Reinvent Albany
ALIGN-NY • Alliance for Quality Education
American Economic Liberties Project
Citizen Action of New York • Coalition for Economic Justice
CPC - The Chinese-American Planning Council
Community Service Society of New York
Fiscal Policy Institute • Good Jobs First
Institute on Taxation and Economic Policy
The Legal Aid Society • Long Island Progressive Coalition
Make the Road New York
Northwest Bronx Community & Clergy Coalition
Nobody Leaves Mid-Hudson • NYPIRG
Pratt Center for Community Development
Strong Economy for All • Tenants PAC

1199SEIU
Communications Workers of America, District 1
New York State United Teachers
Professional Staff Congress/CUNY
Retail, Wholesale and Department Store Union
UFCW Local 1500

MEMO IN SUPPORT

Opportunity Zone Tax Break Elimination Act

S1195 (Gianaris)/A5701 (Dinowitz)

February 25, 2021

TITLE OF BILL
An act to amend the tax law and the administrative code of the city of New York, in relation to investment income.

SUMMARY OF PROVISIONS
Section 1 states the name of the bill.

Section 2 amends the state tax law so that the definition of “investment income” subtracts capital gains deferred or excluded under federal law 26 U.S.C. §1400-Z-2. This reduces the amount of capital gains deferred or excluded, thereby increasing the amount of investment income subject to state tax.

Section 3 amends New York city’s administrative code so that the definition of “investment income” subtracts capital gains deferred or excluded under federal law 26 U.S.C. §1400-Z-2. This reduces the amount of capital gains deferred or excluded, thereby increasing the amount of investment income subject to state tax.

Section 4 states that the act shall take effect immediately and apply to tax years beginning on or after January 1, 2021.

STATEMENT OF SUPPORT
Our groups strongly support this bill.

The bill would decouple New York State and City’s tax codes from the federal “Opportunity Zones" program (OZs), which was intended to increase investment in lower-income communities. Under the program passed through the Trump administration’s 2017 Tax Cuts and Jobs Act, individuals and corporations can reinvest their capital gains in any of the 8,800 designated “Opportunity Zones” across the country. Those investing in OZs can defer taxes on their capital gains and receive a tax reduction if investing for at least 5 years. Investors do not have to pay any taxes on appreciations in their OZ investments if investing for at least 10 years.

To qualify as an Opportunity Zone, a census tract must have a high poverty rate or low family income relative to the local or statewide median, though some contiguous tracts do not have to meet these requirements. The boundaries of the Opportunity Zones are submitted to the U.S. Treasury Department by the governors in each participating state (Empire State Development designated New York’s boundaries without holding any public hearings on the matter).

Extensive coverage of Opportunity Zones in the New York Times, Wall Street Journal, and Bloomberg News has detailed the program's poor design. Opportunity Zones often give tax breaks to projects already underway and seem to serve mainly as a windfall for wealthy and politically connected real estate developers:

> *Former Gov. Chris Christie of New Jersey; Richard LeFrak, a New York real estate titan who is close to the president; Anthony Scaramucci, a former White House aide who recently had a falling out with Mr. Trump; and the family of Jared Kushner, Mr. Trump's son-in-law and senior adviser, all are looking to profit from what is shaping up to be a once-in-a-generation bonanza for elite investors.*
> -The New York Times, August 31, 2019
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> *In Florida, a Fort Lauderdale developer broke ground this spring on a $40 million apartment building located in an opportunity zone. Monthly rents are expected to go for as much as $1,900. "A lot of these people who are going to live there have a high income," the developer confessed to a local business publication. The complex will feature amenities including a dog park, a fitness center with a yoga and cycling studio, a full-time concierge and a fourth-floor pool with cabanas.*
> -The Wall Street Journal, September 13, 2019
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> *Pier Village … features Victorian-inspired oceanfront apartments, a pool club, and expensive restaurants. At a shoreline property built by Extell Development Co. in partnership with Kushner Cos., 786-square-foot one-bedroom apartments are being marketed for as much as $2,765 a month. At an adjacent development site, Kushner Cos. is constructing a 72-room luxury hotel … This section of Long Branch, N.J., has been deemed an "opportunity zone," a classification created in President Trump's 2017 tax law, meant to spur investment in poor communities. Kushner Cos. is one of many developers buying into about 9,000 opportunity zones across the country.*
> -Bloomberg News, December 6, 2018
>
> *Kushner and his wife, Ivanka Trump, pushed for the Opportunity Zone tax breaks to be included in Trump's 2017 tax overhaul. The breaks offer investors big cuts in capital gains taxes if they put money into businesses and buildings in 8,700 poor, struggling neighborhoods across the country that otherwise might not attract the money. Cadre has said it plans to invest heavily in those neighborhoods, though it is unclear just how much it has done so. Kushner also*

has stakes in more than a dozen properties in Opportunity Zones owned by his family firm, Kushner Cos. It is not clear if the company has taken advantage of the breaks.

-Associated Press, March 3, 2020

[Opportunity Zones] are a new federal program that developers see as one of the great tax-avoidance programs ever created in this country.

-The Real Deal, October 24, 2018

A very small group of taxpayers will profit from OZs (only 7 percent of taxpayers pay any capital gains taxes, and two-thirds of capital gains taxes are paid by those making at least $1 million annually). Yet, according to independent estimates, Opportunity Zones will initially cost New York City and State respectively as much as $31 million and $63 million a year in tax revenue, with those numbers expected to rise significantly in 2029. (OZs are estimated to cost the federal government $2 billion annually.) The program also effectively forces New York to subsidize investments in other states.

There is zero evidence that the program actually boosts the communities it means to serve. Many studies find that similar programs benefit large corporations instead of revitalizing economies. As Reinvent Albany noted in last year's testimony to the Joint Legislative Budget Hearing on Economic Development, a report written for the 2013 Governor's New York State Tax Reform and Fairness Commission found "no conclusive evidence from research studies conducted since the mid-1950s to show that business tax incentives have an impact on net economic gains." We see nothing to suggest that Opportunity Zones would have better outcomes, and it may be impossible to find out, as the program was established without any transparency requirements that would allow for analysis of its impact.

Both New York City and State have budget shortfalls of several billion over the next few years, and budget cuts are likely to have a major impact on school districts and social services across the state. Opportunity Zone subsidies cannot be justified in the best of times, so there is no reason why New York should continue forgoing precious tax dollars during a historic budget crisis.

As Opportunity Zones are federal law, investors will continue to have capital gains taxes deferred or excluded on federal taxes regardless of the bill's passage. But New York can still follow California, Massachusetts, Mississippi and North Carolina and change the tax code so that the state and city no longer loses funds that should go to schools, clean water, and the environment. We urge the legislature to pass the bill.