

**Letter of Information – House Bill 211 – Rental Housing Fund, Calculation of Taxable
Income, and Transfer Tax – Alterations (Affordable Housing Investment Act)***Ways and Means Committee**February 9, 2023*

This bill requires an addback of gain from investments in opportunity zones when that gain is excluded under Internal Revenue Code § 1400Z-2.

IRC § 1400Z-2(a) provides that a taxpayer may elect to exclude capital gain that has been reinvested in a qualified opportunity zone. IRC § 1400(b)(1) requires the inclusion of such gain when the when the investment is ultimately sold or exchanged, or December 31, 2026. IRC § 1400(b)(2) provides an adjusted basis for gain on an investment in a qualified opportunity zone, based on how long the investment was held. Investments held for at least 10 years, the basis is equal to the fair market value on the date the investment is sold, thereby eliminating taxable gain entirely.

For any property held for less than 10 years, some gain will eventually be includable in federal taxable income. To avoid unconstitutional double taxation of gain excluded under § 1400Z-2(a) but included under § 1400Z-2(b), the Comptroller recommends a subtraction in the year the gain is included at the federal level:

Tax-General Article § 10-207

(OO) THE SUBTRACTION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES ANY CAPITAL GAINS EXCLUDED UNDER § 1400-Z2 OF THE INTERNAL REVENUE CODE THAT WERE ADDED TO INCOME UNDER § 10-204(M) OF THIS SUBTITLE IN A PRIOR YEAR.

As always, the Comptroller's Office is willing and available to discuss these concerns or any questions you may have at your convenience. Please contact Justin Hayes, Legislative Director at jhayes@marylandtaxes.gov or 410-260-7696.

