HB 262 - Opportunity Zone Tax Deduction Reform Act
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HB 262 – Opportunity Zone Tax Deduction Reform Act of 2021
House Ways and Means Committee
January 21, 2021

SUPPORT

Donna S. Edwards
President
Maryland State and DC AFL-CIO

Madam Chair and members of the Committee, thank you for the opportunity to provide testimony in support of HB 262 – Opportunity Zone Tax Deduction Reform Act of 2021. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 340,000 union members in the state of Maryland, I offer the following comments.

With the passage of the Tax Cuts and Jobs Act of 2017, The Opportunity Zone Program was created, providing federal tax incentives for investment in distressed communities over ten years. The concept was simple and was entered into with the idea of "lifting up" economically areas around the country by giving incentives to invest in those areas, thus creating more and better jobs.

However, with no real job creation standards by which to judge success, nor any solid data on the totality of the economic impact of the program, finding who truly benefits from Opportunity Zones (OZ) can be an opaque endeavor. According to a 2020 study by the Urban Institute, on the efficacy of the OZ program, that found that "*although there are compelling examples of community benefit, the incentive as a whole is not living up to its economic and community development goals. The incentive's structure makes it harder to develop projects with community benefit in places with greatest need. In contrast, OZs are providing the biggest benefits to projects with the highest returns, which are rarely aligned with equitable development*."[1]

Moreover, and even more damning of the OZ program, the study finds that it is spurring relatively little job creation, while disproportionately helping high-profit real estate projects and not small businesses. So many questions have arisen from this program, that earlier in 2020, the

[1] https://www.urban.org/research/publication/early-assessment-opportunity-zones-equitable-development-projects/view/full_report

Treasury Department's inspector general opened an inquiry into the program, at the request of three Federal lawmakers.[2]

We do not need to continue subsidizing this program in the State of Maryland, by keeping our wagon hitched to a potentially problematic Federal program. Passing HB 262 will decouple Maryland tax law from Federal tax law, allowing us to continue to collect the Capital Gains taxes at the state level.

If, in the future, the OZ program is truly fixed, with full accountability and measurable success, along with a track record of sustainable good jobs creation, it might be prudent to realign state tax law with Federal law. Until that time, it is imprudent to spend the tax dollars of Maryland's workers on a program that is opaque and riddled with controversy.

We urge a favorable report on HB 262.

[2] https://www.nytimes.com/2020/06/17/business/trump-opportunity-zone-jobs.html

CBPP_Michael_Mazerov_HB262_FAV.pdf

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Testimony of
Michael Mazerov, Senior Fellow, Center on Budget and Policy Priorities
Submitted for the Record of the
Maryland House of Delegates Ways and Means Committee
Hearing on H.B. 262, Opportunity Zone Tax Deduction Reform Act of 2021
January 21, 2021

Chair Kaiser and Members of the Ways and Means Committee, I am 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 debates and achieve better policy outcomes. I appreciate the opportunity to submit this testimony for the record in support of H.B. 262. Delegate Palakovich Carr's bill would decouple Maryland's individual and corporate income taxes from the capital gains tax breaks for investments in federal opportunity zones created by the 2017 federal tax legislation.

The federal opportunity zone program provides a combination of temporary and permanent reductions in the federal income tax that would otherwise be due on capital gains realized from both the sale of non-zone assets rolled over into "qualified opportunity funds" and the subsequent sale of investments in the funds themselves. Both individuals and corporations can invest in these funds, which in turn invest in real estate developments and operating businesses within designated opportunity zones. Under existing law, Maryland's individual and corporate income taxes provide these same tax breaks because Maryland uses Federal Adjusted Gross Income and Federal Taxable Income, respectively, as the starting point for the calculation of these two taxes.

The most important reason Maryland should decouple its own individual and corporate income taxes from the opportunity zone capital gains breaks is to avoid subsidizing investments in opportunity zone projects located outside the state. The stated investment strategy of many of the funds is to invest in a portfolio of projects in opportunity zones potentially located anywhere in the United States. Others intend to invest in a broader region that may include Maryland, such as the mid-Atlantic. Still others have been established to invest in a single project in a single zone, many of which, again, will be outside Maryland. In short, it is likely that many Maryland residents and many corporations taxable in Maryland state will be investing in opportunity zone funds with some or all their projects located outside the state. Opportunity zones are intended to be an economic development program; it makes no sense for Maryland to forgo vitally needed revenue to subsidize out-of-state investments that will provide no benefit to the state's economy or treasury.

Several states, including Alabama, California, Mississippi, and Pennsylvania, do not conform to the opportunity zone tax breaks because their personal or corporate income taxes do not automatically link to the federal provisions. Three states plus the District of Columbia have proactively decoupled. North Carolina is the only state that has completely decoupled, for both its individual and corporate income tax. Arkansas, the District of Columbia, and Hawaii have decoupled for investments located in other states but grant the tax breaks for investments located in in-state opportunity zones, a misguided policy I will get back to in a moment. As for the rest of the states, I am convinced that the fact that they are forgoing revenue to subsidize investments in out-of-state zones has simply not hit policymakers' radar screens in most cases. I called attention to this problem in a presentation I gave in August 2019 at a meeting of the NCSL Task Force on State and Local Taxation, and it was clear to me from the reaction of the twenty or so legislators present that the issue had occurred to no more than a handful. Addressing the public health emergency and the state fiscal crisis it created understandably took priority for state lawmakers last year, but I think it is likely that other states will seriously consider decoupling this year to avoid an unnecessary and unjustified revenue loss from this program. Decoupling legislation has already been introduced in New York and Oregon, for example.

Some Maryland legislators may be tempted to go the route of the District, Hawaii and Arkansas and preserve state capital gains tax breaks for opportunity zone projects located in Maryland. I strongly urge against this. First, it would raise significant and likely insoluble enforcement problems for the state given that many of the opportunity zone funds will be making investments in multiple states. The capital gains from non-zone investments that will be rolled over into the opportunity zone funds will become subject to taxation no later than 2026, which in many cases will be before opportunity zone projects will be completed. In that event, how could a state determine what share of the initial investment should be granted deferred taxation and/or a lower effective tax rate because it was associated with an in-state investment? Likewise, the state would have to devise – and enforce on its own, since the Internal Revenue Service has no interest in the issue – complicated rules for apportioning the capital gain on any subsequent sale of an interest in an opportunity zone fund between in-state and out-of-state opportunity zone projects.

Second, if Maryland sought to limit the capital gains tax breaks to opportunity zone projects located within its borders, it would be at risk of having that policy overturned by a court holding it to be a violation of the U.S. Constitution's Dormant Commerce Clause prohibition on discrimination against interstate commerce. Courts have held, for example, that limiting the tax benefits of accelerated depreciation write-off to in-state facilities constitutes such a violation,[1] and several years ago a California court held that a state law that sought to limit a capital gains break for the sale of stock in small businesses to businesses located in California was also unconstitutional.[2] Maryland would be at risk of a court issuing a similar decision if it sought to limit opportunity zone capital gains breaks to in-state businesses and, as a remedy, authorizing all residents and all corporations with Maryland nexus that had invested in out-of-state opportunity zone projects to retroactively seek the same tax break for those investments.

Complete decoupling is the right choice. Decoupling does not eliminate Maryland's participation in the opportunity zone program, of course. It just means that the federal government will subsidize investments in Maryland opportunity zones with capital gains tax breaks, not Maryland. Because federal income taxes are considerably higher than Maryland's, if any tax breaks incentivized those investments – and even that is questionable – it was the federal tax breaks. There is no justification for Maryland layering on its own.

I have stressed the profound illogic of Maryland forgoing tax revenue to subsidize investment in out-of-state opportunity zone projects, but I would be remiss in not observing that even were this not occurring serious questions about the propriety of forgoing state revenue to subsidize in-state opportunity zone investments should be raised. There is considerable evidence that capital gains tax breaks will flow to many projects that would have occurred anyway and, in some cases, were already planned – no better illustrated than by the controversy surrounding the qualification of the Port Covington development in Baltimore for opportunity zone breaks.[3] There is growing evidence that many of these projects will be oriented toward high-end residential, commercial, and entertainment uses that not only will do little if anything to benefit low-income neighborhoods and their residents but actually create a high probability of displacing them. Given that only capital gains may be used to finance opportunity zone funds, and given that this type of income is overwhelming received by the richest Americans, the possibility that low-income people might receive relatively few benefits from many opportunity zone projects is all the more troubling. Finally, as highlighted in an analysis by one of my colleagues on the Center's federal tax policy team, rather than "curb[ing] opportunities for abuse and ensur[ing] that opportunity zones fulfill their ostensible purpose of benefiting low-income areas, final Treasury Department regulations "took some questionable business giveaways that were included in its [initially] proposed regulations and actually expanded them."[4]

For all these reasons, complete decoupling from the federal opportunity zone capital gains breaks, as proposed by H.B. 262, is the right policy choice for Maryland. Thank you again for the opportunity to submit testimony for today's hearing.

Notes

[1] R.J. Reynolds Tobacco Company v. City of New York Department of Finance, 1997. https://www.leagle.com/decision/1997243237ad2d61242.

[2] Cutler v. Franchise Tax Board, 2012. https://cases.justia.com/california/court-of-appeal/b233773.pdf?ts=1396114286.

[3] Jeff Ernsthausen and Justin Elliott, "One Trump Tax Cut Was Meant to Help the Poor. A Billionaire Ended Up Winning Big," ProPublica, June 19, 2019. https://www.propublica.org/article/trump-inc-podcast-one-trump-tax-cut-meant-to-help-the-poor-a-billionaire-ended-up-winning-big.

[4] Samantha Jacoby, "Final Opportunity Zone Rules Could Raise Tax Break's Cost," February 3, 2020. https://www.cbpp.org/blog/final-opportunity-zone-rules-could-raise-tax-breaks-cost.

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Position: FAV

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Ways and Means Committee

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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Testimony in Support of HB 262
Opportunity Zone Tax Deduction Reform Act of 2021

Summary

The 2017 federal tax reforms allow wealthy investors and corporations to write off part or all of their capital gains taxes when they invest in an opportunity zone fund. Currently, these investors receive a break on both their federal and state taxes, even if the money is invested outside of Maryland.

This bill would decouple Maryland from the federal tax incentives for opportunity zones. If Maryland decouples from the federal government on this particular tax provision, we will retain $13-$15 million per year.

This bill passed the House of Delegates in 2020.

Opportunity Zones Aren't Working

Several studies have been conducted on the outcomes of opportunity zones to date. The findings are universally underwhelming, from opportunity zones having "very limited" impacts on job creation[1] to directing only 3.5% of total funding to operating businesses and instead investing heavily in real estate developers.[2] Additionally, researchers have found that opportunity zone investments have not been distributed equitably, with women, minority, and lower-income stakeholders largely being shut out.[3]

An analysis of opportunity zones by the Urban Institute found that "although there are compelling examples of community benefit, the incentive as a whole is not living up to its economic and community development goals. The incentive's structure makes it harder to develop projects with community benefit in places with greatest need. In

[1] "What is the Impact of Opportunity Zones on Employment Outcomes?" Rachel Atkins et. al. August 2020, NYU Stern School of Business.

[2] https://www.urban.org/research/publication/early-assessment-opportunity-zones-equitable-development-projects/view/full_report

contrast, OZs are providing the biggest benefits to projects with the highest returns, which are rarely aligned with equitable development."[3]

Additionally, developers and opportunity zone fund managers surveyed by researchers mostly report that tax incentives were not critical to their project, as some had already committed to their projects before their opportunity zone even existed.[3]

Investors in Opportunity Zones are Ultra Wealthy

The federal rules that created opportunity zones specify that only capital gains can be invested in an opportunity zone fund. Capital gains are the profits from the sale of an asset, such as stocks, bonds, or real estate. Less than 10% of American taxpayers have capital gains, and those that do are among the wealthiest Americans. Because of the federal restrictions on what funds can be invested in an opportunity zone, this means that only wealthy people and businesses are able to invest in opportunity zone funds.

As documented in an August 2019 article published by the *New York Times*, the opportunity zone tax breaks will result in billions of dollars in untaxed profits for wealthy investors, including members of President Trump's family and many real estate developers.[4] "Opportunity zones are intended to attract investors to distressed areas," the article stated, "but so far, much of their money is going to create luxury projects… While some money is flowing to poor communities, the most visible impact so far has been to set off a feeding frenzy among the wealthiest Americans. They are poised to reap billions in untaxed profits on high-end apartment buildings and hotels in trendy neighborhoods, storage facilities that employ only a handful of workers or student housing in bustling college towns."

Opportunity Zone Investors Get a Huge Tax Break

Under federal law, investors in opportunity zone funds get three significant benefits. First, they can defer paying capital gains taxes on their original investment until 2026 (or whenever the opportunity zone investment is sold, if earlier), which allows them to invest the entire sum and thereby potentially earn even more money. Second, their tax liability is reduced by 10% if they maintain their opportunity zone investment for five years and by 15% if held for seven years. Third, after 10 years, **the investor pays no capital gains taxes** on their profit from the sale of an opportunity zone investment.

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[3] https://www.urban.org/urban-wire/opportunity-zone-incentive-isnt-living-its-equitable-development-goals-here-are-four-ways-improve-it

[4] https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html

The California Budget and Policy Center provides an example of how lucrative these tax breaks are.[5] Imagine a Marylander who invests $100,000 in capital gains in an opportunity zone fund. They leave the money invested for 10 years and get an annual rate of return of 8%. In total, the resident would now have $215,000–a profit of $115,000. Because of the tax breaks, they would pay $20,230 in federal taxes and save an additional $30,940 on their federal taxes. This results in an effective tax rate of only 9.4% versus the 20% they otherwise would have owed on regular capital gains.

There is no limit to the amount of tax breaks a single entity or opportunity zone can receive, nor any limits on the total federal and state costs (in terms of reduced revenues) for the opportunity zone program.[6]

Investors Get Tax Breaks for Investing in Other States

Maryland taxpayers are not limited to investing in opportunity zones in Maryland; they can invest in <u>any</u> state and get a tax break in Maryland under the current law. Investments outside of Maryland are likely to be fairly common, as most opportunity zone funds plan to invest in multiple states. In fact, a directory of 216 opportunity zone funds lists only two funds that will invest only in Maryland, as opposed to 7 plans that will invest in Maryland plus other states and 66 plans that are nationwide in scope.[7]

Why We Need to Decouple

The federal government created tax breaks for opportunity zone investors, but that doesn't mean that Maryland has to further extend these expensive tax breaks. We can save millions of dollars by decoupling our individual and corporate income taxes from the federal government in regards to opportunity zones.

The Institute on Taxation and Economic Policy and the Center on Budget and Policy Priorities—both of which are non-partisan policy research organizations—have recommended that states decouple from the federal government in regards to opportunity zones.

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[5] https://calbudgetcenter.org/resources/the-federal-opportunity-zones-program-and-its-implications-for-california-communities/

[6] Government Accountability Office, October 2020, "Opportunity Zones: Improved Oversight Needed to Evaluate Tax Expenditure Performance."

[7] www.ncsha.org/resource/opportunity-zone-fund-directory/

This would be a narrow change in our state tax code and is not tied to decoupling in regards to the standard deduction. Moreover, this change would not impact the tax credits the General Assembly passed in 2019 to incentivize businesses to open or expand in opportunity zones.

Millions of Dollars in Potential Savings for Maryland

Four states do not currently provide state tax breaks for opportunity zone investments.

North Carolina passed legislation to decouple in 2018. Because they decoupled before the federal opportunity zone tax breaks started, the state doesn't have an exact measure of how much money has been saved. However, according to North Carolina General Assembly staff, they "generally informed members that the fiscal impact could be *significant*. We told them that the fiscal impact could increase significantly in the out-years because some of the tax breaks were not triggered until several years down the road."[8]

California, Massachusetts, and Mississippi base their state tax codes on pre-2017 versions of the federal tax code, which means that they don't give tax breaks for opportunity zones.

Maryland can retain millions of dollars to use for education or closing the deficit by ending the tax breaks for wealthy opportunity zone investors.

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[8] Email to Delegate Palakovich Carr on October 30, 2019.

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Position: FAV

MDCEP
MARYLAND CENTER ON ECONOMIC POLICY

JANUARY 21, 2021

Lawmakers Should Close an Under-the Radar Loophole for Wealthy Investors

Position Statement in Support of House Bill 262

Given before the House Ways and Means Committee

The hastily composed tax law Congress passed in 2017 has had far-reaching consequences for Maryland's economy. The law delivered a windfall to wealthy individuals and large corporations while heightening barriers that hold back many Marylanders of color.[i] It also had major effects on our state's tax code, which relies heavily on federal law to calculate Marylanders' tax responsibilities. One such effect is the creation of a little-noticed loophole that, if left unchecked, will layer state tax breaks for some wealthy investors on top of their new federal tax breaks. The Maryland Center on Economic Policy supports House Bill 262, which would close this loophole.

Maryland lawmakers made a number of wise choices in 2018 in response to the Trump administration's signature tax overhaul. The state clarified an ambiguous law that could have cost working families hundreds of millions and halted a new tax break for multimillionaire heirs that would have sprung up automatically without corrective action. However, a new loophole for wealthy Opportunity Zones investors largely flew under the radar. Lawmakers should build on their past smart choices by closing this loophole that Congress opened without their input.

Congress created the Opportunity Zone program as part of the 2017 federal tax overhaul with the ostensible goal of promoting economic opportunity in struggling communities. However, the program's structure virtually guarantees that it will primarily benefit wealthy investors and do little to help the communities our economy leaves behind:[ii]

- The program's core is a set of capital gains tax breaks a recipient can qualify for by investing in Opportunity Zones. This design ensures that the program's benefits will be heavily lopsided, as 65 percent of capital gains in Maryland today go to the wealthiest 1 percent of households.[iii]
- Because the program under certain circumstances allows investors to avoid paying taxes on their profits from Opportunity Zone projects, it effectively steers money toward the projects with the greatest moneymaking potential. These are the exact projects investors would most likely pursue even without tax breaks as well as the projects least likely to benefit struggling communities.

On top of these serious flaws, the program automatically creates a state tax break for Opportunity Zone investors in states that rely on provisions of federal law to calculate individuals' and corporations' tax responsibilities. Any capital gains income the federal government does not tax because of Opportunity Zone subsidies essentially disappears from a person's income for state tax purposes.[iv] House Bill 262 is a simple fix that closes this new loophole.

It is not entirely clear whether this loophole is simply a result of the federal tax law's hasty, chaotic drafting process or a deliberate policy choice that received no public scrutiny. What is clear is that Maryland's tax code changed with no input from Maryland lawmakers, in a way that further concentrates wealth and power in a few hands, and in the process made it harder for us to invest in the foundations of our economy. As lawmakers race to respond to the fiscal challenges brought on by the coronavirus pandemic and recession, they should work to build a revenue system capable of meeting Marylanders' needs. The path forward is clear—close loopholes for powerful special interests and fix our upside-down tax code—and House Bill 262 is a commonsense first step.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the House Ways and Means Committee make a favorable report on House Bill 262.

Equity Impact Analysis: House Bill 262

Bill summary

House Bill 262 changes the way the state calculates income for tax purposes by undoing a federal tax break for capital gains under the Opportunity Zones program. Under current law, the federal tax break automatically translates into Maryland's tax code, allowing investors to pay less in Maryland taxes than they otherwise would.

Background

Maryland's tax code refers extensively to federal law in order to define the income concepts that determine individuals' and corporations' tax responsibilities. This means that federal policy changes can sometimes affect state revenues without any action by Maryland lawmakers. The federal Opportunity Zones program, part of the 2017 Tax Cuts and Jobs Act, is based on federal tax breaks for certain capital gains income. Because of the way the program is structured, these tax breaks automatically flow through to Maryland's tax code.

Equity Implications

Interactions between federal Opportunity Zone subsidies and Maryland's tax code pose significant equity concerns:

- The capital gains tax breaks at the center of the Opportunity Zones program are heavily lopsided. Nearly two-thirds of capital gains income in Maryland goes to the wealthiest 1 percent of tax filers.
- The program worsens racial wealth imbalances because a small minority of white families hold nearly two-thirds of all household wealth nationwide,[v] which is a prerequisite for capital gains income.
- 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.
- The coronavirus pandemic and the resulting recession have both heightened health and economic barriers facing Marylanders of color and made it harder for the state to invest in the basics.
- Without legislative action, the automatic capital gains tax cut will make it harder for Maryland to make the kinds of investments that strengthen our economy and build opportunity for everyone.

House Bill 262 would mitigate these harms by closing the state tax loophole created by the 2017 federal tax law.

Impact

House Bill 262 would likely **improve racial and economic equity** in Maryland.

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[i] Emanuel Nieves, David Newville, Jeremie Greer, and Meg Wiehe, "Race, Wealth, and Taxes: How the Tax Cuts and Jobs Act Supercharges the Racial Wealth Divide," Prosperity Now, 2018, https://prosperitynow.org/resources/race-wealth-and-taxes

[ii] Samantha Jacoby, "Potential Flaws of Opportunity Zones Loom, as Do Risks of Large-Scale Tax Avoidance," Center on Budget and Policy Priorities, 2019, https://www.cbpp.org/research/federal-tax/potential-flaws-of-opportunity-zones-loom-as-do-risks-of-large-scale-tax

[iii] TY 2016 Personal Statistics of Income, Maryland Comptroller.

[iv] Michael Mazerov, "States Should Decouple Their Income Taxes from Federal 'Opportunity Zone' Tax Breaks ASAP," Center on Budget and Policy Priorities, 2019, https://www.cbpp.org/blog/states-should-decouple-their-income-taxes-from-federal-opportunity-zone-tax-breaks-asap

[v] 2016 Survey of Consumer Finances.

HB 262_MD Fair Funding Coalition_FAV.pdf
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MARYLAND
FAIR FUNDING
COALITION

Testimony in <u>SUPPORT</u> of HB 262
Delegate Anne Kaiser, Chair
House Ways and Means Committee

The Maryland Fair Funding Coalition (MFFC) is a statewide coalition of more than 25 organizations that supports policy proposals to equitably and sustainably raise revenue in order to make significant investments in essential public services.

The MFFC supports proposals focused on eliminating corporate loopholes and tax breaks that benefit special interests, and fixing our upside-down tax code, which currently allows the wealthiest individuals to pay the smallest share of their income to state and local taxes. Fixing our tax system will support our state's recovery from the COVID-19 pandemic as well as long-term investments in education, health care, transportation, environmental protections, and many other essential public services. It also will ensure that large corporations and wealthy individuals are paying their fair share for the public services we all rely on.

Our coalition supports HB 262, which would ensure Maryland does not add state tax breaks on top of federal tax provisions that primarily benefit wealthy investors.

The federal Opportunity Zone program that was part of the 2017 federal tax overhaul is designed in a way that primarily benefit wealthy investors and do little to help the communities that are most in need of economic investment. There is no reason for Maryland to layer more tax breaks on top of the federal ones.

If Maryland does not decouple from this tax provision, it will cost at least $55 million over the next four years – funds that could instead be going to support the things that Maryland families and communities really need. As our state continues to respond to the urgent public health and economic needs the pandemic created, we simply can't afford to accept tax breaks that are lining the pockets of well-off investors with little benefit to Maryland communities

Therefore, we urge a <u>favorable report</u> on HB 262

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COMMUNITY DEVELOPMENT
NETWORK OF MARYLAND

Testimony Concerning HB 262
Opportunity Zone Tax Deduction Reform Act of 2021
Ways & Means Committee
January 21, 2021

Position: **Support**

The Community Development Network of Maryland (CDN) is the voice for Maryland's community development sector and serves nearly 200 member organizations. CDN—focuses on small affordable housing developers, housing counseling agencies and community-based non-profits across the state of Maryland. The mission of CDN is to promote, strengthen and advocate for the community development sector throughout Maryland's urban, suburban and rural communities. CDN envisions a state in which all neighborhoods are thriving and where people of all incomes have abundant opportunities for themselves and their families.

Opportunity Zones are an ambitious and historic federal undertaking that sought to match the interest of private investors seeking tax relief on unrealized capital gains with the interest of local communities in need of revitalization. The sheer scale and transformative power of the Opportunity Zones had the potential to attract and spur economic activity with broad social benefits equitably-shared in some places, but just as likely to accelerate the type of neighborhood change that results in displacement, dislocation and poor social outcomes for local residents and others. Currently, these investors receive a break on both their federal and state taxes, even if the money is invested outside of Maryland.

This bill would decouple Maryland from the federal tax incentives for opportunity zones. If Maryland decouples from the federal government on this particular tax provision, the state could save $20 million per year that can be used for education or to fill the looming deficit.

How many more tax breaks do wealthy individuals need? Thus far, the Opportunity Zone program is another fairytale of trickle-down economics. This bill seeks to redirect investment of wealthy investors to Maryland. We are eager to close loop holes that reward those with capital gains with little regard for distressed communities, long left behind by history and the market

We urge your favorable consideration of HB 262.

CLAUDIA WILSON RANDALL, ASSOCIATE DIRECTOR, CDN CLAUDIA@COMMUNITYDEVELOPMENTMD.ORG, PHONE 443-756-7819

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Position: UNF

gbc POSITION STATEMENT

TESTIMONY PRESENTED TO THE HOUSE WAYS & MEANS COMMITTEE

HOUSE BILL 262 -- OPPORTUNITY ZONE TAX DEDUCTION REFORM ACT OF 2021
Sponsor – Delegate Julie Palakovich Carr

January 21, 2021

DONALD C. FRY
PRESIDENT & CEO
GREATER BALTIMORE COMMITTEE

Position: Oppose

The GBC opposes House Bill 262, which requires taxpayers investing funds in Opportunity Zones to add to their Maryland taxable income the amount of capital gains that were deferred or excluded under the federal Qualified Opportunity Zones program. The GBC opposes this measure and requests that the tax benefit afforded by the federal Opportunity Zone program be treated as intended without further modifications to Maryland investors. Passage of House Bill 262 could make Opportunity Zone investments less attractive to Maryland investors and complicate efforts to make this program beneficial in Baltimore City and the Greater Baltimore region.

The Opportunity Zone benefit, created by the 2017 federal *Tax Cuts and Jobs Act*, was enacted to spur private investment in distressed communities by creating a federal tax incentive for investors in real estate or operating businesses within specified Census Tracts. There are 149 Opportunity Zones in Maryland, 62 of which are in the Greater Baltimore region 42 are located in Baltimore City. Qualified Opportunity Funds can invest in eligible commercial, residential and mixed-use real estate properties and operating businesses located in designated Opportunity Zones. The benefit offered by Opportunity Zones allows investors who reinvest capital gains in a designated census tract to defer or eliminate future capital gains taxes.

The Greater Baltimore Committee supports the Opportunity Zone benefit because it has the potential to create economic opportunity in distressed areas of the State that would benefit from private investment. In particular, Baltimore City has been aggressively seeking Opportunity Zone investments. To increase its prospects for success, Baltimore City had the foresight to create a dedicated Opportunity Zone Coordinator position to ensure a coordinated effort to spur investment. This position is now being created in other cities across the country based on Baltimore City's model.

This bill is inconsistent with two of the key tenets in *Gaining the Competitive Edge: Keys to Economic Growth and Job Creation in Maryland,* a report published by the GBC that identifies eight core pillars for a competitive business environment and job growth:

> **Strategic and effective investments in business growth.** The State must commit to substantive strategic investments, leveraged with capital assets, to nurture business and job growth. Investments should include competitive and effective tax credits, business development incentives, and tactical initiatives to nurture private investments in industry growth.
>
> **Government leadership that unites with business as a partner.** Maryland leaders must set a welcoming tone that communicates positive support for business, respect for the private sector as a partner, not an adversary, and reflects a strategic plan for business growth and job creation.

For these reasons, the Greater Baltimore Committee urges an unfavorable report on House Bill 262.

The Greater Baltimore Committee (GBC) is a non-partisan, independent, regional business advocacy organization comprised of hundreds of businesses -- large, medium and small -- educational institutions, nonprofit organizations and foundations located in Anne Arundel, Baltimore, Carroll, Harford, and Howard counties as well as Baltimore City. The GBC is a 65-year-old, private-sector membership organization with a rich legacy of working with government to find solutions to problems that negatively affect our competitiveness and viability.

MBIA Testimony HB 262.pdf
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Position: UNF

MARYLAND BUILDING INDUSTRY ASSOCIATION
11825 West Market Place | Fulton, MD 20759 | 301-776-6242

January 21, 2021

The Honorable Anne R. Kaiser
Ways & Means Committee
House Office Building, Room 131,
6 Bladen St., Annapolis, MD, 21401

RE: Opposition of House Bill 262 (Opportunity Zone Tax Deduction Reform Act of 2021)

Dear Chairwoman Kaiser:

The Maryland Building Industry Association (MBIA), representing 100,000 employees of the building industry across the State of Maryland, opposes Senate Bill 113 (Opportunity Zone Tax Deduction Reform Act of 2020).

This bill requires a party to add back to Maryland adjusted gross income or Maryland modified income the amount of capital gains deferred or excluded under the federal Qualified Opportunity Zones Program, thereby making these gains taxable for State income tax purposes.

This measure would harm a valuable Maryland program and slow necessary development in vulnerable communities. The Qualified Opportunity Zones Program was created to stimulate private investment in underinvested communities by providing enhanced incentives for qualifying businesses within an Opportunity Zone. Those incentives include allowing capital gains to be deferred or excluded, which frees up financial resources for the businesses to quickly reinvest in a new project in the same neighborhood. Communities are strengthened and made safer with consistent investment, and the current structure helps businesses have the financial flexibility they need to help with that process.

Removing that taxation benefit removes that financial flexibility, which would slow crucial development and redevelopment in Opportunity Zones. Builders and developers want to be a part of the solution, but it has to make financial sense for the business, which is why the Opportunity Zones Program was created. Passing this measure would essentially disincentivize investment in Opportunity Zones.

Furthermore, this will further creates a disincentive for investment in Baltimore. According to the Baltimore Development Corporation, of the 149 Census Tracts in Maryland that are designated a Opportunity Zones by the U.S. Treasury, 42 are in Baltimore City. (See: http://baltimoredevelopment.com/wp-content/uploads/2018/08/BDC-Opportunity-Zones-Prospectus.pdf and http://baltimoredevelopment.com/wp-content/uploads/2018/08/BDC-Opportunity-Zones-Prospectus.pdf)

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: House Ways and Means Committee Members

MD Opportunity Zones Baltimore City POSTER.pdf
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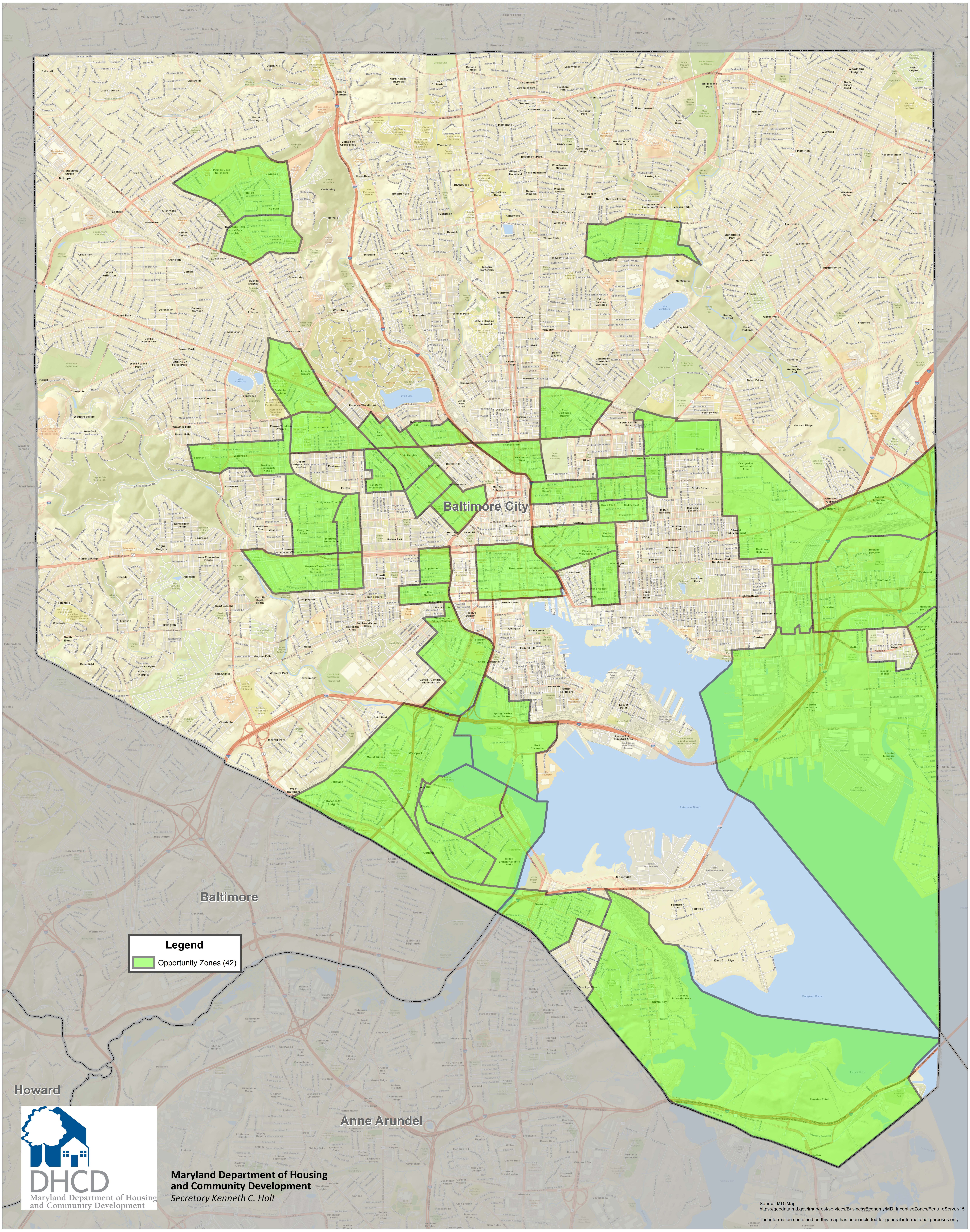
Maryland Opportunity Zones
Baltimore City



HB0262_UNF_MTC_Opportunity Zone Tax Deduction.pdf
Uploaded by: Kasemeyer, Pam
Position: UNF

MARYLAND TECH COUNCIL

TO: The Honorable Anne R. Kaiser, Chair
Members, House Ways and Means Committee
The Honorable Julie Palakovich Carr

FROM: Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman

DATE: January 21, 2021

RE: **OPPOSE** – House Bill 262 – *Opportunity Zone Tax Deduction Reform Act of 2021*

The Maryland Tech Council (MTC) is a collaborative community, actively engaged in building stronger life science and technology companies by supporting the efforts of our individual members who are saving and improving lives through innovation. We support our member companies who are driving innovation through advocacy, education, workforce development, cost savings programs, and connecting entrepreneurial minds. The valuable resources we provide to our members help them reach their full potential making Maryland a global leader in the life sciences and technology industries. On behalf of MTC, we submit this letter of **opposition** for House Bill 262.

House Bill 262 requires a person to add back to Maryland adjusted gross income or Maryland modified income the amount of capital gains deferred or excluded under the federal Qualified Opportunity Zones Program. This bill references IRS code section 1400Z-2, which is the deferment of gains for investments in Qualified Opportunity Funds (QOF) investing in Qualified Opportunity Zones. A QOF can buy and sell property and the gain does not have to be recognized until the earlier of the sale of the investment or December 31, 2026. Under this bill, there would have to be reporting on the Maryland K-1 to identify any deferred gains, which could be onerous if the QOF is active in buying and selling.

A fairer way to realize capital gain tax revenue would be to defer the gains until having to be reported on a federal return. Maryland would eventually receive its tax revenue, but the taxpayer would get a deferral and there would be less administrative burden to the QOF. This would still allow the fund to be attractive to invest and to improve certain areas and provide jobs, particularly as it relates to the information technology, cybersecurity, and biotechnology industries. Making the taxpayer pay Maryland tax as they go makes the QOF less attractive to potential investors which also means a QOF may not look to Maryland to invest in our leading industries.

As such, MTC urges the House Ways and Means Committee to oppose House Bill 262.

For more information call:
Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
410-244-7000

HB 262.pdf
Uploaded by: Mitchell, Susan
Position: UNF

House Bill 262 - Opportunity Zone Tax Deduction Reform Act of 2021

Position: Oppose

On behalf of Maryland REALTORS®, we oppose HB 262 which would no longer allow investors to invest capital gains in an opportunity zone fund by incentivizing these investments.

Maryland REALTORS® fully supported the prospect for significant investment in low income areas that the Opportunity Zone programs encourages. For too long, low income areas have not seen investment or incentives for investment. This program is still so new and recent and has not had the time to prove its effectiveness.

Maryland REALTORS® believes the Opportunity Zone program has the potential to increase investment opportunities in Maryland's distressed areas and will revitalize neighborhoods, job opportunities and create more affordable/workforce housing at a time when Maryland needs the housing supply.

For these reasons, Maryland REALTORS® respectfully urges an unfavorable report of HB 262.

For more information, please contact bill.castelli@mdrealtor.org or susan.mitchell@mdrealtor.org or lisa.may@mdrealtor.org

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HB262 - MoCo Chamber - Opportunity Zone Tax Deduct
Uploaded by: Swanson, Tricia
Position: UNF

To Lead, Advocate and Connect as the Voice of Business

House Bill 262 - Opportunity Zone Tax Deduction Reform Act of 2021

Ways and Means Committee

January 21, 2021

OPPOSE

House Bill 262 requires a person to add back to Maryland adjusted gross income or Maryland modified income the amount of capital gains deferred or excluded under the federal Qualified Opportunity Zones Program.

Opportunity Zones were created as part of the federal Tax Cuts and Jobs Act of 2017. These zones encourage reinvesting capital gains in underdeveloped census tracts with enticements, such as deferring taxes on capital gains until 2026 or paying no capital gains taxes on appreciation on investments held for a decade. Rolling back incentives created discourages investments in Maryland from across the nation. Maryland should be doing everything it can to attract opportunity zone investment and while local Maryland might prefer to invest locally, they can make investments across state lines. By removing state incentives, investors will move their capital to other states.

In 2020, two reports were commissioned to analyze the future of economic development in Montgomery County and Metro Maryland. Both reports (An Economic Roadmap to Recovery & Long-Term Success and James Chung, "Montgomery County at a Crossroads") spoke to the immense need for future investments through Venture Capital and capital gains, particularly in our Biotech, Quantum Computing, and Hospitality sectors. Montgomery County, and thereby the state, could see investments comparable to Boston and Silicon Valley but the state must pass policies that support this investment.

The Chamber continues to support a proposal to create a commission to analyze and make recommendations as to how to make Maryland's tax structure more business-friendly and economically competitive. This more comprehensive and strategic approach should be adopted, rather than a series of tax "one-offs" with little understood consequences.

For the aforementioned reasons, **the Chamber opposes House Bill 262 and respectfully urges an unfavorable report.**

The Montgomery County Chamber of Commerce (MCCC) accelerates the success of our nearly 500 members by advocating for increased business opportunities, strategic investment in infrastructure, and balanced tax reform to advance Metro Maryland as a regional, national, and global location for business success. Established in 1959, MCCC is an independent non-profit membership organization and is proud to be a Montgomery County Green Certified Business.

Tricia Swanson, Vice President, Government Relations
Montgomery County Chamber of Commerce
301-738-0015 www.mcccmd.com