

HB495_FAV_Mazerov.pdf

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1275 First Street NE, Suite 1200
Washington, DC 20002

Tel: 202-408-1080
Fax: 202-408-1056

center@cbpp.org
www.cbpp.org

**Testimony Of
Michael Mazerov, Senior Fellow, Center on Budget and Policy Priorities**

**Before the
Maryland Senate Budget and Taxation Committee**

**Hearing on H.B. 495, Decoupling from Costly Retroactive Federal Tax Changes
March 30, 2021**

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, D.C. 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 to help inform policy debates and achieve better policy outcomes. I appreciate the opportunity to submit testimony in support of H.B. 495 as amended by the House of Delegates.

Delegate Palakovich Carr's bill would close a loophole in Maryland's tax law that allowed several costly changes in federal tax law included in the March 2020 CARES Act to flow automatically into the state's tax law and reduce its revenues by an estimated \$97.5 million in fiscal years 2020 and 2021 combined. Maryland has had a provision in its law for many years ensuring that any federal tax changes that would reduce revenue by more than \$5 million annually do not take effect until the legislature affirmatively decides to recognize them. But when the provision was written, no one considered that Congress might reduce federal taxes retroactively for a tax year earlier than the one already underway. Congress took that virtually (if not completely) unprecedented step in the CARES Act, relaxing limits it had enacted less than three years earlier on the deductibility of business losses and business interest in the 2017 Tax Cuts and Jobs Act and doing so retroactively for tax years 2018 and 2019. Earlier this year, the Comptroller determined that the specific wording of the \$5 million revenue loss provision did not allow it to apply to 2018 and 2019 tax years, circumventing the clear intention of the legislature in enacting the provision to begin with.

I urge the committee to favorably report H.B. 495. Going forward, it closes a loophole that resulted in the kind of large, automatic revenue losses that longstanding state policy had sought to prevent.

I thank the Committee for the opportunity to submit testimony. I may be reached at mazerov@cbpp.org if Committee members have any further questions.

Delegate Palakovich Carr Senate Testimony HB495.pd

Uploaded by: Palakovich Carr, Julie

Position: FAV



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

**Testimony in Support of HB 495
Income Tax - Internal Revenue Code Amendments - Decoupling**

This bill clarifies Maryland's law regarding conformity with federal tax changes.

Maryland Automatically Decouples from Certain Federal Tax Changes

Maryland law currently requires that the state automatically decouple from any federal tax change that is projected to have immediate and significant impact to our revenues.¹ Any federal tax changes that will cost Maryland at least \$5 million in the year that the federal changes were passed does not go into effect in our state that year. For instance, if Congress enacts a change for tax year 2021 during calendar year 2021, Maryland automatically decouples for that year. This one-year pause provides the General Assembly a chance to review the federal law and its impact on our state and to accept or decline it.

State Law Needs Updating

Our state's decoupling law, however, does not account for retroactive federal tax changes. Such changes were unprecedented prior to 2020, when Congress enacted several retroactive tax changes.

The Department of Legislative Services noted in its Issue Papers for the 2021 legislative session² that "the current statute does not contemplate the passage of federal legislation that, in its year of enactment, would alter the computation of taxable income for previous taxable years. A change in the wording of the decoupling statute could better effectuate the intent of the statute to allow the General Assembly the opportunity to accept or reject changes to the federal income tax code that impact prior years."

Andrew Schaufele of the Bureau of Revenue Estimates similarly noted this problem in both of the Comptroller's 60 day reports following the federal CARES Act and the Consolidated Appropriations Act.^{3,4} "I believe the intent of the decoupling language in TG § 10-108 is to prevent a change to the federal tax code from significantly impacting State revenues until the legislature has had the opportunity to either accept (by taking no action and allowing it to

¹ Tax-General §10-108

² <http://dls.maryland.gov/pubs/prod/RecurRpt/Issue-Papers-2021-Legislative-Session.pdf#page=142>

³ CARES Act 60 Day Report, June 12, 2020.

⁴ Consolidated Appropriations Act 60 Day Report, February 19, 2021.

flow-through) or to deny the change (by passing legislation to decouple). However, it appears that the current statute did not contemplate the passage of federal legislation that in its year of enactment, would alter the computation of taxable income for tax periods beginning in prior calendar years.”

What This Bill Does

As passed by the House of Delegates, HB 495 would clarify the intent of Tax-General §10-108 to temporarily decouple the state from both current-year and retroactive federal tax changes. This would give the General Assembly time to evaluate and act before federal reforms impact state revenues. Notably, this change only applies prospectively to future federal tax modifications.

This clarification is especially needed as our status as a part-time legislature could leave the state unable to react in a timely manner to future federal tax changes that occur outside of the legislative session.

HB 495 is a needed clarification that would prevent future revenue shocks and give lawmakers time to think critically about conforming to or decoupling from retroactive federal tax changes before they automatically flow through to our state tax code.

HB0495_CARES_Decoupling_MLC_FAV.pdf

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**TESTIMONY FOR HB0495
INCOME TAX – INTERNAL REVENUE CODE AMENDMENTS AND FEDERAL CARES
ACT - DECOUPLING**

Bill Sponsor: Delegate Palakovich-Carr
Committee: Ways and Means
Organization Submitting: Maryland Legislative Coalition
Person Submitting: Cecilia Plante, co-chair
Position: FAVORABLE

I am submitting this testimony in favor of HB0495 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

The Federal CARES Act did provide some much-needed support during the pandemic. However, it did update the tax code, and without this legislation Maryland would lose over \$100 million in revenues in fiscal years 2020 and 2021. Maryland must join other states in decoupling from the CARES Act provisions that would affect our tax code.

We support this bill and recommend a **FAVORABLE** report in committee.

HB 495_MDCEP_FAV.pdf

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Position: FAV



MARCH 30, 2021

Lawmakers Should Ensure Federal Legislation Doesn't Change State Tax Law Retroactively

Position Statement in Support of House Bill 495

Given before the Senate Budget and Taxation Committee

The Maryland Center on Economic Policy supports House Bill 495 as amended because it would ensure existing guardrails in Maryland tax law function as intended and would protect state revenues from retroactive impacts of future federal legislation.

Because Maryland's tax code automatically incorporates parts of federal tax law, policy changes made by Congress can cost Maryland needed revenue without any input from Maryland policymakers. The General Assembly in 2002 established a common-sense guardrail intended to ensure that federal tax legislation can only alter state law in future years, not the calendar year that has already begun when Congress acts.ⁱ However, the 2002 law leaves open the possibility that federal tax legislation can alter state law for tax years that have already ended. House Bill 495 as amended would fix this oversight for future federal legislation.

House Bill 495 would prevent future situations like the one created by tax provisions in the federal CARES Act. The law softened the blow to Maryland families and communities inflicted by the coronavirus pandemic, but also included a number of misguided business tax breaks that provided little economic benefit. The State Comptroller's Office predicted that automatic incorporation of these tax breaks would cumulatively cost the state \$300 million in lost revenueⁱⁱ—without any input from Maryland lawmakers. This loss was partly the result of CARES act provisions altering taxable income for years 2019 or earlier. House Bill 495 would ensure that similar situations will not occur in the future.

When and How Can Federal Tax Legislation Alter State Law?			
	← Past Years	Year Federal Law Passes	Future Years →
Pre-2002	Federal tax legislation can alter state law	Federal tax legislation can alter state law	Federal tax legislation can alter state law
Current Law	Federal tax legislation can alter state law	State tax law is protected from alteration	Federal tax legislation can alter state law
HB 495 As Amended	State tax law is protected from alteration	State tax law is protected from alteration	Federal tax legislation can alter state law

House Bill 495 as amended would simply bring Maryland law in line with the principle that motivated the General Assembly's 2002 guardrail. Specifically:

- House Bill 495 as amended would apply only proactively and would not change the way federal legislation enacted in 2020 or earlier interacts with the state tax code.
- House Bill 495 maintains the \$5 million floor exempting federal legislation with only minor impacts on Maryland's tax code.

The guardrail strengthened by House Bill 495 is especially necessary to ensure the state can in thriving communities today and in the future. Maryland has been underinvesting in the foundations of our communities ever since the Great Recession, and the fallout from the COVID-19 pandemic has only added to Marylanders' needs:

- The state failed to substantially rebuild funding for local health departments after deep cuts during the Great Recession, forcing staffing and service cuts in every county and weakening our ability to respond to the coronavirus pandemic.ⁱⁱⁱ
- By 2017, only six of the state's 24 school districts were close to full funding under the Thornton formula, down from 23 in 2008. More than half of the state's Black students went to school in a district that was underfunded by 15 percent or more.^{iv}
- As of late 2017, legislative analysts estimated that state agencies were understaffed to the tune of about 2,500 workers.^v

As lawmakers contemplate Marylanders' growing list of unmet needs in areas like education, health care, and transportation, they should work to ensure our revenue system is capable of meeting those needs. House Bill 495 is a common-sense 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 House Bill 495.

Equity Impact Analysis: House Bill 495

Bill summary

House Bill 495 as amended would strengthen a guardrail that prevents federal tax law from altering Maryland tax law retroactively. The bill would apply only for federal laws enacted in 2021 or later, and would maintain a \$5 million triggering floor included in current state law.

Background

Because Maryland's tax code automatically incorporates parts of federal tax law, policy changes made by Congress can cost Maryland needed revenue without any input from Maryland policymakers. The General Assembly in 2002 established a common-sense guardrail intended to ensure that federal tax legislation can only alter state law in future years, not the calendar year that has already begun when Congress acts.^{vi} However, the 2002 law leaves open the possibility that federal tax legislation can alter state law for tax years that have already ended. House Bill 495 as amended would fix this oversight for future federal legislation.

House Bill 495 would prevent future situations like the one created by tax provisions in the federal CARES Act. The State Comptroller's Office predicted that automatic incorporation of federal business tax breaks included in the CARES Act would cumulatively cost the state \$300 million in lost revenue,^{vii} partly because of provisions altering taxable income for years 2019 or earlier.

Equity Implications

Interactions between federal tax breaks and Maryland's tax code pose significant equity concerns:

- 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.
- Under current law, *retroactive* tax breaks in future federal legislation would automatically be incorporated into state law, making it harder for Maryland to make the kinds of investments that strengthen our economy and build opportunity for everyone.
- House Bill 495 as amended would prevent future federal legislation from retroactively altering Maryland tax law.

Impact

House Bill 495 would likely **improve racial and economic equity** in Maryland.

ⁱ Budget Reconciliation and Financing Act of 2002.

ⁱⁱ Comptroller Peter Franchot, “60-day report” letter to Governor Larry Hogan, Senate President William C. Ferguson IV, and Speaker of the House Adrienne A. Jones, June 12, 2020, https://www.marylandtaxes.gov/reports/static-files/revenue/federalimpact/CARES_Act_60_Day_Report_Final_2020.pdf

A smart existing policy of automatically decoupling from certain retroactive federal tax changes may have reduced but not eliminated this cost.

ⁱⁱⁱ Christopher Meyer, “Lessons from the Great Recession: Policymakers Must Reject Deep Budget Cuts for a Strong Recovery,” Maryland Center on Economic Policy, 2020, <http://www.mdeconomy.org/recession-budget-cuts/>

^{iv} Christopher Meyer, “Budgeting for Opportunity: How our Fiscal Policy Choices Can Remove Barriers Facing Marylanders of Color and Advance Shared Prosperity,” Maryland Center on Economic Policy, 2018, <http://www.mdeconomy.org/budgeting-for-opportunity/>

^v David Juppe et al., “Executive Branch Staffing Adequacy Study,” Department of Legislative Services, 2018, <http://dls.maryland.gov/pubs/prod/TaxFiscalPlan/Executive-Branch-Staffing-Adequacy-Study.pdf>

^{vi} Budget Reconciliation and Financing Act of 2002.

^{vii} Comptroller Peter Franchot, “60-day report” letter to Governor Larry Hogan, Senate President William C. Ferguson IV, and Speaker of the House Adrienne A. Jones, June 12, 2020, https://www.marylandtaxes.gov/reports/static-files/revenue/federalimpact/CARES_Act_60_Day_Report_Final_2020.pdf

A smart existing policy of automatically decoupling from certain retroactive federal tax changes may have reduced but not eliminated this cost.

MBIA Testimony HB 495.pdf

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Position: UNF

March 30, 2021

The Honorable Guy Guzzone
Senate Budget and Taxation Committee
Miller Senate Office Building,
3 West Wing 11 Bladen St.,
Annapolis, MD, 21401

RE: HB 495 Income Tax – Internal Revenue Code Amendments and the Federal CARES Act – Decoupling

Dear Chairman Guzzone:

The Maryland Building Industry Association, representing 1,100 member firms statewide, appreciates the opportunity to participate in the HB 495 Income Tax – Internal Revenue Code Amendments and the Federal CARES Act – Decoupling. MBIA Opposes the Act in its current version.

This bill would prevent the retroactive application of federal tax credits for taxable years beginning after 2021. MBIA opposes this measure because of both the timing and the long-term effects of its application. Businesses set out budgets based on anticipated taxes and preventing them from taking advantage of previously available tax deductions. This bill would force substantial revaluation of ongoing activities for businesses and create additional expenses while businesses are already struggling during a period of severe economic restriction.

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: Members of the Senate Budget and Taxation Committee

Letter to Budget and Taxation.pdf

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Position: UNF

DaV Co Restaurants

David Norman
Chief Executive Officer

Honorable Chair and Members of the
Senate Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis, Maryland 21401

March 25, 2021

Re: House Bill 495

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

I would respectfully plead with you to reject House Bill 495 as an inappropriate response to the now multi-year crisis which we as Marylanders and Americans find ourselves in. I am a member of the Maryland restaurant industry, and serve as well as the president of Marylanders for Safe and Sensible Regulations, a local restaurant advocacy group. The past year has seen devastation among numerous small and large businesses in Maryland, but no industry has suffered to the extent of the Hospitality sector, and more specifically the Restaurant industry. We have had to endure waves of complete shut-downs (unlike other retail businesses), then told to invest in special purpose safety equipment and expensive outdoor dining furniture and heaters, and then shut down again. Our restaurants most at risk are the ones with few financial reserves, which are predominantly the minority, immigrant and women-owned restaurants operating in Baltimore City, Baltimore County, Prince Georges County and Montgomery County. These restaurants often struggled with the application process under the PPP, but they all file tax returns every year. Instead of looking for ways to deny restaurants and other Maryland small businesses the immediate financial help which they desperately need, Maryland should be looking for ways to get these businesses enough money now so that they can survive to benefit us all in the future.

As I am sure you are well aware, our industry never expected to base its economic survival solely upon carry-out, delivery and some outdoor dining. The losses we have suffered in 2020 were only slightly compensated for by the Federal PPP loan program (without which very few of us could have survived even to this point), and restaurants large and small are still closing or filing bankruptcy on a daily basis. This past July, one of the largest restaurant groups, which operates all of the

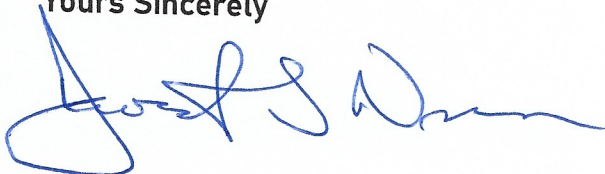
Wendy's and many of the Pizza Huts in Maryland, filed for bankruptcy and is in the process of selling those restaurants which it can, after closing many restaurants.

While the restaurant industry is fraught with economic risk, many of the restaurant owners were at least making a profit, and paying taxes, prior to 2020 and the Pandemic. A package of restaurant specific grants and loans to allow restaurant owners to stay open was included in the American Rescue Plan recently passed by Congress, but the legislation still needs to be interpreted by the Small Business Administration, and it will be months before our financially struggling restaurants will be able to determine if they qualify and how they can apply, and months more before funds are received. Instead, by rejecting the unfair limitations imposed by HB 495, and affirmatively allowing restaurant owners to carry back their losses to recent years in which they made a profit and paid Maryland taxes would be a critical piece of aid which will help them to survive until the Restaurant Revitalization Fund becomes available to all, and sufficient numbers of us are vaccinated so that life can return to (somewhat) normal.

The survival of the restaurant industry is not only critical for those of us who have invested our lives and our savings in restaurants, but it is essential for the economic well-being of the State of Maryland. As the Aspen Institute report established, one in four Americans gets their first job in the restaurant industry, and one out of two Americans works in a restaurant industry associated job at some point in their lives. All communities in Maryland are touched by this – there are well over 100+ restaurants in Baltimore City which are owned by Blacks, and similarly a large number owned by immigrants from all countries around the world. Minorities occupy many of the jobs in the restaurants in Maryland, and are disproportionately impacted by the shut downs, layoffs and job losses. It is my hope that the Legislature will do everything in its power to help save these jobs and this diversity of experience in Maryland. Rejecting the cruel inequity of House Bill 495 would be a great place to start.

Thank you for your service to Maryland, and for your attention to this letter.

Yours Sincerely



David J. Norman

President, Marylanders for Safe and Sensible Regulations