**HB191_Griswold_CBPP_FAV.pdf**
Uploaded by: Don Griswold
Position: FAV

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**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 20120, 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).

**HB191_MDSierraClub_fav 29March2023.pdf**
Uploaded by: Josh Tulkin
Position: FAV

SIERRA CLUB

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**Committee: Budget and Taxation**
**Testimony on: HB191 – "Income Tax – Payments of Fines, Penalties, and Other Amounts – Addition Modification"**
**Position: Support**
**Hearing Date: March 29, 2023**

The Maryland Chapter of the Sierra Club supports HB191, which would deny the deductibility under Maryland law of certain expenses incurred in the context of legal settlements and judgements. This issue is directly related to the environment because, under current law, expenses for remediation and restitution are generally treated as deductible for business purposes.[1,2] Because of this deductibility, if a party pays millions or billions of dollars for these expenses due to its damage to the environment, the receipt of tax revenues received by the federal government and the State of Maryland will generally fall.

The sums in question can be quite large.[3] In addition to environmental cases, there are also large recent settlements for dangerous products. When an entity's taxable income allocable to the State of Maryland falls by $100 million due to payments made by the entity for damage it has caused, the State of Maryland receives $8.25 million less tax revenue.[4] The public, in turn, is not truly being made whole for the damage.

The current treatment of these expenses was codified in the 2017 Tax Cuts and Jobs Act.[5] Before this time, however, similar treatment existed in regulation. Like the prior treatment, current law has a number of complexities. Section 162(f) recognizes that some activities do not warrant deductibility, for reasons of public policy. For example, certain fines and penalties that do not constitute remediation or restitution are not deductible. However, large amounts of settlements for inappropriate actions are still being treated as deductible. HB191 would reduce the share of these amounts that result in reduced Maryland tax receipts.

While recognizing that the interactions between state and federal tax law are complex and warrant careful assessment, for the above reasons we think the proposed change to Maryland tax law embodied in HB191 warrants passage.

Randy Lyon
Legislative Chair
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Josh Tulkin
Chapter Director
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[1] Section 162(f) of the Internal Revenue Code. Maryland's income tax treatment of deductions for expenses largely follows federal law unless there are specific exceptions such as the one provided for by HB191.
[2] Internal Revenue Service. Denial of Deduction for Certain Fines, Penalties, and Other Amounts; Related Information Reporting Requirements, Federal Register, January 19, 2021, pp. 4970=4990.
[3] Baxandall, P. and R. Pierannunzi. Subsidizing Bad Behavior: How Corporate Legal Settlements for Harming the Public Become Lucrative Tax Write Offs, with Recommendations for Reform, US PIRG Education Fund, 2013; R.W. Wood. "BP's $20.8 Billion Gulf Spill Settlement Nets $15.3 Billion Tax Write-Off," Forbes, October 6, 2015. J.M. Breslow, "How $80 Billion in Corporate Fines Can Become $48 Billion in Tax Breaks," PBS Frontline, December 4, 2015.
[4] The reduction in federal tax revenue, which would not be changed by HB191, is even greater.
[5] House of Representatives, Conference Report to Accompany H.R. 1, pp. 76-77 and 430-431.

**Delegate Palakovich Carr Testimony - HB 191 - Sena**
Uploaded by: Julie Palakovich Carr
Position: FAV

**Julie Palakovich Carr**
*Legislative District 17*
Montgomery County

Ways and Means Committee

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THE MARYLAND HOUSE OF DELEGATES
Annapolis, Maryland 21401

# Testimony in Support of HB 191
# Income Tax - Payments of Fines, Penalties, and Other Amounts - Addition Modification

Corporate wrongdoing shouldn't be rewarded with a tax deduction. Yet, because of a loophole in federal tax law, companies that harm the environment, engage in financial wrongdoing, or sell dangerous products can write off their restitution payments on their taxes. This bill closes this loophole in Maryland for restitution payments paid to a local, state, or federal government entity.

**Tax Giveaways for Corporate Wrongdoing**

When large companies harm the public, they often negotiate out-of-court settlements that resolve the charges in return for stipulated payments or promised remedies. Under current federal law, if legal action is taken against a business and there is a settlement between the parties or a fine ordered by a court, the company can deduct restitution and remediation payments from their federal taxable income. Because Maryland uses a taxpayer's federal taxable income as the starting point for calculating state income taxes, we also give a tax deduction for corporate wrongdoing.

This unjust tax break reduces both the incentive of companies to comply with state and federal laws and the value of the redress these bad actors pay. This practice lowers the real value of settlement payments and lowers their power to prevent recidivism. Moreover, Marylanders are left in the dark as to how much corporations are actually paying for alleged wrongdoing and how much of those payments are being picked up by taxpayers.

**Large Corporations Commonly Use this Tax Loophole**

Corporate tax deductions on settlements are commonplace and are often treated as part of the cost of doing business. For instance, more than half of the $80 billion in settlements reached by a handful of federal agencies in 2012 to 2014 were able to be deducted by companies.[1] The U.S. Government Accountability Office similarly found that among 34 settlements worth collectively $10 billion, more than half of the involved companies had some or all of their payments deducted.[2]

Some particularly egregious examples include the 2010 Deepwater Horizon rig explosion and oil spill, where at least 80% of the $42 billion paid out by BP qualified for a tax deduction. BP saved an estimated $10-14 billion.[3] Many of the banks that contributed to the financial crisis of 2007-2008 were able to deduct part of their multibillion-dollar settlements. JPMorgan Chase wrote off $7 billion of its $13 billion deal with the Justice Department.[4] And $12 billion of Bank of America's $17 billion settlement was eligible for a tax break.

**Changes in Federal Law Make State Enforcement Easier**

The federal Tax Cuts and Jobs Act of 2017 made an important change to how the federal government handles the taxation of penalties and fines; it required government agencies to report details of settlement payments to the IRS.[5] Tax year 2022 is the first year where these details are being reported. This federal reporting requirement will help our Comptroller's Office to administer the addback required under this bill.

**Why This Bill Is Needed**

Every dollar in tax savings companies enjoy from the federal deduction of restitution penalties must ultimately be paid for by Marylanders. In 2022 alone, Maryland's Attorney General reached several multi-million dollar settlements with corporations, including a $40 million settlement with the Sackler family for its role in the opioid crisis, a $13 million settlement with Juul over its sales practices, a $9 million settlement with Google over its privacy practices, and a $3 million settlement with Jared Kushner-owned Westminster Management over poor housing conditions.

These companies engaged in wrongdoing and shouldn't get a tax break paid for by Marylanders. Instead of subsidizing companies that violate laws designed to protect people from financial wrongdoing, environmental harm, fraud, or dangerous products, HB 191 would keep this money in the hands of the State for public use and benefit.

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[1] "Subsidizing Bad Behavior: How Corporate Legal Settlements for Harming the Public Become Lucrative Tax Write Offs." https://pirg.org/wp-content/uploads/2013/01/Subsidizing-Bad-Behavior-USPIRG-EF_10.pdf

[2] GAO Tax Administration report: "Systematic Information Sharing Would Help IRS Determine the Deductibility of Civil Settlement Payments". https://www.gao.gov/assets/gao-05-747.pdf

[3] The New York Times: When Company Is Fined, Taxpayers Often Share Bill

[4] *Id.*

[5] The IRS created Form 1098-F to report such payments of $50,000 or more.

**HB 191_MD Center on Economic Policy_FAV_Senate.pdf**
Uploaded by: Kali Schumitz
Position: FAV

MDCEP
MARYLAND CENTER ON ECONOMIC POLICY

MARCH 29, 2023

# Maryland's Tax System Should Not Reward Bad Actions

## Position Statement in Support of House Bill 191

### *Given before the Senate Budget and Taxation Committee*

Like our state budget, Maryland's tax system represents a series of choices that should ideally reflect our values as a state. Currently, our state income tax matches a provision of the federal tax code that essentially rewards bad behavior by businesses. **The Maryland Center on Economic Policy supports House Bill 191** because it would ensure that businesses aren't rewarded via a tax break for bad actions.

Prior to 2017, businesses could not deduct fines, fees or other payments related to a lawsuit settlement or violation of civil or criminal law. A provision of the 2017 Trump tax bill, the Tax Cut and Jobs Act, created a partial exemption to this, allowing businesses to deduct the cost of restitution, such as paying into a victims fund, or the cost to come into compliance with the law or regulation that the business violated[i]. Because Maryland automatically adopts changes to federal tax code, we also began granting this deduction without any input from legislators or the public.

An effective revenue system is an essential tool to enable Maryland to protect our investments in the foundations of our economy, such as public health, education, and transportation. Collecting sufficient revenue is especially important as we work to rebuild hollowed-out state agencies and guarantee all students a world-class education. All Marylanders benefit when we have sufficient resources to invest in the basics, and these investments can be particularly important to break down the barriers—built through past and present policies—that hold back many Marylanders because of their race, gender, a disability, or another aspect of their identity.

It is just as important that we have a fair tax system that asks everyone to contribute, without exceptions that special interest groups have forced into our tax system. Today, the wealthiest 1 percent of Maryland households pay a smaller share of their income in state and local taxes than the rest of us do, due in large part to corporate tax loopholes and lopsided tax breaks.[ii] Maryland should not double down on bad federal tax policies by giving a tax break to businesses that have violated the law.

House Bill 191 represents an important step forward for creating a revenue system that reflects our values as a state. If enacted, it would make our tax system more equitable and contribute to the resources Maryland families need to thrive.

**For these reasons, the Maryland Center on Economic Policy respectfully requests that the Budget and Taxation Committee make a favorable report on House Bill 191.**

1800 North Charles Street, Suite 310 Baltimore MD 21202 | mdcep@mdeconomy.org | 410-412-9105

## Equity Impact Analysis: House Bill 191

*Bill summary*

House Bill 191 decouples Maryland's income tax from a provision of the federal tax code that allows a deduction in some cases for business expenses related to restitution or compliance after a business has been found in violation of the law.

*Background*

- Former President Trump's 2017 tax overhaul, the Tax Cut and Jobs Act, created this limited exemption. Previously no expenses associated with a violation of federal or civil law could be considered a business expense.

*Equity Implications*

- Fair tax reform would generate revenues that could be invested in things like world-class schools, improved customer service at state agencies, and reliable transit. Investing in these basics strengthens our economy and can dismantle the economic barriers that too often hold back Marylanders of color.

*Impact*

House Bill 191 would likely **improve racial and economic equity** in Maryland.

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[i] "TREASURY FINALIZES SECTION 162(F) REGULATIONS ON THE DEDUCTIBILITY OF AMOUNTS PAID TO, OR AT THE DIRECTION OF, A GOVERNMENTAL ENTITY," Shearman and Sterling, Jan. 26, 2021, https://www.shearman.com/perspectives/2021/01/treasury-finalizes-section-162f-regulations

[ii] Meg Wiehe, Aidan Davis, Carl Davis, Matt Gardner, Lisa Christensen Gee, and Dylan Grundman, "Who Pays? A Distributional Analysis of the Tax Systems in All 50 States," Institute on Taxation and Economic Policy, 2018, https://itep.org/wp-content/uploads/whopays-ITEP-2018.pdf

# HB 191_Fair Funding Coalition_FAV.pdf
Uploaded by: Kevin Slayton
Position: FAV

MARYLAND
FAIR FUNDING
COALITION

**Testimony in Support of HB 191**
**Del. Vanessa Atterbeary, Chair**
**House Ways & Means Committee**

The Maryland Fair Funding Coalition is a coalition of more than 30 organizations across the state that are committed to creating a fair and equitable tax system that supports the public services families and communities need to thrive.

The coalition supports proposals focused on eliminating loopholes and tax breaks that benefit special interests and fixing our upside-down tax code, which allows the wealthiest individuals to pay the smallest share of their income in state and local taxes. We believe large, profitable corporations should pay what they truly owe in taxes and not expect working families to continue to subsidize more than their share of taxes that support our roads, schools, and infrastructure.

**Our coalition supports HB 191, which closes a tax loophole created by the 2017 Trump tax bill that effectively rewards businesses that have violated civil or criminal laws by giving them a tax deduction.**

Former President Trump's signature 2017 tax overhaul included a number of new tax breaks that exclusively benefitted the powerful and well-connected, particularly large businesses. These tax breaks were automatically incorporated in Maryland law without any say by Maryland lawmakers. HB 191 would decouple Maryland's tax code from a provision that allows a business owner to deduct the cost of restitution payments, such as paying into a victims fund, or expenses related to coming into compliance with the law from their income taxes.

Public opinion polling consistently shows that most Marylanders understand our state tax code is set up to benefit the wealthy and powerful corporations over working families and small businesses. Policies like the one addressed in HB 191 erode confidence public in our tax system and undermine the pride that most people feel in contributing to their communities through taxes.

It is time for every Maryland resident and business to pay their fair share of taxes, especially when critical state needs remain unmet. With a wide range of state services stretched thin, the best way to support families, local businesses, and a healthy economy is to reform Maryland's tax code to make it more effective and equitable.

**<u>Therefore, we urge a favorable report on House Bill 191</u>**

**X HB 191 Support.pdf**
Uploaded by: Maddie Long
Position: FAV

**Testimony in support of**
**House Bill 191: Income Tax - Payments of Fines, Penalties, and Other Amounts - Addition Modification**

**Senate Budget and Taxation Committee**
**Position: Favorable**

March 29, 2023

Strong Schools Maryland is a network of education advocates dedicated to ensuring the full funding and faithful implementation of the Blueprint for Maryland's Future. As a member of the Fair Funding Coalition, we are committed to creating a fair and equitable tax system that supports the public services families and communities need to thrive. **Strong Schools Maryland supports House Bill 191,** which if enacted would close a tax loophole created by the 2017 Trump tax bill that effectively rewards businesses that have violated civil or criminal laws by giving them a tax deduction.

The Blueprint for Maryland's Future envisions a World-Class system of public schools for our state's students. This only exists if the state produces the necessary funding to implement this vision. House Bill 191 addresses inequity in the state's rules for corporations and updates Maryland's tax code, which can also produce revenue for the state's long-term and future priorities, not the least of which is the full funding and faithful implementation of the Blueprint for Maryland's Future.

Now is the time to ensure corporations pay their fair share, and now is the time to secure revenue sources that can fulfill the promises of the Blueprint.

**For these reasons, we urge a favorable report on House Bill 191.**

*For more information, contact Maddie Long:*
*maddie@strongschoolsmaryland.org*

**Economic Action Maryland_HB191_FAV.PDF**
Uploaded by: Michael Donnelly
Position: FAV

**Testimony to the Senate Budget and Taxation Committee**
**HB 191: Income Tax – Payments of Fines, Penalties, and Other Amounts – Addition Modification**
**Position: Favorable (FAV)**

March 29, 2023
The Honorable Guy Guzzone, Chair
Senate Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis, Maryland 21401
cc: Members, Budget and Taxation Committee

Honorable Chair Guzzone, Vice Chair Rosapepe, and members of the Budget and Taxation Committee:

Economic Action Maryland (formerly Maryland Consumer Rights Coalition) is a nonprofit organization that works to advance economic justice and equity statewide through direct service, research, education, and advocacy.

We write in support of House Bill 191.

At its core, economic theory deals with incentives and how they alter behavior amongst persons, government and society as a whole. Nearly any economic condition and activity present factors that lead to either incentivize conduct and likely lead to more of it – or disincentivize conduct to reduce how frequently it takes place. [1]

The concept of "pigouvian taxes'' runs directly from this perspective. Our taxation systems can help incentivize or subsidize conduct that benefits society. This is particularly necessary when the rewards are diffuse and not included in the final market price. [2]

Similarly, conduct that harms society should be disincentizedor penalized – especially when the costs are borne by society as a whole, not just those that engage in socially harmful conduct. The added costs imposed by taxing detrimental conduct can reduce its frequency and provide funds to correct the harms suffered by society.

House Bill 191 follows this basic economic principle and seeks to correct incentives. Persons should not benefit from incurring fines and penalties. Incentivizing harmful conduct will only lead to more of it. By

[1] https://www.econlib.org/library/Topics/College/incentives.html

[2] https://taxfoundation.org/tax-basics/pigouvian-tax/#:~:text=What%20Is%20a%20Pigouvian%20Tax,sugar%20taxes%2C%20and%20carbon%20taxes.

capturing deductions taken for fines and penalties. House Bill 191 will help correct these perverse incentives and help to reduce harm to society.

For these reasons we urge a favorable report.

Respectfully submitted,
Michael Donnelly
Economic Action Maryland

# HB 191_Fair Funding Coalition_FAV.pdf
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Position: FAV

MARYLAND
FAIR FUNDING
COALITION

**Testimony in Support of HB 191**
**Del. Vanessa Atterbeary, Chair**
**House Ways & Means Committee**

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**Our coalition supports HB 191, which closes a tax loophole created by the 2017 Trump tax bill that effectively rewards businesses that have violated civil or criminal laws by giving them a tax deduction.**

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It is time for every Maryland resident and business to pay their fair share of taxes, especially when critical state needs remain unmet. With a wide range of state services stretched thin, the best way to support families, local businesses, and a healthy economy is to reform Maryland's tax code to make it more effective and equitable.

<u>**Therefore, we urge a favorable report on House Bill 191**</u>

## SEIU 500 SUPPORT House Bill 191 – Income Tax – Pay

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Position: FAV

LOCAL 500 SEIU Stronger Together

**Hearing Testimony March 29, 2023**
**Senate Budget and Taxation Committee**
**Service Employees International Union, Local 500, CtW, CLC**

## House Bill 191 – Income Tax – Payments, of Fines, Penalties, and other Amounts – Addition Modificiation

**SUPPORT**

SEIU Local 500 represents over 20,000 working people in Maryland, Washington D.C., and Virginia. Our union represents the support staff at the Montgomery County Public School system, Family Child Care Providers, Faculty and Staff at several Maryland colleges and universities, staff at non-profits and many other working people across the region. **We urge a favorable report on House Bill 191.**

SEIU Local 500 supports proposals focused on eliminating loopholes and tax breaks that benefit special interests and fixing our upside-down tax code, which allows the wealthiest individuals to pay the smallest share of their income in state and local taxes. We believe large, profitable corporations should pay what they truly owe in taxes and not expect working families to continue to subsidize more than their share of taxes that support our roads, schools, and infrastructure.

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**Therefore, we urge a favorable report on HB 191.**

**Service Employees International Union, Local 500, CtW, CLC**
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**Pia Morrison, President**