

Testimony of Don Griswold, Consultant

In Support of HB 191

Before the Committee on Budget and Taxation, Maryland Senate

March 29, 2023

Chairman Guzzone and Members of the Budget and Taxation Committee:

My name is Don Griswold, appearing as a consultant on behalf of the Center on Budget and Policy Priorities in Washington DC. 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 ways that are equitable and effective.

I write in favor of HB 191 because it will decouple from a federal tax law that is inequitable and ineffective.

Break the law, get caught, settle out of court . . . and you get rewarded with a tax break by the state of Maryland. That is the unjust state of affairs in this state.

When a business gets caught creating an epidemic of killer drugs, or renting mold and rat-infested apartments to low-income tenants, or polluting the Chesapeake Bay, or . . . fill in the blank . . . that law-breaking business is going to face financial consequences.

Those consequences often come in a settlement agreement with the victims and their government. The lawbreaker may agree, for example, to pay fines and penalties; to make restitution payments to the families whose children got very sick or died; to clean up our polluted land and waters with remediation measures; and to bring the company into compliance with the law — by tearing out moldy walls, establishing abuse circuit-breaker procedures, or installing pollution control equipment.

Fines and penalties; restitution and remediation; compliance upgrades. These are the financial consequences that — in a just society — we use to punish and deter law-breaking businesses in the hope that these costs will deter future criminal behavior.

For nearly half a century (up until 2017), there was wide bipartisan agreement that lawbreakers in the business community cannot take a tax deduction to offset a portion of these financial consequences of crime. The federal tax law — which broadly allows deductions for most business expenses — was

amended in 1969 to deny deductions for these types of expenses, at least in part because “the deduction would take the sting out of the penalty.”¹

But Congress was persuaded a few years ago to make an unjust exception to this public-protecting policy when, as part of the federal Tax Cuts and Jobs Act of 2017, it amended that federal law to make a distinction between two of the financial consequences of crime — fines and penalties (which continue to be non-deductible) and the others — restitution, remediation, and coming into compliance (which now are deductible).

Break the law; get a tax break. That’s the current federal tax rule. Maryland follows it, but it is free to “decouple” and go its own fair way — as HB 191 proposes.

Maryland should decouple from the federal tax break for lawbreakers because there is no legitimate policy justification for that tax break. Sure, restitution and remediation measures may produce societal benefits that are more visible than increased public revenues from fines and penalties. But that is not relevant to the policy reasons underlying the 50-year-old rule denying a tax deduction for these types of expenses, and underlying HB 191.

HB 191 represents good public policy because:

- A tax break for lawbreakers diminishes the deterrence effect of business crime’s financial consequences.
- Criminal business activity is normalized — considered “not really a crime”—when the financial consequences of getting caught are treated as if they were ordinary and necessary business expenses.
- Public perception of the Maryland tax system’s fairness is the foundation for widespread tax compliance. This perception is weakened when a rule — like the tax break for lawbreakers — gives the impression that abiding by the law is essentially optional for business.
- Crime should not be subsidized by the public or rewarded in the tax law.

Marylanders expect fiscally prudent leadership from the General Assembly even when that requires decoupling from unjust provisions of the federal Internal Revenue Code. It is time to pass HB 191 into law, and I recommend a favorable report.

Thank you for the opportunity to submit this testimony.

¹ Marvin A. Chirelstein and Lawrence Zelenak, *Federal Income Taxation*, 12th ed. (Foundation Press 2012), discussing Internal Revenue Code section 162(f) and the US Supreme Court case that established the doctrine it codified, *Tank Truck Rentals v. Commissioner*, 356 U.S. 30 (1958).