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January 28, 2020

To: The Honorable Anne R. Kaiser
Chair, Ways and Means Committee

From: Hannibal G. Williams II Kemerer, Legislative Director, Office of the Attorney General

Re: HB 67 Income Tax – Exemption – Individuals Erroneously Convicted, Sentenced, and Confined (SUPPORT)

If enacted, House Bill 67 would clarify that the Maryland income tax does not apply to the income of any individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit. It further requires the Comptroller to adopt regulations providing procedures for an individual to apply for and be recognized as erroneously convicted, sentenced, and confined under Maryland law for a crime the individual did not commit.

Under State Finance and Procurement Section 10–501, the Board of Public Works “may grant to an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit an amount commensurate with actual damages sustained . . . due to the confinement.” Such grants are tantamount to damages in tort and should not be taxable as income. *See Blanchfield v. Dennis*, 292 Md. 319 (1982); *see also*, MD. CIVIL PATTERN JURY INSTR. – CIV. 10:12 (5th ed. 2019). Therefore, the Office of Attorney General supports the policy HB 67 seeks to implement by exempting an exoneree’s awards from State income taxes. It will be important for the Comptroller, in adopting regulations under Section 10-104(b) of the Tax Article, to cabin the exemption to grants or tort damages so as not to include an exoneree’s employment income.

cc: Members of the Ways and Means

