Feb. 2, 2021

The Honorable Anne R. Kaiser, Chair
Ways and Means Committee
House Office Building
Annapolis, Maryland 21401

Re: HB 495, “Income Tax – Internal Revenue Code Amendments and the Federal CARES Act – Decoupling” – OPPOSE

Dear Chair Kaiser and members of the Committee:

The Maryland Association of CPAs represents nearly 9,000 Certified Public Accountants throughout the state. These CPAs work in public practice, private industry, government, non-profit, and education. As trusted advisors, CPAs are keenly aware of the unprecedented pandemic-related challenges facing Maryland’s economy, its employers and its workforce. The accounting profession and the MACPA have been working tirelessly to improve public understanding of how key provisions in the CARES Act and other coronavirus relief legislation can be utilized to support small businesses and bolster Maryland’s economic recovery.

We believe that HB 495 goes in the wrong direction.

Our members report that many of their business clients continue to struggle and are making efforts to adapt as much as possible in order to keep their businesses running and their employees working. Many of the small employers, especially in the agriculture, hospitality, nonprofit and restaurant sector, are closed or operating at a small percentage of their prior revenue levels. HB 495 will add an additional layer of financial complexity for these struggling businesses, and it will eliminate much needed fiscal help from the state. The proposed language in HB 495, which disallows federal CARES Act provisions that provide deductions for excess business losses and expanded business interest expenses, would negatively impact many businesses and especially smaller businesses that have disproportionately suffered as a result of the pandemic.

As proposed, HB 495 does not actually “decouple” from the CARES Act. Instead, it requires an additional modification in 2021 for net operating losses (NOLs) and other deductions that were carried back to prior years under the CARES Act, thus removing these deductions and increasing taxable income for 2021. Businesses that already filed their prior year amended tax returns to secure the cashflow benefits intended by the CARES Act had no way of anticipating this negative result. Additionally, the bill does not address what happens to these items in future periods. Do taxpayers permanently lose these valid deductions or can they be carried forward for Maryland purposes and deducted under pre-CARES Act provisions? If they are allowed to be carried forward, it creates an additional conformity issue between Maryland and the Internal Revenue Code, which will require businesses to track separately. If they are lost, then Maryland taxpayers would be in a worse position than if the CARES Act had never been enacted.

Maryland Art. Tax Gen. §10-108 already decouples from the federal income tax CARES Act relief provisions for the 2020 tax year, including removal of the 80 percent limitation and five-year NOL carryback, availability of excess business loss deduction, and expanded business interest expense deduction. As proposed, HB 495 would add back any Maryland income tax benefits claimed for these federal CARES Act items for businesses' tax years prior to 2020 on their 2021 Maryland tax year returns. This will place these businesses in a competitive disadvantage compared to other states that allow these relief provisions to apply.

The CARES Act was intended to offer emergency assistance to businesses affected by the 2020 coronavirus. If Maryland no longer conforms, the impact of this much-needed assistance is diminished, yet the complexity of compliance, additional complicated record keeping, and associated financial costs will substantially increase for these struggling employers. HB 495 will disproportionately impact small businesses since few have in-house accountants to manage the paper flows. The more time and resources these employers spend on tax compliance, the less time they have to focus on recovery and hiring employees.

Continued conformity with the CARES Act provisions will enable a smoother economic recovery for Maryland, ensuring as many employers as possible can remain in business and employ Marylanders. For these reasons, we respectfully request an unfavorable report for HB 495.

Thank you very much for the opportunity to offer these comments for your consideration.

Sincerely,

MACPA State and Local Tax Advisory Group

cc: Nick Manis, Manis Canning & Associates