



**LEGISLATIVE POSITION:**

**Unfavorable**

**House Bill 337**

**Income Tax – Capital Gains, Dividends, and Foreign-Derived Intangible Income - Alterations**

**House Ways & Means Committee**

**Thursday, February 9, 2023**

Dear Chairwoman Atterbeary and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 6,400 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

House Bill 337 seeks to increase Maryland's income tax rate on the capital gains of individuals, change the longstanding structure on the taxation of real estate investment trusts (REITs), and disallow deductions for dividends and other foreign income while allowing the same dividend-received deductions for US based operations. While all the provisions of HB 337 are concerning to the overall health of Maryland's business climate, the section of the bill pertaining to foreign-derived intangible income is particularly worrisome as this provision has been found unconstitutional in the U.S. Supreme Court's 1992 ruling in the case of *Kraft v. Iowa*.

To address the additional 1% tax on capital gains income, all capital gains income is already taxed at the full Maryland tax rate of the recipient. Preferential treatment is not given to capital gains income in Maryland. Increasing the Maryland tax rate simply because the federal tax law has a different rate would be a bad policy choice from a regional and national business competitiveness perspective.

The other provisions of the bill all relate to various areas of the Federal Internal Revenue Code and pertain to foreign business operations. The bill's attempt to deny all of the listed deductions that pertain to foreign operations would appear to be unconstitutional as a violation of the Commerce Clause. In fact, HB 337 would put Maryland's statute into the same position as Iowa's which the U.S. Supreme Court ruled unconstitutional in its ruling in the *Kraft* decision. Simply put, HB 337 would discriminate against foreign commerce in favor of domestic commerce. The title of HB 337 even illudes to the fact that the intent of the legislation is to disincentivize foreign business in favor of domestic business.

The Maryland Chamber of Commerce would strongly urge the Committee to explore existing case law on the treatment of foreign business income before forging ahead on complicated new tax structures.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on HB 337.