



February 9, 2022

The Honorable Guy Guzzone, Chair
Senate Budget and Taxation Committee
Miller Senate Office Building, 3 West
Annapolis, MD 21401

Oppose: SB 361 – Carried Interest – Additional Tax

Dear Senator, Guzzone and Committee Members:

The NAIOP Maryland Chapters represent more than 700 companies involved in all aspects of commercial, industrial and mixed-use real estate. On behalf of our member companies, I am writing in opposition to SB 361 – Carried Interest Additional Tax.

Carried interest is a term that dates to the Renaissance merchants of Genoa, Pisa, Florence, and Venice. Ship captains sent to carry goods around the world were provided an interest in the value of the cargo, a “*carried interest*.”

Although the concept of *carried interests* are often associated with stock investors, much of the real estate development that takes place today is within partnership entities. According to the IRS, real estate partnerships represent nearly 50 percent of the 3.7 million partnerships in the United States.

In real estate partnerships a *carried interest* is given by the limited partners to the general partner in return for the risks taken, pursuit costs and liabilities borne by that partner during the project. A general partner will often personally guarantee, development design and permit approvals, construction of the project, as well as payment of all debts. In addition, the general partner is at risk for all partnership liabilities such as environmental compliance, and any lawsuits.

SB 361 refers to, *carried interests* but the legislation would simply impose a 17% surtax on the income derived from “*investment management services*” conducted in Maryland. For example, if a real estate management company were to work on acquisitions, dispositions financing and property management, the members’ share of the income would be subject to an additional 17% surtax. The bill would increase the tax burden on real estate activities that already pay a repeated series of sales, property, excise, transfer, recordation, and income taxes.

Real estate development, unlike some investments from industries that are the intended focus of the bill, results in the creation of a tangible, capital asset: a mixed-use community, an office building, a housing project, or a distribution warehouse. The investment in the underlying real estate asset gives rise to jobs, results in an increased state and local tax revenue and provides other community benefits through economic multiplier effects.

Applying SB 361’s tax surcharge to real estate would have negative policy implications:

- + Increasing fixed development costs and frontloading those costs rather than deferring them by taking them out of capital gains after the project is stabilized would pressure partnerships to take on more debt to finance development operating costs.

- + Willingness to take development risk is reduced by a tax surcharge. A 2013 study by Douglas Holtz-Eakin, former director of the nonpartisan Congressional Budget Office, found that *carried interest* legislation could result in reduced construction activity and decreased wages in the real estate industry.
- + Reducing the flow of investment capital to real estate projects would be felt hardest by already difficult to finance projects such as urban redevelopment, affordable housing, or property with environmental contamination.
- + The tax surcharge would apply to the distributions of partnership agreements drafted years, perhaps decades, earlier. This penalizes the patient, long-term build and hold business model most of our members follow.

Under current federal law, for investments held less than three years, capital appreciation is taxed as ordinary income; for investments held longer than 3-years it is taxed as long-term capital gain for all partners. SB 361 makes no distinction about the holding period and would impose the 17% tax on passthrough income that is federally taxed at the ordinary income rate.

Federal tax treatment of real estate related income and capital gains may significantly change under the Build Back Better legislation now under consideration in Congress. An increase in the long-term capital gains rate could increase the effective tax rate in Maryland to 37.55%. Adding the 17% surtax in SB 361 would increase the top rate to 54.55%. Because the concepts in federal *carried interest* legislation are not the same as SB 361, we question the value of the abrogation provision and its ability to prevent stacking of taxes.

Because real estate assets are often owned and managed by separate entities within the same real estate enterprise structure, the exemption in the bill based on the percentage of assets in real estate would be insufficient.

For these reasons, NAIOP respectfully recommends your unfavorable report on SB 361.

Sincerely;



Tom Ballentine, Vice President for Policy
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

cc: Senate Budget and Taxation Committee Members
Nick Manis – Manis, Canning Assoc.