Reinvent Albany
ALIGN-NY • Alliance for Quality Education
American Economic Liberties Project
Citizen Action of New York
Community Service Society of New York
CPC - The Chinese-American Planning Council
Good Jobs First • Institute on Taxation and Economic Policy
Legal Aid Society • Long Island Progressive Coalition
New Yorkers for Fiscal Fairness • NYPIRG
New York State Council of Churches
Strong Economy for All • Tenants PAC

Civil Service Employees Association
Communications Workers of America, District 1
New York State United Teachers
Professional Staff Congress/CUNY
Retail, Wholesale and Department Store Union
United University Professions

MEMO OF SUPPORT

S3340 (Gianaris) / A3246 (Dinowitz)

January 31, 2025

TITLE OF BILL
Relates to treatment of gains from qualified opportunity zones in calculating taxable income.

SUMMARY OF PROVISIONS
Sections 1, 5, 7, and 9 provide under various sections of law that the definition of "entire net income" does not include the amount of gain excluded from federal gross income for the taxable year by IRS code §1400z-2(a)(1)(c).[1]

Sections 2, 4, 6, 8, 10, and 12 provide under various sections of law that under tax years beginning on or after January 1, 2024, the sale or exchange of property which the taxpayer made under IRS code §1400z-2(a)(1)(c) shall not treated as if the taxpayer had not made such an election.[2]

Section 3 adds a new paragraph 43 to Tax Law section 612(b) providing that gains excluded under IRS code §1400z-2(a)(1)(c) shall be added to federal income for New York State purposes.

Section 11 adds a new paragraph 40 to NYC administrative code 11-1712 providing that gains excluded under IRS code §1400z-2(a)(1)(c) shall be added to federal income for New York State purposes.

Section 13 states that the bill applies to taxable years beginning on or after January 1, 2026.

STATEMENT OF SUPPORT
In the 2021 budget, New York State partially ended the state and NYC tax breaks connected to the federal Opportunity Zone program, a major tax initiative of the Trump administration. Unfortunately, the 2021 bill included a loophole that will begin costing NYS and NYC government billions in foregone revenue in 2029.

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[1] Section 1 adds a new subparagraph (28) to Tax Law section 208(9)(b). Section 5 adds a new subparagraph (aa) to Tax Law Section 1503(b)(2). Section 7 adds a new subparagraph (16) to NYC Administrative Code Section 11-602(8)(a). Section 9 adds a new subparagraph (16) to NYC Administrative Code Section 11-652(8)(a).
[2] Section 2 adds a new paragraph (u) to Tax Law Section 208(9). Section 4 adds a new subsection y to Tax Law Section 612. Section 6 adds a new subdivision (d) to Tax Law Section 1503. Section 8 adds a new subdivision 11 to NYC Administrative Code Section 11-602. Section 10 adds a new paragraph (u) to NYC Administrative Code Section 11-652(8). Section 8 adds a new subdivision (w) to NYC Administrative Code Section 11-1712. Section 10 adds a new paragraph (u) to NYC Administrative Code §11-652(8). Section 12 adds a new subdivision (w) to NYC Administrative Code §11-1712.

Under the Opportunity Zone program, investors receive various tax breaks for investing their capital gains in designated high-poverty/low-income areas. If they invest for five years, investors can pay a reduced tax rate on the capital gains. If they invest for ten years, investors do not have to pay *any* taxes on new gains from their investments. Unfortunately, the 2021 budget bill did not end the latter tax break, which could begin costing New York $420 million a year in 2029, according to the Citizens Budget Commission ($284 million for New York State, and $140 million for New York City).

Numerous studies have found that Opportunity Zones inordinately benefit wealthy real estate investors. The New York Times, the Wall Street Journal, and Bloomberg News have detailed how Opportunity Zones are essentially a government handout to the very rich that has been used for luxury apartments with pet spas and superyacht marinas. The program also forces NY to subsidize projects out-of-state: The tax break takes effect when investors reinvest their NY capital gains in Opportunity Zones *anywhere* in the country, meaning that NY effectively pays investors to send their money to Alabama, Utah, or other states.

The state needs to stop this unnecessary, unfair, and wasteful tax break before it costs New York billions of dollars. We urge the Legislature to pass the bill.