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.