Center on Budget and Policy Priorities

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Testimony of

Michael Mazerov, Senior Fellow, Center on Budget and Policy Priorities

Before the

Maryland Senate Budget and Taxation Committee

Hearing on S.B. 263, Opportunity Zone Deduction Reform Act of 2020

February 5, 2020

Chairman Guzzone and Members of the Budget and Taxation Committee, I'm Michael Mazerov, a Senior Fellow with the State Fiscal Policy division of the Center on Budget and Policy Priorities in Washington. The Center is a non-partisan research and policy institute that pursues federal and state policies designed to reduce poverty and inequality and to restore fiscal responsibility in equitable and effective ways. We apply our expertise in budget and tax issues and in programs and policies that help low-income people, in order to help inform debates and achieve better policy outcomes. I appreciate the opportunity to testify this afternoon in support of S.B. 263. Senator Rosapepe's bill would decouple Maryland's individual and corporate income taxes from the capital gains tax breaks for investments in federal opportunity zones created by the 2017 federal tax legislation.

The federal opportunity zone program provides a combination of temporary and permanent reductions in the federal income tax that would otherwise be due on capital gains realized from both the sale of non-zone assets rolled over into "qualified opportunity funds" and the subsequent sale of investments in the funds themselves. Both individuals and corporations can invest in these funds, which in turn invest in real estate developments and operating businesses within designated opportunity zones. Under existing law, Maryland's individual and corporate income taxes provide these same tax breaks because Maryland uses Federal Adjusted Gross Income and Federal Taxable Income, respectively, as the starting point for the calculation of these two taxes.

The most important reason Maryland should decouple its own individual and corporate income taxes from the opportunity zone capital gains breaks is to avoid subsidizing investments in opportunity zone projects located outside our state. The stated investment strategy of many of the funds is to invest in a portfolio of projects in opportunity zones potentially located anywhere in the United States. Others intend to invest in a broader region that may include Maryland, such as the mid-Atlantic. Still others have been established to invest in a single project in a single zone, many of which, again, will be outside Maryland. In short, it is likely that many Maryland residents and many corporations taxable in our state will be investing in opportunity zone funds with some or all their projects located outside the state. It makes no sense whatsoever for Maryland to forgo vitally needed revenue to subsidize out-of-state investments that will provide no benefit to the state's economy or treasury.

Although a few states do not conform to the opportunity zone tax breaks because their personal or corporate income taxes do not automatically link to the federal provisions, to my knowledge only three states to date have proactively decoupled. North Carolina is the only state that has completely decoupled, for both its individual and corporate income tax. Arkansas and Hawaii have decoupled for investments located in other states but grant the tax breaks for investments located in in-state opportunity zones, a misguided policy I will get back to in a moment. As for the rest of the states, I'm convinced that the fact that they are forgoing revenue to subsidize investments in out-of-state zones has simply not hit policymakers' radar screens in most cases. I called attention to this problem in a presentation I gave last August at a meeting of the NCSL Task Force on State and Local Taxation, and it was clear to me from the reaction of the twenty or so legislators present that the issue had occurred to no more than a handful. Likewise, a recent article in the New Hampshire Business Review highlighted the surprise of several members of the tax-writing committees in learning that their corporate income tax was vulnerable to erosion from these tax breaks even though the state does not levy an individual income tax. I am confident that if Maryland takes the completely justified step of decoupling from these unwarranted tax breaks it will draw additional attention to the issue and thereby encourage more states to follow in its footsteps. For example, I have been working with grassroots tax activists in Oregon who are seeking similar decoupling legislation, and they have brought Senator Rosapepe's bill to the attention of their legislators. They are optimistic that Oregon, too, will decouple by the end of its session in early March.

Some Maryland legislators may be tempted to go the route of Hawaii and Arkansas and preserve state capital gains tax breaks for opportunity zone projects located in our state. I strongly urge against this. First, it would raise significant and likely insoluble enforcement problems for the state given that many of the opportunity zone funds will be making investments in multiple states. The capital gains from non-zone investments that will be rolled over into the opportunity zone funds will become subject to taxation no later than 2026, which in many cases will be before opportunity zone projects will be completed. In that event, how could a state determine what share of the initial investment should be granted deferred taxation and/or a lower effective tax rate because it was associated with an in-state investment? Likewise, the state would have to devise – and enforce on its own, since the Internal Revenue Service has no interest in the issue – complicated rules for apportioning the capital gain on any subsequent sale of an interest in an opportunity zone fund between in-state and out-of-state opportunity zone projects.

Second, if Maryland sought to limit the capital gains tax breaks to opportunity zone projects located within its borders, it would be at risk of having that policy overturned by a court holding it to be a violation of the U.S. Constitution's Dormant Commerce Clause prohibition on discrimination against interstate commerce. Courts have held, for example, that limiting the tax benefits of accelerated depreciation write-off to in-state facilities constitutes such a violation, and several years ago a California court held that a state law that sought to limit a capital gains break for the sale of stock in small businesses to businesses located in California was also unconstitutional. Maryland would be at risk of a court issuing a similar decision if it sought to limit opportunity zone capital gains breaks to in-state businesses and, as a remedy, authorizing all residents and all corporations with Maryland nexus that had invested in out-of-state opportunity zone projects to retroactively seek the same tax break for those investments.

Complete decoupling is the right choice. Decoupling doesn't eliminate Maryland's participation in the opportunity zone program, of course. It just means that the federal government will subsidize investments in Maryland opportunity zones with capital gains tax breaks, not Maryland. Because federal income taxes are considerably higher than Maryland's, if any tax breaks incentivized those investments – and even that is questionable – it was the federal tax breaks. There is no justification for Maryland layering on its own.

I've stressed the profound illogic of Maryland forgoing tax revenue to subsidize investment in out-of-state opportunity zone projects, but I would be remiss in not observing that even were this not occurring serious questions about the propriety of forgoing state revenue to subsidize in-state opportunity zone investments should be raised. There is considerable evidence that capital gains tax breaks will flow to many projects that would have occurred anyway and, in some cases, were already planned – no better illustrated than by the controversy surrounding the qualification of the Port Covington development in Baltimore for opportunity zone breaks. There is growing evidence that many of these projects will be oriented toward high-end residential, commercial, and entertainment uses that not only will do little if anything to benefit low-income neighborhoods and their residents but actually create a high probability of displacing them. Given that only capital gains may be used to finance opportunity zone funds, and given that this type of income is overwhelming received by the richest Americans, the possibility that low-income people might receive relative few benefits from many opportunity zone projects is all the more troubling. Finally, as highlighted earlier this week by one of my colleagues on the Center's federal tax policy team, rather than "curb[ing] opportunities for abuse and ensur[ing] that opportunity zones fulfill their ostensible purpose of benefiting low-income areas, final Treasury Department regulations "took some questionable business giveaways that were included in its [initially] proposed regulations and actually expanded them."

For all these reasons, complete decoupling from the federal Opportunity zone capital gains breaks, as proposed by S.B. 263, is the right policy choice for Maryland. Thank you again for the opportunity to testify today.

MDCEP
MARYLAND CENTER ON ECONOMIC POLICY

FEBRUARY 5, 2020

Lawmakers Should Close an Under-the Radar Loophole for Wealthy Investors

Position Statement in Support of Senate Bill 263

Given before the Senate Budget and Taxation Committee

The hastily composed tax law Congress passed in 2017 has had far-reaching consequences for Maryland's economy. The law delivered a windfall to wealthy individuals and large corporations while heightening barriers that hold back many Marylanders of color.[i] It also had major effects on our state's tax code, which relies heavily on federal law to calculate Marylanders' tax responsibilities. One such effect is the creation of a little-noticed loophole that, if left unchecked, will layer state tax breaks for some wealthy investors on top of their new federal tax breaks. The Maryland Center on Economic Policy supports Senate Bill 263, which would close this loophole.

Maryland lawmakers made a number of wise choices in 2018 in response to the Trump administration's signature tax overhaul. The state clarified an ambiguous law that could have cost working families hundreds of millions and halted a new tax break for multimillionaire heirs that would have sprung up automatically without corrective action. However, a new loophole for wealthy Opportunity Zones investors largely flew under the radar. Lawmakers should build on their past smart choices by closing this loophole that Congress opened without their input.

Congress created the Opportunity Zone program as part of the 2017 federal tax overhaul with the ostensible goal of promoting economic opportunity in struggling communities. However, the program's structure virtually guarantees that it will primarily benefit wealthy investors and do little to help the communities our economy leaves behind:[ii]

- The program's core is a set of capital gains tax breaks a recipient can qualify for by investing in Opportunity Zones. This design ensures that the program's benefits will be heavily lopsided, as 65 percent of capital gains in Maryland today go to the wealthiest 1 percent of households.[iii]
- Because the program under certain circumstances allows investors to avoid paying taxes on their profits from Opportunity Zone projects, it effectively steers money toward the projects with the greatest moneymaking potential. These are the exact projects investors would most likely pursue even without tax breaks as well as the projects least likely to benefit struggling communities.

On top of these serious flaws, the program automatically creates a state tax break for Opportunity Zone investors in states that rely on provisions of federal law to calculate individuals' and corporations' tax responsibilities. Any capital gains income the federal government does not tax because of Opportunity Zone subsidies essentially disappears from a person's income for state tax purposes.[iv] Left unchecked, this loophole will cost Maryland more than $70 million over the next five years.[v] Senate Bill 263 is a simple fix that closes this new loophole.

It is not entirely clear whether this loophole is simply a result of the federal tax law's hasty, chaotic drafting process or a deliberate policy choice that received no public scrutiny. What is clear is that Maryland's tax code changed with no input from Maryland lawmakers, in a way that further concentrates wealth and power in a few hands, and in the process made it harder for us to invest in the foundations of our economy. As lawmakers contemplate Marylanders'

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growing list of unmet needs in areas like education, health care, and transportation, they should work to build a revenue system capable of meeting those needs. The path forward is clear—close loopholes for powerful special interests and fix our upside-down tax code—and Senate Bill 263 is a commonsense first step.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Senate Budget and Taxation Committee make a favorable report on Senate Bill 263.

Equity Impact Analysis: Senate Bill 263

Bill summary

Senate Bill 263 changes the way the state calculates income for tax purposes by undoing a federal tax break for capital gains under the Opportunity Zones program. Under current law, the federal tax break automatically translates into Maryland's tax code, allowing investors to pay less in Maryland taxes than they otherwise would.

Background

Maryland's tax code refers extensively to federal law in order to define the income concepts that determine individuals' and corporations' tax responsibilities. This means that federal policy changes can sometimes affect state revenues without any action by Maryland lawmakers. The federal Opportunity Zones program, part of the 2017 Tax Cuts and Jobs Act, is based on federal tax breaks for certain capital gains income. Because of the way the program is structured, these tax breaks automatically flow through to Maryland's tax code. Without legislative action, this loophole is expected to cost more than $70 million between fiscal years 2021 and 2025.

Equity Implications

Interactions between federal Opportunity Zone subsidies and Maryland's tax code pose significant equity concerns:

- The capital gains tax breaks at the center of the Opportunity Zones program are heavily lopsided. Nearly two-thirds of capital gains income in Maryland goes to the wealthiest 1 percent of tax filers.
- The program worsens racial wealth imbalances because a small minority of white families hold nearly two-thirds of all household wealth nationwide,[vi] which is a prerequisite for capital gains income.
- Our state's growing underinvestment in essential services harms all Marylanders and has outsized impacts on people who face economic roadblocks because of low income or the ongoing legacy of racist policy.
- Without legislative action, the automatic capital gains tax cut will make it harder for Maryland to make the kinds of investments that strengthen our economy and build opportunity for everyone.

Senate Bill 263 would mitigate these harms by closing the state tax loophole created by the 2017 federal tax law.

Impact

Senate Bill 263 would likely **improve racial and economic equity** in Maryland.

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[i] Emanuel Nieves, David Newville, Jeremie Greer, and Meg Wiehe, "Race, Wealth, and Taxes: How the Tax Cuts and Jobs Act Supercharges the Racial Wealth Divide," Prosperity Now, 2018, https://prosperitynow.org/resources/race-wealth-and-taxes

[ii] Samantha Jacoby, "Potential Flaws of Opportunity Zones Loom, as Do Risks of Large-Scale Tax Avoidance," Center on Budget and Policy Priorities, 2019, https://www.cbpp.org/research/federal-tax/potential-flaws-of-opportunity-zones-loom-as-do-risks-of-large-scale-tax

[iii] TY 2016 Personal Statistics of Income, Maryland Comptroller.

[iv] Michael Mazerov, "States Should Decouple Their Income Taxes from Federal 'Opportunity Zone' Tax Breaks ASAP," Center on Budget and Policy Priorities, 2019, https://www.cbpp.org/blog/states-should-decouple-their-income-taxes-from-federal-opportunity-zone-tax-breaks-asap

[v] SB 263 Fiscal and Policy Note, http://mgaleg.maryland.gov/2020RS/fnotes/bil_0003/sb0263.pdf

[vi] 2016 Survey of Consumer Finances.

OZ Decoupling Summary (final)

Uploaded by: Senator Rosapepe, Senator Rosapepe

Position: FAV

SB263 / HB224 Opportunity Zone Tax Deduction Reform Act of 2020

Senator Jim Rosapepe & Delegate Julie Palakovich Carr

Decoupling from the Feds on Opportunity Zones

Summary

The 2017 federal tax reforms allow wealthy investors and corporations to write off part or all of their capital gains (e.g. from selling stocks or real estate) taxes when they invest in an opportunity zone fund. Currently, these investors receive a break on both their federal and state taxes, even if the money is invested outside of Maryland.

This bill would decouple Maryland from the federal tax incentives for opportunity zones. If Maryland decouples from the federal government on this particular tax provision, we will retain an estimated $20 million per year that can be used for education or to fill the looming deficit.[1]

Investors in Opportunity Zones are Ultra Wealthy

The federal rules that created opportunity zones specify that only capital gains can be invested in an opportunity zone fund. Capital gains are the profits from the sale of an asset, such as stocks, bonds, or real estate. Less than 10% of American taxpayers have capital gains, and those that do are among the wealthiest Americans. Because of the federal restrictions on what funds can be invested in an opportunity zone, this means that only wealthy people and businesses are able to invest in opportunity zone funds.

As documented in an August 2019 article published by the *New York Times* , the opportunity zone tax breaks will result in billions of dollars in untaxed profits for wealthy investors, including members of President Trump's family and many real estate developers.[2] "Opportunity zones are intended to attract investors to distressed areas," the article stated, "but so far, much of their money is going to create luxury projects… While some money is flowing to poor communities, the most visible impact so far has been to set off a feeding frenzy among the wealthiest Americans. They are poised to

[1] Calculations by Delegate Palakovich Carr. Based on 2017 taxable capital gains realization of $11.4 billion reported to the Comptroller's Office, an assumed investment rate of 10% in opportunity zone funds, and an assumption that the taxpayer is subject to the top individual tax. [2] https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html

reap billions in untaxed profits on high-end apartment buildings and hotels in trendy neighborhoods, storage facilities that employ only a handful of workers or student housing in bustling college towns."

Opportunity Zone Investors Get a Huge Tax Break

Under federal law, investors in opportunity zone funds get three significant benefits. First, they can defer paying capital gains taxes on their original investment until 2026 (or whenever the opportunity zone investment is sold, if earlier), which allows them to invest the entire sum and thereby potentially earn even more money. Second, their tax liability is reduced by 10% if maintain their opportunity zone investment for five years and by 15% if held for seven years. Third, after 10 years, **the investor pays no capital gains taxes** on their profit from the sale of an opportunity zone investment.

The California Budget and Policy Center provides an example of how lucrative these tax breaks are.[2] Imagine a Marylander who invests $100,000 in capital gains in an opportunity zone fund. They leave the money invested for 10 years and gets an annual rate of return of 8%. In total, the resident would now have $215,000–a profit of $115,000. Because of the tax breaks, they would pay $20,230 in federal taxes and save an additional $30,940 on their federal taxes. This results in an effective tax rate of only 9.4% versus the 20% they otherwise would have owed on regular capital gains.

Investors Get Tax Breaks for Investing in Other States

Maryland taxpayers are not limited to investing in opportunity zones in Maryland; they can invest in any state and get a tax break in Maryland under the current law.

Investments outside of Maryland is likely to be fairly common, as most opportunity zone funds plan to invest in multiple states. In fact, a directory of 184 opportunity zone funds lists only one fund that will invest in only Maryland, as opposed to 7 plans that will invest in Maryland plus other states and 63 plans that are nationwide.[3]

Why We Need to Decouple

[2] https://calbudgetcenter.org/resources/the-federal-opportunity-zones-program-and-its-implications-for-calif ornia-communities/

[3] www.ncsha.org/resource/opportunity-zone-fund-directory/

The federal government created tax breaks for opportunity zone investors, but that doesn't mean that Maryland has to further extend these expensive tax breaks. We can save millions of dollars by decoupling our individual and corporate income taxes from the federal government in regards to opportunity zones.

The Institute on Taxation and Economic Policy and the Center on Budget and Policy Priorities—both of which are non-partisan policy research organizations—have recommended that states decouple from the federal government in regards to opportunity zones.

This would be a narrow change in our state tax code and is not tied to decoupling in regards to the standard deduction. Moreover, this change would not impact the tax credits the General Assembly passed in 2019 to incentivize businesses to open or expand in opportunity zones.

Millions of Dollars in Potential Savings for Maryland

Four states do not currently provide state tax breaks for opportunity zone investments.

North Carolina passed legislation to decouple in 2018. Because they decoupled before the federal opportunity zone tax breaks started, the state doesn't have an exact measure of how much money has been saved. (You can't measure something that hasn't happened.) However, according to North Carolina General Assembly staff, they "generally informed members that the fiscal impact could be *significant* . We told them that the fiscal impact could increase significantly in the out-years because some of the tax breaks were not triggered until several years down the road."[4]

California, Massachusetts, and Mississippi base their state tax codes on pre-2017 versions of the federal tax code, which means that they don't give tax breaks for opportunity zones.

Maryland can retain millions of dollars to use for education or closing the deficit by ending the tax breaks for wealthy opportunity zone investors.

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[4] Email to Delegate Palakovich Carr on October 30, 2019.

CDN_FAV_SB 263
Uploaded by: WILSON RANDALL, CLAUDIA
Position: FAV

COMMUNITY DEVELOPMENT
NETWORK OF MARYLAND

Testimony Concerning SB 263
Opportunity Zone Incentives-
Decoupling from the Federal Government on Opportunity Zones
Budget & Taxation Committee
February 5, 2020

Position: Support

The Community Development Network of Maryland (CDN) is the voice for Maryland's community development sector and serves nearly 200 member organizations. CDN—focuses on small affordable housing developers, housing counseling agencies and community-based non-profits across the state of Maryland. The mission of CDN is to promote, strengthen and advocate for the community development sector throughout Maryland's urban, suburban and rural communities. CDN envisions a state in which all neighborhoods are thriving and where people of all incomes have abundant opportunities for themselves and their families.

Opportunity Zones are an ambitious and historic federal undertaking that sought to match the interest of private investors seeking tax relief on unrealized capital gains with the interest of local communities in need of revitalization. The sheer scale and transformative power of the Opportunity Zones had the potential to attract and spur economic activity with broad social benefits equitably-shared in some places, but just as likely to accelerate the type of neighborhood change that results in displacement, dislocation and poor social outcomes for local residents and others. Currently, these investors receive a break on both their federal and state taxes, even if the money is invested outside of Maryland.

This bill would decouple Maryland from the federal tax incentives for opportunity zones. If Maryland decouples from the federal government on this particular tax provision, the state could save $20 million per year that can be used for education or to fill the looming deficit.

How many more tax breaks do wealthy individuals need? Thus far, the Opportunity Zone program is another fairytale of trickle-down economics. This bill seeks to redirect investment of wealthy investors to Maryland. We are eager to close loop holes that reward those with capital gains with little regard for distressed communities, long left behind by history and the market

We urge your favorable consideration of SB 263.

CLAUDIA WILSON RANDALL, ASSOCIATE DIRECTOR, CDN CLAUDIA@COMMUNITYDEVELOPMENTMD.ORG, PHONE 443-756-7819

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Uploaded by: Zinsmeister, Robert
Position: FAV

Associated Builders and Contractors, Inc.
Maryland Joint Legislative Committee

The Voice of Merit Construction

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February 5, 2020

TO: BUDGET & TAXATION COMMITTEE

FROM: ASSOCIATED BUILDERS AND CONTRACTORS

RE: S.B. 263- OPPORTUNITY ZONE TAX DEDUCTION REFORM ACT OF 2020

POSITION: OPPOSE

Associated Builders and Contractors (ABC) opposes S.B. 263 which is before you today for consideration. The bill would negatively impact businesses which are taking advantage of the benefits offered through the Opportunity Zone Enhancement Program. To take away these incentives is ill advised and should not be supported.

On behalf of the over 1,500 ABC business members, we respectfully request an unfavorable report on S.B. 263.

Thank you.

Robert Zinsmeister, Director
Government Affairs

SB 263_MSEA_FAV_Samantha Zwerling
Uploaded by: zwerling, samantha
Position: FAV

maryland state education association

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Annapolis, MD 21401-2003
marylandeducators.org

Testimony in Support of Senate Bill 263
Opportunity Zone Tax Deduction Reform Act of 2020

Senate Budget and Taxation Committee
February 5, 2020

Samantha Zwerling
Government Relations

The Maryland State Education Association supports Senate Bill 263 that would decouple Maryland from the federal tax incentives for investors in Opportunity Zones. The funds freed up from enacting this bill 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 263 is part of that funding solution. Our kids can't wait.

MSEA urges a favorable report of Senate Bill 263.

SB 263.Darmody UNF
Uploaded by: Darmody, Brian
Position: UNF

ASSOCIATION OF UNIVERSITY RESEARCH PARKS

DC Area Office

7761 Diamondback Drive

College Park, MD 20742

February 4, 2020

Dear Chairman Guzzone and Members of the Senate Budget and Tax Committee:

Senate Bill 263: Opposed

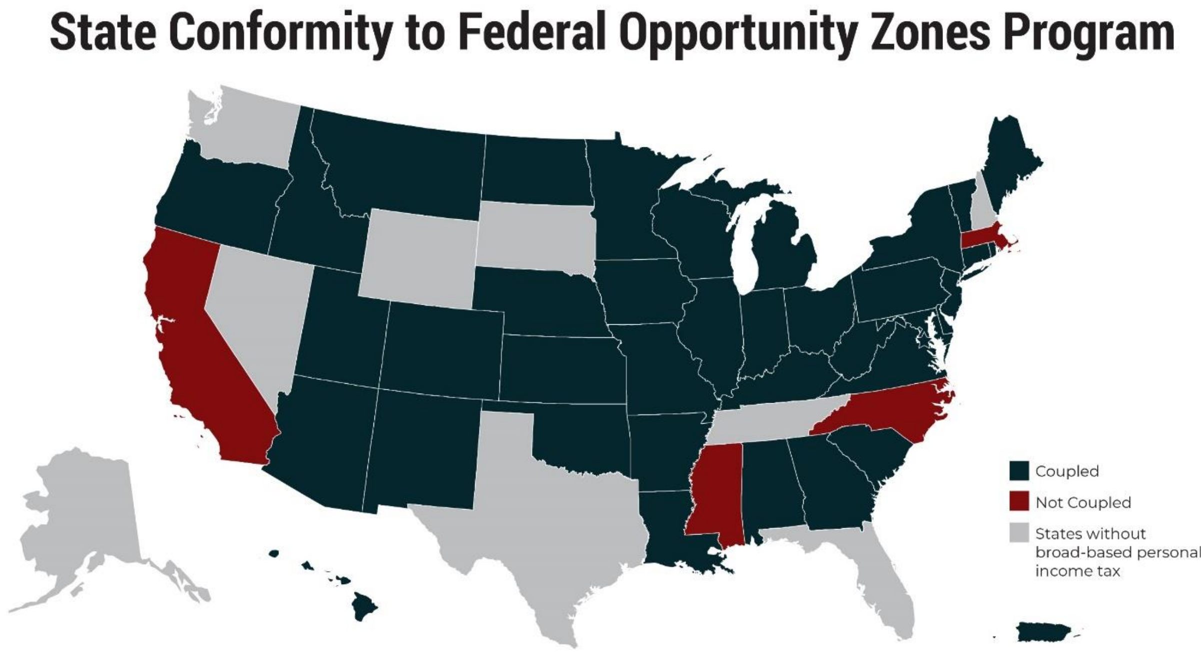
I am Brian Darmody, a lifelong Maryland resident and CEO of the Association of University Research Parks, a global nonprofit that represents communities of innovation in 42 states and 13 countries. Our main office is in the University of Arizona Tech Park and AURP has a Washington DC area office in the University of Maryland Discovery District in College Park, Maryland, a designated Opportunity Zone (OZ).

AURP represents many anchor institutions, including research parks, universities, hospitals, community colleges and other institutions across the U.S. In Maryland, AURP members include UM Discovery District in College Park, UMB Bio Park in Baltimore, BW Tech at UM Baltimore County, Viva White Oak at FDA headquarters and PIC MC at Montgomery College. Verte OZ, an OZ fund based in UMD Discovery District that is raising a $50M fund to invest in tech businesses in OZs, is another AURP member.

Last year, this committee introduced, and the Maryland Senate unanimously passed, SB 561, a bill that augmented the federal OZ incentives and re-enforces responsible, purposeful investment to enhance and uplift communities and was seen nationally as one of the nation's most successful state OZ incentives and policy reforms. I believe SB 263, introduced this year, is flawed for 4 reasons:

First, SB 263 would undercut the General Assembly's and the Administration's effort to attract OZ funds to the state and punish **Maryland investors** in OZs, while leaving out-of-state investors free to take advantage of their own state's conformity with federal treatment of capital gains. As you can see from the chart below, Maryland under SB 263 would be one of only a few states that doesn't conform to federal treatment of OZ capital gains. Under SB 263, OZ investors from Virginia, DC, Delaware or Pennsylvania would not pay state capital gains on OZ investments, but Maryland investors/taxpayers would.

OZs potentially can attract hundreds of millions of new private capital to the state, far outstripping the state tax dollars the General Assembly appropriates to TEDCO and the Maryland Department of Commerce. But OZ investors have choices, and if the state does not have a favorable climate for OZ investing, those dollars will not come to the state or its anchor institutions to supported needed infrastructure and Maryland investors will be denied ability to make investments in their own state. As the recent *Washington Post* article on job growth between Montgomery County and Virginia showed, our state needs to be doing everything it can to attract investments that lead to sustained economic growth.



Source: Institute on Taxation and Economic Policy

Second, besides Maryland investors, SB 263 would also disadvantage many anchor institutions seeking new capital for real estate development and operating businesses around them. Some Anchor Institutions located in OZs in Maryland that potentially would be hurt by this bill include:

Baltimore City:

Pimlico and Preakness Track

Morgan State University

Johns Hopkins Research Park

1100 Wicomico, Pigtown

Coppin State University

UMB Bio Park

Port Covington

Baltimore County:

BW Tech at University of Maryland, Baltimore County

Prince George's County:

UM College Park Discovery District

Montgomery County:

PIC MC Innovation Campus at Montgomery College

Viva White Oak Research Park at FDA headquarters/Adventist Hospital

Anne Arundel County:

Ft. Meade/NSA

Somerset County:

University of Maryland Eastern Shore

Allegany County:

Frostburg State University

Third, this legislation is premature as we are just beginning to see the inflow of OZ funds to support projects. For example, a JHU medical device spin out, Galen Robotics, just received OZ funding from College Park based Verte OZ, and just moved into 1100 Wicomico in Pigtown. We need more investments like this. The investors that would be attracted to OZ funds are not traditional investors, and they will not want to invest in jurisdictions with uncertain investment climates. The final deadline to invest in a Qualified Opportunity fund to achieve a 10-year gain exclusion *is June 28, 2027,* and the final date to *dispose of an OZ investment is December 31, 2047.* We are just at the beginning stages of seeing how the federal OZ program will attract capital gains sitting on the side lines currently to the state of Maryland. There are many years before the state can assess the impact of the federal OZ tax changes on investing in state projects so now is not the time to discourage private investment in Maryland.

Fourth, if there are policy improvements needed for the OZ program, the best way to address them would be to work with the Maryland Congressional delegation to work reforms ***at the federal level***, and not punish Maryland investors by having the state take unilateral action, thus depriving Maryland investor taxpayers and Maryland anchor institutions from receiving potentially hundreds of millions of dollars of private investment in infrastructure and company investment over the next seven years.

I know the sponsor of the legislation is interested in supporting inclusive economic development in the state. However, for the reasons listed above, please give SB 263 an unfavorable report.

Thank you.

Brian Darmody

CEO, AURP

GBC_UNF_SB263
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Position: UNF

POSITION STATEMENT

TESTIMONY PRESENTED TO THE SENATE BUDGET & TAXATION COMMITTEE

SENATE BILL 263 -- OPPORTUNITY ZONE TAX DEDUCTION REFORM ACT OF 2020

February 5, 2020

DONALD C. FRY
PRESIDENT & CEO
GREATER BALTIMORE COMMITTEE

Position: Oppose

The GBC opposes Senate Bill 263, which requires taxpayers investing funds in Opportunity Zones to add to their Maryland taxable income the amount of capital gains that were deferred or excluded under the federal Qualified Opportunity Zones program. The GBC opposes this measure and requests that the tax benefit afforded by the federal Opportunity Zone program be treated as intended without further modifications to Maryland investors. Passage of Senate Bill 263 could make Opportunity Zone investments less attractive to Maryland investors and complicate efforts to make this program beneficial in Baltimore City and the Greater Baltimore region.

The Opportunity Zone benefit, created by the 2017 federal *Tax Cuts and Jobs Act*, was enacted to spur private investment in distressed communities by creating a federal tax incentive for investors in real estate or operating businesses within specified Census Tracts. There are 149 Opportunity Zones in Maryland, 62 of which are in the Greater Baltimore region 42 are located in Baltimore City. Qualified Opportunity Funds can invest in eligible commercial, residential and mixed-used real estate properties and operating businesses located in designated Opportunity Zones. The benefit offered by Opportunity Zones allows investors who reinvest capital gains in a designated census tract to defer or eliminate future capital gains taxes.

The Greater Baltimore Committee supports the Opportunity Zone benefit because it has the potential to create economic opportunity in distressed areas of the State that would benefit from private investment. In particular, Baltimore City has been aggressively seeking Opportunity Zone investments. To increase its prospects for success, Baltimore City had the foresight to create a dedicated Opportunity Zone Coordinator position to ensure a coordinated effort to spur investment. This position is now being created in other cities across the country based on Baltimore City's model.

This bill is inconsistent with two of the key tenets in *Gaining the Competitive Edge: Keys to Economic Growth and Job Creation in Maryland,* a report published by the GBC that identifies eight core pillars for a competitive business environment and job growth:

> **Strategic and effective investments in business growth.** The State must commit to substantive strategic investments, leveraged with capital assets, to nurture business and job growth. Investments should include competitive and effective tax credits, business development incentives, and tactical initiatives to nurture private investments in industry growth.
>
> **Government leadership that unites with business as a partner.** Maryland leaders must set a welcoming tone that communicates positive support for business, respect for the private sector as a partner, not an adversary, and reflects a strategic plan for business growth and job creation.

For these reasons, the Greater Baltimore Committee urges an unfavorable report on Senate Bill 263.

The Greater Baltimore Committee (GBC) is a non-partisan, independent, regional business advocacy organization comprised of hundreds of businesses -- large, medium and small -- educational institutions, nonprofit organizations and foundations located in Anne Arundel, Baltimore, Carroll, Harford, and Howard counties as well as Baltimore City. The GBC is a 65-year-old, private-sector membership organization with a rich legacy of working with government to find solutions to problems that negatively affect our competitiveness and viability.

2020 Priority Issues

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Position: UNF

MARYLAND BUILDING INDUSTRY ASSOCIATION

marylandbuilders.org

The Ripple Effect of Home Building

ECONOMIC IMPACT OF RESIDENTIAL HOME BUILDING IN MARYLAND PER YEAR

Industries Involved

$1.23 BILLION

The jobs, wages and local taxes (including utility connection and impact fees) generated by development, construction and the sale of a home.

Ripple Effect of Wages

$649 MILLION

The wages and profits for local residents earned during the construction period are spent on other locally produced goods and services.

Ongoing, Annual Effect

$420 MILLION

The local jobs, incomes and taxes generated as a result of the home being occupied.

MBIA 2020 PRIORITY ISSUES

Housing Affordability

Safe, decent, housing that is affordable provide fundamental benefits that are essential to the well-being of families and communities. However, owning or renting a suitable home is increasingly out of financial reach of many households. The cost of housing is determined by many factors, including labor and material prices; interest rates and financing costs; federal, state and local regulations; and supply and demand. In today's market, a limited supply of land, a shortage of skilled labor, and rising fees are contributing to higher prices.

Workforce Development

A skilled and capable workforce that is adequate to meet our housing demand is vital to home builders. Despite competitive pay, the home building industry continues to experience labor shortages. This translates into higher housing costs, increased home prices, difficulty completing projects on time, and lower economic growth

Inclusionary Zoning

While the policy offers a solution for the growing need for affordable housing across the state, we must ensure there are appropriate offsets and incentives to compensate for the economic impact to builders and developers.

Transportation/ infrastructure

Traffic congestion in the state is among the worst in the nation. We need to find practical solutions to this problem to get people to their jobs and housing in safe, timely manner.

Adequate Public Facilities Ordinances

APFOs have emerged as a popular planning technique however local jurisdictions' attempts to reduce APF capacities artificially constrain development and negatively impacts jobs growth and economic development.

Forest Conservation

The Forest Conservation Act should be used as one of many tools to maintain Maryland's 40% forest canopy coverage. Currently, Maryland's coverage exceeds the 40% threshold. This is a result of enforcement of the existing FCA and other policies throughout the state. This provides evidence that Maryland's tree canopy policies are working as intended and do not need to change at this time.

Business Climate

Maryland must look for opportunities to assist businesses in navigating regulatory compliance and coordinating the complicated development approval process.

#mbiaworkingforyou

MBIA SB 263 Testimony
Uploaded by: Graf, Lori
Position: UNF

MARYLAND BUILDING INDUSTRY ASSOCIATION
11825 West Market Place | Fulton, MD 20759 | 301-776-6242

February 5, 2020

The Honorable Guy Guzzone
Chairman, Senate Budget and Taxation Committee
Senate Office Building, 3 West
11 Bladen Street
Annapolis, MD 21401

RE: Opposition of Senate Bill 263 (Opportunity Zone Tax Deduction Reform Act of 2020)

Dear Chairman Guzzone:

The Maryland Building Industry Association (MBIA), representing 100,000 employees of the building industry across the State of Maryland, opposes Senate Bill 263 (Opportunity Zone Tax Deduction Reform Act of 2020).

This bill requires a party to add back to Maryland adjusted gross income or Maryland modified income the amount of capital gains deferred or excluded under the federal Qualified Opportunity Zones Program, thereby making these gains taxable for State income tax purposes.

This measure would harm a valuable Maryland program and slow necessary development in vulnerable communities. The Qualified Opportunity Zones Program was created to stimulate private investment in underinvested communities by providing enhanced incentives for qualifying businesses within an Opportunity Zone. Those incentives include allowing capital gains to be deferred or excluded, which frees up financial resources for the businesses to quickly reinvest in a new project in the same neighborhood. Communities are strengthened and made safer with consistent investment, and the current structure helps businesses have the financial flexibility they need to help with that process.

Removing that taxation benefit removes that financial flexibility, which would slow crucial development and redevelopment in Opportunity Zones. Builders and developers want to be a part of the solution, but it has to make financial sense for the business, which is why the Opportunity Zones Program was created. Passing this measure would essentially disincentivize investment in Opportunity Zones.

For these reasons, MBIA respectfully requests the Committee give this measure an unfavorable report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Senate Budget and Taxation Committee Members

MDChamber_Griffin_Unfav_SB263
Uploaded by: Griffin, Andrew
Position: UNF

MARYLAND
Chamber of Commerce

LEGISLATIVE POSITION:
Unfavorable
Senate Bill 263
Opportunity Zone Tax Deduction Reform Act of 2020
Senate Budget and Taxation Committee
Wednesday, February 5, 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 support for sustainable solutions that drive Maryland's future economy, including education, talent pipeline, innovation and economic diversity.

The U.S. Treasury established 149 Opportunity Zones in Maryland as a result of the 2017 Tax Cuts and Jobs Act. This program is designed to provide federal tax incentives for investment in distressed communities over the next 10 years. More than one-third of the established Opportunity Zones in Maryland are in Prince George's County and Baltimore City.

If enacted, SB 263 would require individual and business taxpayers to count capital gains that have been deferred or excluded from their federal adjusted gross income because of investment in a federally recognized Opportunity Zone. Those capital gains would be added to federal adjusted gross income to determine that individual's or business' Maryland adjusted gross income, therefore increasing their Maryland state tax burden.

The Maryland Chamber of Commerce supports any effort to encourage and maintain business development in our state, particularly in those areas most challenged for investment. In the Maryland Department of Commerce's FY 18 annual report, they expected over 900 new jobs to be added in Maryland as a result of the Opportunity Zone program and the investments made by those individuals and businesses. Furthermore, the independent Department of Legislative Services cites SB 263 as having a meaningful negative impact on Maryland's small business community due to declining business investment as a result of the loss of tax benefits. SB 263 threatens the continued investment in Maryland's Opportunity Zones by increasing the costs of doing business and disincentivizing investment. Finally, any expected additions in state revenue as a result of this bill are projected to decrease year over year showing that this add-back initiative is an unreliable revenue vehicle.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **Unfavorable Report** on **SB 263**.

MDCHAMBER.ORG
60 West Street, Suite 100, Annapolis 21401 | 410-269-0642

VerteOZ_Testimony SB 263Mills UNF

Uploaded by: Mills, Len

Position: UNF

VERTE OZ

7761 Diamondback Dr.
College Park, MD 20833

18803 Quarrymen Terrace
Brookeville, MD 20833

Date: February 5, 2020

Position on SB 263: Opposed

My name is Leonard Mills and I am CEO of Verte Opportunity Fund, a Maryland-based, qualified Opportunity Zone Investment Fund (QOF). Verte Opportunity Fund (Verte OZ) is focused on promoting positive economic development by bringing private funding to designated Opportunity Zones in the state of Maryland, and elsewhere. I have spoken to investors and economic development agencies across the country and am well-informed of Opportunity Zone activities in other states.

The federal Opportunity Zone (OZ) initiative was passed with funnel capital gains into real estate and business ventures in economically distressed areas, and thereby promoting positive economic development in those traditionally under-capitalized areas. With the additional incentives provided last year, Maryland is viewed nationally as one of the most progressive in leveraging the Opportunity Zone tax program. And evidence provided by data from the OZ think tank EI (https://eig.org/oz-activity-map) indicates that Maryland has seen more than its share of investment activity in the early days of this tax policy. One aspect of the OZ program that has become increasing apparent in these early days is that OZ investors prefer to invest locally, in their own states and cities. Although it is still early, Maryland is off to a good start in attracting investors and fresh capital to distressed areas in the state.

As CEO of Verte OZ, I have set out to raise $50M in funding to support small businesses in designated OZs. As of today, half of the companies in Verte OZ's dynamic and ever-growing portfolio are based in the state of Maryland and have received investment through our QOF. In 2019, the Verte Opportunity Fund has invested in a revolutionary medical device company that works to commercialize technology developed at Johns Hopkins University. Using the OZ and state incentives, we were able to recruit this firm back to Maryland from Silicon Valley; to the 1100 Wicomico Incubator building in Baltimore City. Verte OZ also invested in an electric vehicle company in 2019, which is co-headquartered in two Maryland OZ's. This company is establishing hubs in OZ's that lease, service, and assemble electric trucks and buses for commercial and municipal fleet operations. It is vital to these investments and others, as well as the Opportunity Zone communities they're impacting, that the state of Maryland continue to maintain a stable and predictable investing climate.

With the passage of SB 263, the OZ investment climate changes deteriorates materially. Under this bill, Maryland would no longer conform to the Federal tax incentives, retroactively back to calendar year 2019. Specifically, investors in Maryland would not receive the OZ tax incentives on their state taxes. Maryland would be one of only a few states that does not conform to the federal OZ tax policies and incentives. This would clearly put MD at a competitive disadvantage relative to most other states. Although investors in Maryland might prefer to invest in the state's businesses and real estate projects, their investment dollars are fungible across state lines. They will simply move their capital to other states and thereby providing needed economic development to those states, rather than Maryland. The OZ program is competitive, and if Maryland legislates less favorable treatment compared to most other states, Maryland losses that competition. And the OZ communities themselves lose the most due to the continuation of a lack of capital for much-needed economic development.

I sincerely thank you for your time and consideration on this matter.

Sincerely,

Leonard O. Mills

Dr. Leonard Mills
CEO, Verte Opportunity Fund

SB 263_Commerce DHCD_Oppose
Uploaded by: Schulz, Kelly
Position: UNF

Maryland
DEPARTMENT OF COMMERCE

Maryland
DEPARTMENT OF HOUSING
AND COMMUNITY DEVELOPMENT

DATE:	**February 5, 2020**
BILL NO.:	**Senate Bill 263**
COMMITTEE:	**Senate – Budget and Taxation**
POSITION:	**OPPOSE**
TITLE:	**Opportunity Zone Tax Deduction Reform Act of 2020**
SPONSORS:	**Sen. Rosapepe**

Description of Bill:

For personal income tax purposes, the State of Maryland uses the federal Adjusted Gross Income (AGI) as the starting point for Maryland Adjusted Gross Income (MAGI). Likewise, for corporate income tax purposes, the State uses federal taxable income as the starting point for determining Maryland modified income (MMI).

Senate Bill 263 adds back to MAGI and MMI any income that is deferred or exempted from federal taxation under § 1400Z-2 of the Internal Revenue Code

Specifically, IRC § 1400Z-2 allows the deferred taxation of capital gains if such gains are invested in an Opportunity Zone. Senate Bill 263 would require that gain to be added back in calculating MAGI and MMI, resulting in the gain being taxed at the State level when it is otherwise nontaxable at the federal level.

Senate Bill 263 will discourage Maryland residents (including individuals, partnerships and corporations) from investing their gains in Opportunity Zones, whether in or outside of Maryland, because they will be taxed on the gains by the State. It will also discourage out-of-State investors from investing in a Maryland Opportunity Zone to the extent such the investors have pre-existing filing obligations with the State because they may need to add back and pay taxes on the gain.

Background

Opportunity Zones are a federal tax incentive created to encourage investment in low income communities. Maryland has designated 149 Opportunity Zones throughout the State. Federal law requires an Opportunity Zone to be a low-income census tract, and generally defines a low-income census tract as a tract where the median family income does not exceed 80% of the area median family income, or the poverty rate is at least 20%.

The poverty rate in Maryland Opportunity Zones is almost 2.5 times higher than the statewide average at 22.9%, with 27% of households earning less than $25,000. In addition to suffering income disparities, Opportunity Zone residents have lower levels of education than the statewide average, and households are twice as likely not to own a vehicle. For these communities, the investments incentivized by Opportunity Zones will spur job creation and other community reinvestment.

Investments in Opportunity Zones are an example of socially responsible investing, where, one hopes, there is both a net positive for investors and communities. However, this bill seeks to discourage Maryland Opportunity Zone investments by diminishing the incentives on the table.

The State of Maryland has, in many ways, been a leader in Opportunity Zones. When the bill creating Opportunity Zones went into effect, because Maryland's tax code was already in alignment with the federal code, we were ready to encourage investment from Day 1. At the time, only 20 states' tax codes aligned with the Internal Revenue Code for purposes of Opportunity Zones. Since then, 16 further states have brought their tax codes into full conformity, while 1 more brought their state only into conformity with IRC § 1400Z-2.

Conclusion:

Maryland already has the tax structure to welcome investments into the most needed communities. By decoupling Maryland from the federal tax benefit offered by the Opportunity Zone program, the State would be placed at a competitive disadvantage for investor capital, while the potential revenue from what the bill seeks to obtain is largely unknown.

The Department of Housing and Community Development and the Department of Commerce respectfully request an **unfavorable report** for Senate Bill 263.

MTC_Richard Tabuteau_UNF_SB0263
Uploaded by: Tabuteau, Richard
Position: UNF

MARYLAND TECH COUNCIL

TO: The Honorable Guy Guzzone, Chair
Members, Senate Budget and Taxation Committee
The Honorable Jim Rosapepe

FROM: Richard A. Tabuteau
Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman

DATE: February 5, 2020

RE: **OPPOSE** – Senate Bill 263– *Opportunity Zone Tax Deduction Reform Act of 2020*

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 263.

Senate Bill 263 requires a person to add back to Maryland adjusted gross income or Maryland modified income the amount of capital gains deferred or excluded under the federal Qualified Opportunity Zones Program. This bill references IRS code section 1400Z-2, which is the deferment of gains for investments in Qualified Opportunity Funds (QOF) investing in Qualified Opportunity Zones. A QOF can buy and sell property and the gain does not have to be recognized until the earlier of the sale of the investment or December 31, 2026. Under this bill, there would have to be reporting on the Maryland K-1 to identify any deferred gains, which could be onerous if the QOF is active in buying and selling.

A fairer way to realize capital gain tax revenue would be to defer the gains until having to be reported on a federal return. Maryland would eventually receive its tax revenue, but the taxpayer would get a deferral and there would be less administrative burden to the QOF. This would still allow the fund to be attractive to invest and to improve certain areas and provide jobs, particularly as it relates to the information technology, cybersecurity, and biotechnology industries. Making the taxpayer pay Maryland tax as they go makes the QOF less attractive to potential investors which also means a QOF may not look to Maryland to invest in our leading industries.

As such, MTC urges the Senate Budget & Taxation Committee to oppose Senate Bill 263.

For more information call:
Richard A. Tabuteau
Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
410-244-7000