SB 113

Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 113 (Senator Rosapepe)
Budget and Taxation

Opportunity Zone Tax Deduction Reform Act of 2021

This bill requires a person to add back to Maryland adjusted gross income or Maryland modified income the amount of capital gains excluded under the federal Qualified Opportunity Zones Program. **The bill takes effect July 1, 2021, and applies to tax year 2021 and beyond.**

Fiscal Summary

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

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

Small Business Effect: Potential meaningful.

Analysis

Current Law: The Federal Tax Cuts and Jobs Act of 2017 established the Qualified Opportunity Zones Program to incentivize private investment in certain communities. Under the Act, states may nominate up to 25% of specified low-income census tracts for designation by the U.S. Treasury as opportunity zones. The U.S. Treasury has designated 149 zones located in Maryland. Qualifying investments may only be made through calendar 2026.

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

Taxpayers who realize capital gains can elect to roll over the gain into the Qualified Opportunity Fund. If the investment is held for at least five years, the basis of the rollover gain is increased by 10%. The basis is increased to 15% for investments held for at least 7 years. The increase in basis generally reduces the amount of the investment subject to taxation. The remaining capital gain rollover gain is recognized and tax paid at the earlier of the time of sale or exchange of the Qualified Opportunity Fund investment or December 31, 2026. If a taxpayer holds the investment for at least 10 years, the taxpayer may elect, at the time of sale or exchange of investment, to increase the basis of investment to its fair market value at the time of sale or exchange. The subsequent additional gain from the Qualified Opportunity Fund investment is generally excluded from taxation.

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

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

State Fiscal Effect: Under current law, Maryland conforms to the federal tax treatment of capital gains eligible for special treatment under the federal Qualified Opportunity Zones Program. The bill requires a person to add back the amount of capital gains that are excluded under the program, thereby making these gains taxable for State income tax purposes.

State finances are not expected to be materially impacted in the near term. Investors may receive a partial exclusion of the capital gains invested in the program if the investment is held for at least 5 years. Taxpayers may exclude the additional gains from the Qualified Opportunity Fund investment only if the investment is held for at least 10 years.

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

Additional Information

Prior Introductions: HB 224 of 2020, an identical bill as amended, passed the House and was referred to the Senate Budget and Taxation Committee, but no further action was taken. Its cross file, SB 263, received a hearing in the Senate Budget and Taxation Committee, but no further action was taken.

Designated Cross File: HB 262 (Delegate Palakovich Carr) - Ways and Means.

Information Source(s): Comptroller's Office; Department of Legislative Services

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