



THE MARYLAND HOUSE OF DELEGATES  
ANNAPOLIS, MARYLAND 21401

**Testimony in Support of HB 495  
Income Tax – Internal Revenue Code Amendments and the Federal  
CARES Act – Decoupling**

The federal CARES Act, passed by Congress in March 2020, was an important financial stimulus in a time of great need for many Americans. The law, however, contained several significant tax provisions, three of which will reduce Maryland's revenues by \$110 million in fiscal years 2020 and 2021.<sup>1</sup> HB 495 would decouple from certain costly federal tax provisions that disproportionately benefit wealthy taxpayers.

**Summary of the CARES Act Tax Loopholes**

The CARES Act made several amendments to the federal tax code:

1. Allowed business losses from 2018, 2019, and 2020 to be carried back up to 5 years and to offset up to 100% of profits in a given year. This is a far more generous provision than the 80% offset limit and 2 year timeframe in effect under the 2017 federal tax law. The retroactive nature of this provision means that businesses are able to obtain immediate tax refunds if they file amended tax returns for prior years even though the losses have nothing to do with the pandemic.
2. Allowed more deductions for business interest expenses. Businesses can now write off interest expenses up to 50 percent of their annual income—up from 30 percent.
3. Allowed wealthy business owners to write off unlimited non-business income. The 2017 federal tax reforms limited the writeoff of non-business income, such as capital gains, with business losses to no more than \$250,000/\$500,000 (single vs. joint filers) per year. The CARES Act removed that cap, thereby allowing the top 1% of taxpayers to write off unlimited amounts of personal income. This tax change is also now retroactive for tax years 2018 and 2019.

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<sup>1</sup> Board of Revenue Estimates, September 2020

These changes automatically go into effect in Maryland for tax years before 2020. Unless the General Assembly acts, the end result will be substantially less money for the state.

### **Other States are Decoupling**

More than half of states plus the District of Columbia do not conform to these changes in the CARES Act.<sup>2</sup> Ten states plus the District of Columbia have taken action to decouple from some or all of the CARES Act tax provisions.<sup>3</sup> Additionally, about half of states do not automatically conform with changes to the federal tax code, which means that these changes in the CARES Act will not automatically take effect in these states.<sup>4</sup>

### **Tax Breaks for the Wealthy**

The CARES Act tax breaks will disproportionately benefit wealthy individuals and businesses.

The main group that benefits under the excess business loss provision is wealthy people who own a business and who make more than \$250,000/\$500,000 in capital gains or other non-business income. According to the Joint Committee on Taxation, 82% of the benefits of this provision will go to the 43,000 millionaires in America.<sup>5</sup> This tax provision makes it even easier for a small subset of wealthy taxpayers to effectively zero out their personal income taxes. Wealthy real estate investors will especially be advantaged by this change, which will allow them to write off losses that only occurred on paper.<sup>6,7</sup>

The CARES Act tax breaks for businesses are also problematic. “Unlike other economic rescue programs, this tax provision has no strings attached. Any corporation, even companies that did not suffer from the pandemic, can utilize this change to the tax code and request automatic refunds from the IRS. The money does not need to be used for maintaining employment. Any refund received through the program can be

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<sup>2</sup> “State Conformity to CARES Act,” Bloomberg Tax and Accounting, updated December 14, 2020.

<sup>3</sup> Includes Colorado, Connecticut, Georgia, Hawaii, Iowa, Massachusetts, New Mexico, New York, North Carolina, and Tennessee

<sup>4</sup> Includes Arizona, Arkansas, California, Idaho, Indiana, Kentucky, Maine, Minnesota, Mississippi, New Hampshire, South Carolina, Texas, Vermont, Virginia, and West Virginia

<sup>5</sup> JCT letter to Senator Sheldon Whitehouse and Representative Lloyd Doggett, April 9, 2020, <https://www.whitehouse.senate.gov/imo/media/doc/116-0849.pdf>

<sup>6</sup> New York Times, March 26, 2020,

<https://www.nytimes.com/2020/03/26/business/coronavirus-real-estate-investors-stimulus.html>

<sup>7</sup> “The Troubling Case of the Unlimited Pass-Through Deduction,” Clint Wallace, June 29, 2020. University of Chicago Law Review Online, <https://ssrn.com/abstract=3583074>

spent on dividends or stock repurchasing plans, or other giveaways to management and investors.”<sup>8</sup>

Many corporations cashed in their CARES Act refunds to pay for shareholder dividends.<sup>9</sup> For instance, Marathon Petroleum Corp. received \$411 million in CARES Act refunds and then paid out \$400 million to its shareholders.

Moreover, many profitable corporations benefited from these tax breaks.<sup>8</sup> For instance, Amerco—the parent company of U-Haul—received \$110 million in federal refunds with an additional \$123 million pending. Other companies receiving refunds include Kirkland’s Inc. (\$12.3 million), Apyx Medical Corp. (\$3.7 million), and Stericycle (\$48 million); all of these companies reported profits in 2020.

### **Retroactive Tax Breaks are Problematic**

Maryland law currently requires that the state automatically decouple for any federal tax changes that are projected to reduce state revenue by \$5 million or more. Such decoupling, however, is temporary and only applies to the tax year in which the federal amendments were passed. That one-year grace period is supposed to give the state legislature a chance to review the federal tax changes and to give us time to decouple from problematic tax changes.

Maryland state law, however, does not account for retroactive federal tax changes, which means that such changes go into effect immediately. This bill would clarify that retroactive federal tax reforms would also be subject to a one year pause to give the General Assembly time to evaluate and act.

### **Why Maryland Needs to Decouple**

Maryland is faced with many fiscal challenges due to the COVID-19 pandemic. These challenges will be exacerbated by retaining the costly tax breaks included in the CARES Act. If the General Assembly does not decouple and require repayment of these funds, we will have to offset the lost revenues with tax increases or spending cuts in other areas of the budget totalling \$110 million over two years.

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<sup>8</sup> <https://theintercept.com/2020/12/04/covid-irs-corporation-tax-refunds/>

<sup>9</sup> “Thriving companies getting hundreds of millions in federal coronavirus tax breaks,” Orlando Sentinel, May 21, 2020.

<https://www.orlandosentinel.com/coronavirus/jobs-economy/os-ne-coronavirus-corporate-tax-breaks-savings-20200521-4br52rs5lve3vmcdfjrhwbvfhe-story.html>