MARYLAND
Chamber of Commerce

LEGISLATIVE POSITION:
Unfavorable
Senate Bill 288
Income Tax—Carried Interest—Additional Tax
Senate Budget & Taxation Committee

Thursday, January 21, 2021

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 5,000 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic recovery and subsequent 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 gains 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.

Beyond all of this, we are in the midst of a global pandemic. To say that COVID-19 has had a tremendous, detrimental impact on Maryland's economy would be an understatement, and there is plenty of reason to remain cautious and concerned about its lasting implications. Maryland businesses continue to struggle, and the Comptroller's Office has estimated that approximately 30,000 businesses have either closed or will close permanently due to the pandemic. A period of major economic downturn and future uncertainty is not the time to implement tax measures that stand to negatively impact businesses that are already struggling to overcome the impact of COVID-19.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **SB 288.**