closing a tax break known as the "carried interest loophole."

First: What is a hedge fund? Hedge funds are alternative investments using pooled funds that employ numerous different strategies to earn returns, for their investors. Hedge funds are aggressively managed with the goal of generating high returns. It is important to note that hedge require less regulations than mutual funds and other investment vehicles.

Hedge fund and private equity funds are structured as partnerships. The fund manager is the general partner of the funds, and the investors are limited partners. Investors supply the capital, and the fund manager supplies investment expertise. For the services the investment manager provides, he/she charges certain fees.

In both hedge funds and private equity funds, the standard fee structure is "2 and 20". Two percent of the fund assets per year are taken as the management fee, which covers operating costs. Twenty percent of all gains are taken by the fund manager as the performance fee.

The problem comes from how that twenty percent performance fee is treated for tax purposes. It is clear that this twenty percent fee is compensation for services. According to the Tax Policy Center, the vast majority of tax analysts share this view.

But the hedge fund and private equity industries treat this investment advice as "carried interest" fees, a unique type of income for tax and accounting purposes – not a service income. If we treated the performance fee as a fee for services, it would be federally taxed at the ordinary income level, where the highest marginal tax rate is currently 39.6%

Instead fund managers treat this fee using the carried interest loophole claim as a capital gain. It clearly it is not. It is investment advice. They are managing other people's money. The tax on capital gains is 20% not 39.6%. The difference of 19.6% may not sound like a lot of money, but it is estimated the tax revenue loss from the carried interest loophole is over \$18 billion per year.

State loophole-closing legislation aims to "repatriate" the revenue lost to the loophole back to the states where "carried interest" investment fees were assessed.

The simple method: a state-level 19.6% "carried interest fairness fee" that makes up for the federal-level revenue loss, with the money going to fund essential in-state needs. It is important to note that this bill just covers those entities that categorize their income as capital gains when it is really investment advice and should be taxed at the rate for individual income.

This tax would sunset on the effective date when and if the federal government decides to close the carried interest loophole

SB 216_MSEA_FAV

Uploaded by: Zwerling, Samantha

Position: FAV

**Testimony in Support of Senate Bill 216
Income Tax – Carried Interest – Additional Tax**

**Senate Budget and Taxation Committee
January 29, 2020
1:00 PM**

**Samantha Zwerling
Government Relations**

The Maryland State Education Association supports Senate Bill 216 proposing to impose a 17% income surtax on the distributive or pro-rata share of a pass-through entity's taxable income that is attributable to investment management services provided in Maryland that will benefit the General Fund in ways that can be used to implement the new school funding formula our students and schools need.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our 896,837 students for the careers and jobs of the future. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3 million-member National Education Association (NEA).

MSEA supports passage of an adequate, sustainable, predictable revenue stream that will adequately fund both the operating and construction costs of our public schools. A great public school for every child means our students have updated technology, small manageable classes, safe and modern schools, proper healthcare and nutrition, and have highly qualified and highly effective educators. The work of the Commission on Innovation and Excellence in Education (Kirwan Commission) further recommends improvements to access to Pre-K and Career Technology Education, as well as expansion of the educator workforce and increased salaries to help deliver individualized instruction and recruit and retain the best workforce in the country.

The Kirwan Commission has determined that Maryland will need to invest substantially more resources into education for our citizens become truly successful in the very competitive national and global economies. This is the time to be locating and allocating more resources to education, and Senate Bill 216 is part of that funding solution. Our kids can't wait.

MSEA urges a favorable report of Senate Bill 216.

MD Statement For The Record (003)

Uploaded by: Constantino, Louis

Position: UNF



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

January 29, 2019

Re: Oppose Senate Bill 216

Dear Chairman Guzzone and Members of the Committee:

Managed Funds Association (“MFA”) welcomes the opportunity to submit this written statement in opposition to SB 216, *Income Tax – Carried Interest – Additional Tax*. MFA represents the world’s largest alternative investment funds and is the primary advocate for sound business practices for hedge funds, funds of funds, managed futures funds, and service providers. MFA’s members manage a substantial portion of the approximately \$3 trillion invested in hedge funds around the world. Our members serve pensions, university endowments, and charities, among others, including many Maryland-based institutional investors.

MFA’s members are a valuable component of the capital markets. They provide liquidity and price discovery to capital markets, capital to companies seeking to grow or improve their businesses, and important investment options to investors seeking to increase portfolio returns with less risk, such as pension funds trying to meet their future obligations to plan beneficiaries. Our members’ skills help their customers plan for retirement, honor pension obligations, and fund scholarships, among other important goals.

MFA supports fair taxation of all businesses and investors and opposes discriminatory taxes that impose punitive tax rates on specific businesses for reasons other than sound tax policy. Policymakers may believe that SB 216 seeks to address perceived gaps in the tax treatment of carried interest income. However, the bill instead would increase the combined marginal tax rates on hedge fund managers from the current 49.75 percent to 66.75 percent by applying the surtax to income that is already subject to the highest federal tax rates. Further, while the bill title suggests the proposed 17 percent surtax would be applied to carried interest income, the bill instead imposes a surtax on investment management services income that is unrelated to carried interest income, including fee income that is already taxed as ordinary income at the federal and state level.

As a result, the bill would impose an uneconomical 66.75 percent combined marginal tax rate on hedge fund managers, making the business uneconomical for Maryland-based hedge fund managers. Because the bill would apply to non-Maryland residents with respect to income attributable to Maryland, many out-of-state hedge fund managers will face the same uneconomic tax rate on the services they provide to Maryland investors, which could significantly limit the investment options for Maryland pensions, endowments, foundations, and other institutional investors. If Maryland were to enact the bill, it would be the first state in the country to impose this kind of surtax on the investment

management industry, putting the state at a significant competitive disadvantage to other states. Ultimately, the negative economic consequences of enacting SB 216 will outweigh the perceived tax revenue of the surtax.

In considering the likely effects of SB 216, it is important for policymakers to understand the federal tax treatment of the income earned by hedge fund managers. Hedge fund managers typically earn fee income (either based on assets under management or performance-based), which is taxed as ordinary income at the federal and state level, and carried interest income. Despite the rhetoric, carried interest income is not automatically taxed at the lower long-term capital gains rate at the federal level. Indeed, for most hedge fund managers, their carried interest income is taxed at ordinary income tax rates. Under federal tax law following enactment of the Tax Cuts and Jobs Act, investment managers only pay long-term capital gains rates on their carried interest if the funds they manage own investments that generate capital gains income and the fund holds those investments for at least three years. Hedge funds generally are short-term trading and investment vehicles, therefore, unlike other types of private funds, hedge funds typically do not hold investments for the three-year period necessary to generate long-term capital gains. As a result, the carried interest earned by hedge fund managers generally is taxed at ordinary income rates up to 37 percent at the federal level.

SB 216 would apply the 17 percent surtax on (1) investment management services income regardless of the federal tax rate paid on that income and (2) investment management services income that is unrelated to carried interest. Hedge fund managers already typically pay federal taxes on their carried interest and other investment management services income at ordinary rates up to the top 37 percent rate at the federal level, in addition to other taxes, such as net investment income tax or self-employment tax, and state and local taxes. Combined with these existing taxes, SB 216 would increase the combined marginal tax rate from 49.75 percent to 66.75 percent for hedge fund managers. Because SB 216 would impose this punitive tax rate in a discriminatory manner with respect to hedge fund managers, MFA opposes enactment of the bill and encourages policymakers to oppose the bill.

Sincerely,

Louis Costantino Jr.
Executive Vice-President and Managing Director, Government Relations
Managed Funds Association

Cc: The Honorable Paul Pinsky

MARYLAND



Hedge Funds in Maryland

Hedge funds help provide a range of benefits to pension funds and other institutional investors in Maryland, including **diversification and risk-adjusted returns to help deliver reliable returns over time.**

Across Maryland, hedge funds help support retirement security, college education, and the important work done by non-profits and charities.¹

Specifically, over **80 institutional investors in Maryland use hedge funds** to help achieve their unique investment objectives, including more than **20** foundations and non-profit organizations, **25** public and private pension funds, and at least **9** colleges and universities.²

While certain states are making a concerted effort to attract investment firms, including hedge funds, to their lower-taxed jurisdictions, Maryland currently has 39 active hedge fund managers.³

1 Preqin's alternative asset database as of September 2018.

2 Preqin's alternative asset database as of September 2018.

3 Preqin Special Report: Hedge Funds in the U.S., July 2018.

IN NUMBERS



39

Number of active Maryland-based hedge fund managers.



\$21.5bn

Size of the Maryland hedge fund industry.



83

Number of Maryland-based institutional investors active in hedge funds.



6

Number of Maryland-based hedge fund managers with over \$1bn in AUM.



14.17%

Average current allocation to hedge funds of Maryland-based institutional investors active in the asset class.

Source: Preqin, the leading source of data on the alternative asset management industry.

Hedge Funds and Their Role in Capital Markets

What is their purpose?

Hedge funds employ a wide range of investment and trading activities to maximize return while minimizing risk.



PORTFOLIO DIVERSIFICATION

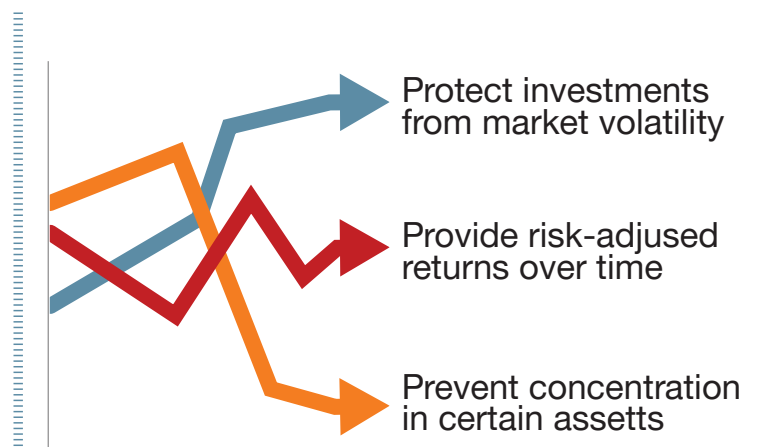


OPPORTUNITIES FOR ASSET GROWTH



RISK MANAGEMENT

Portfolio diversification helps...



Who benefits?

These investments benefit local communities and residents in ways that are not always explained or well-understood. Institutions partner with hedge funds to help:



...Fund retiree benefits and ensure retirement security for 25 major public and private pension plans in MD.

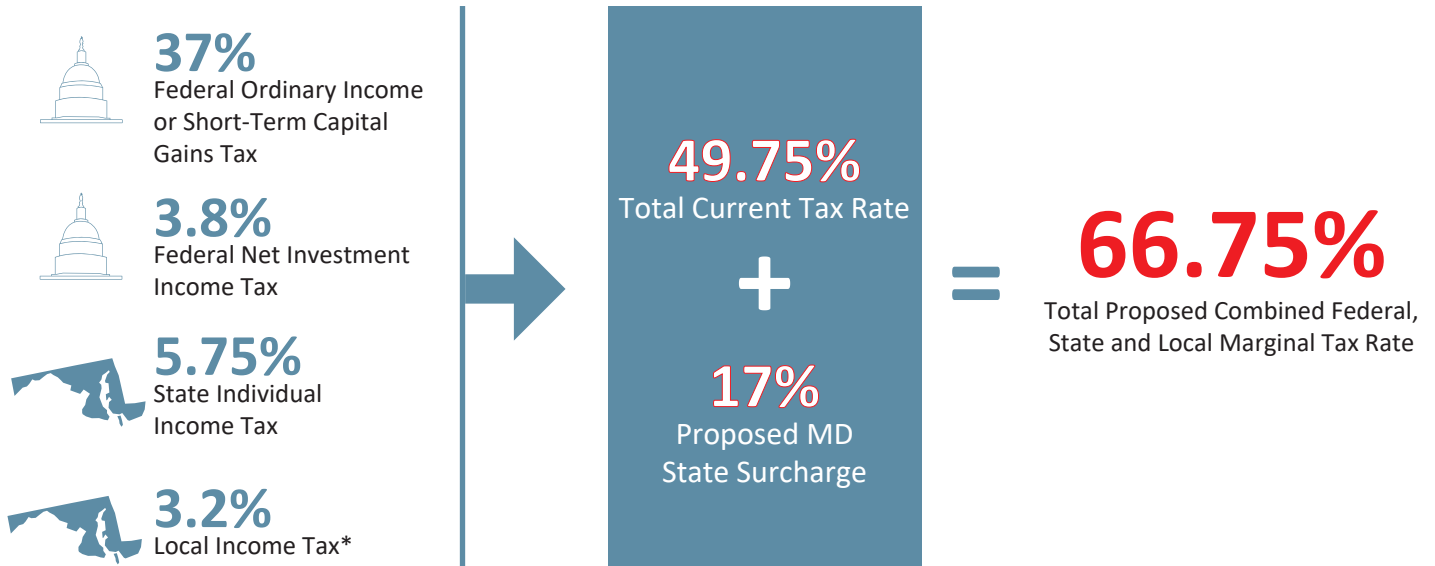


...9 major MD colleges and universities fund investments that provide scholarships, research funding and operating income.

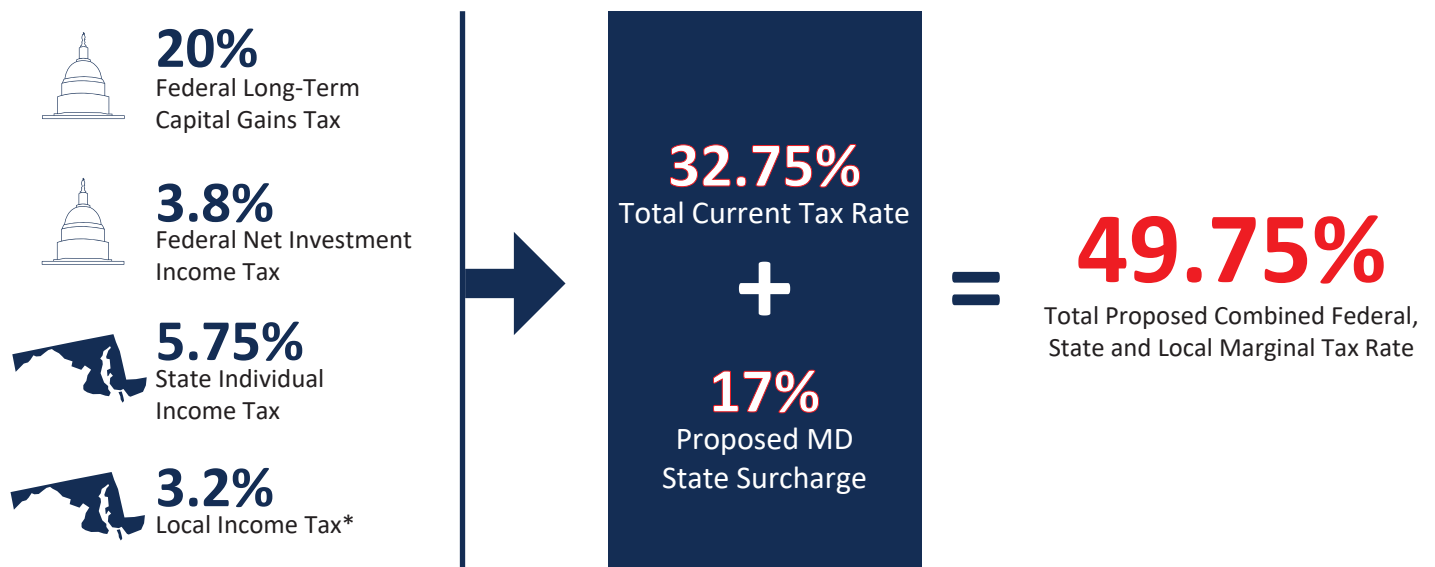


...Fund the work of 20+ foundations and non-profit organizations and endowments in Maryland

CARRIED INTEREST TAX TREATMENT OF AN INVESTMENT MANAGER WITH MORE THAN \$500,000 IN INCOME WITH SHORT-TERM CAPITAL GAINS (ASSETS HELD LESS THAN 3 YEARS)



CARRIED INTEREST TAX TREATMENT OF AN INVESTMENT MANAGER WITH MORE THAN \$500,000 IN INCOME WITH LONG-TERM CAPITAL GAINS (ASSETS HELD LONGER THAN 3 YEARS)



*Note: local income taxes vary by jurisdiction; minimum taxes are at least 1% of Maryland taxable income, and no more than 3.2%

SIFMA SB 216 Comment Letter, Carried Interest

Uploaded by: DiPietro, Chris

Position: UNF



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:

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

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.

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,

A handwritten signature in black ink that reads "Nancy Lancia". The signature is written in a cursive style with a large initial "N".

Managing Director
State Government Affairs
SIFMA

MDChamber_Duckman_Unfav_SB216

Uploaded by: Duckman, Ashley

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 216

Income Tax—Carried Interest—Additional Tax

Senate Budget and Taxation Committee

Wednesday, January 29, 2020

Dear Chairman Guzzone and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 4,500 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic growth for Maryland businesses, employees and families. Part of that work includes evaluating, promoting and maintaining the best approaches for tax policy for the State.

What has come to be known as the “carried interest” issue is a U.S. federal income tax matter, not a Maryland state tax matter. This is because all types of income are taxed at the same tax rate in Maryland. Imposing an additional Maryland tax to make up for a federal tax difference between the capital gains tax rate versus other income tax rate will result in more than tripling the Maryland tax on this income. Simply put, this is bad state tax policy.

Carried interest is a financial term for the profit certain partners and limited liability company (LLC) members receive as a product of their invested capital or for the interest in the partnership or LLC received by these partners or members in connection with investment management activities they perform. As such, it is treated under the Internal Revenue Code as an investment taxable under the capital gains tax, and under Maryland’s tax statute as taxable income.

The federal tax code taxes capital gains separately because they are not salary. Rather, they are investments that can make or lose money. Because of that risk, they are taxed differently, including at a different tax rate. The way in which the tax is currently structured provides an incentive for individuals to invest. This investment helps to start businesses, advance technology and innovation and create the tools needed to help economic development overall.

Importantly, this income is already subject to full income tax in Maryland with respect to residents and nonresident members of pass-through entities. The issue is not one involving Maryland income tax, but one involving the difference in tax rates for U.S. income tax, i.e. the rates for “ordinary income” versus “capital gain.” The bill’s proposed additional tax rate is even obvious in its derivation from the federal tax rates—rates in existence prior to recent federal tax changes. Ordinary income was taxed at a high of 39.6% and capital gain at 20%. There is no such different tax rate structure in Maryland—both ordinary income and capital gains are taxed at the same rate.

If passed, this bill would impose an exorbitant increase in tax, a 17% surtax, on income that is already taxed at Maryland's full state-plus-local tax rate. Maryland's income tax rates are already among the highest in the nation. "Carried interest" is a federal issue that is best addressed by the United States Congress under the Internal Revenue Code. It is not a Maryland tax issue.

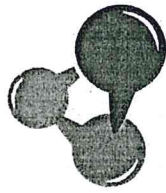
For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **SB 216**.



SB_216_MTC_UNFAV

Uploaded by: Tech Council, Maryland

Position: UNF



MARYLAND TECH COUNCIL

TO: The Honorable Guy Guzzone, Chair
Members, Senate Budget and Taxation Committee
The Honorable Paul G. Pinsky

FROM: Martin Rosendale

DATE: March 2, 2020

RE: **OPPOSE** – Senate Bill 216 – *Income Tax – Carried Interest – Additional Tax*

The Maryland Tech Council (MTC) is a collaborative community, actively engaged in building stronger life science and technology companies by supporting the efforts of our individual members who are saving and improving lives through innovation. We support our member companies who are driving innovation through advocacy, education, workforce development, cost savings programs, and connecting entrepreneurial minds. The valuable resources we provide to our members help them reach their full potential making Maryland a global leader in the life sciences and technology industries. On behalf of MTC, we submit this letter of **opposition** for Senate Bill 216.

Senate Bill 216 imposes a 17% State income tax on the distributive share or pro-rata share of a pass-through entity's taxable income that is attributable to investment management services provided in the State. Under the bill, both the management fee and the realized carried interest for partners in an investment fund are likely subject to a 17% tax.

The Maryland Tech Council opposes Senate Bill 216 because it would hurt many of our over 450 life science and technology member companies developing innovative solutions that save, protect, and improve lives. Attracting venture capital to support Maryland businesses has been one of the largest and most successful public/private partnerships in the State. Support from the State legislature and the Governor's office, combined with extraordinary efforts from State industry associations and businesses, have resulted in record investment levels in Maryland businesses. Legislation like Senate Bill 216 threatens that success. Recently, MTC received an email from the Maryland Venture Capital community that contained the following messages:

"I can tell you that a "carry tax" would potentially stifle funds launching in the State and as you know, more scalable risk capital is needed..."

"This (Senate Bill 216) would seriously negatively impact all the efforts that various entities are making in the community (including us) to try to get more of a Venture Capital community into the State."

Maryland cannot afford the setback created by bills that impede venture investment, stall innovation, or inhibit business growth. For the foregoing reasons, MTC urges the Senate Budget and Taxation Committee to give Senate Bill 216 an unfavorable report.

For more information call:

Richard A. Tabuteau
Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
410-244-7000