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**TESTIMONY BEFORE THE OHIO HOUSE FINANCE COMMITTEE
HB49, BIENNIAL STATE OPERATING BUDGET**

**TESTIMONY OF:
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CLERK-TREASURER
VILLAGE OF JEFFERSON, OHIO**

APRIL 5, 2017

A. Introduction

Chairman Smith, Vice Chair Ryan, Ranking Member Cera, and members of the House Finance Committee:

My name is Patricia Fisher and I am the elected Clerk-Treasurer for the Village of Jefferson, Ohio in Ashtabula County. I appreciate the opportunity to speak with you today to offer my testimony regarding the proposed Biennial State Operating Budget currently before this Committee known as House Bill 49 upon request by the Council of the Village of Jefferson and on behalf of the residents of the Village of Jefferson.

B. Background

However, before I get to my detailed testimony, I would like to give you some relevant background on me and Jefferson so that you may have an appreciation for my perspective and concerns.

I have had the privilege of serving the Village of Jefferson in my current capacity for 22 years since being elected to the first of my 6 four year terms on April 1, 1996, with my most recent re-election occurring on November 3, 2015. Additionally, I serve as the President for the Jefferson Area Chamber of Commerce, Past President and Board Member of the Ohio Association of Public Treasurers, Chairman of the Workers Compensation Pool for the Ohio Association of Public Treasurers, Treasurer of the Support our Community Center, Member of the Ohio Township Association, and Member of four other finance-related organizations. I am here today as a direct result and product of my passion to secure a brighter future for Jefferson and its residents and protect its home rule sovereignty as a municipal corporation.

The Village of Jefferson was founded by United States Postmaster General Gideon Granger in 1803 who named it after his boss, President Thomas Jefferson. Jefferson has a Mayor-Council form of government with an appointed Village Administrator. As of the 2010 census, the Jefferson had 3,120 residents, 77.5% of whom were 18 years of age or older. The Village has self-administered its municipal income tax code since 1998 when we terminated our relationship with Central Collection Agency, a policy change that I advocated. The Village employs one full-time employee named Tina Dumperth as Tax Clerk whose main responsibility is to assist me in my duties as Tax Administrator in order to build and maintain productive relationships with taxpayers, ensure smooth processing of our tax code, and bring violations of the code to my attention.

My main purpose for testifying today is to bring your attention to two particular parts of House Bill 49 and their effects on the Village of Jefferson. The first is the proposal to centralize the collection of business net profit income tax and the second is the proposal to eliminate the “throwback” rule for the sales tax. The Village of Jefferson is strongly opposed to both proposals and has publicly and formally declared that position through unanimous passage and adoption of Resolution Number 2017-R-3062 on March 20, 2017. I have included a copy of the Council’s Resolution with my remarks.

C. Centralized Collection Testimony

Much of my testimony today is going to be focused on the budget’s proposed centralization of collection of municipal income taxes on business net profits through the Ohio Business Gateway, which I will refer to as OBG. In Resolution 3062 mentioned earlier, the Village Council expressed its strong opposition to the proposal for numerous reasons, including its attack on home rule powers granted to Jefferson by the Ohio Constitution, removal of the personal service and assistance provided to taxpayers who need assistance preparing and filing necessary forms; and the issues that involving a state bureaucracy will cause when Jefferson needs to audit, correct, or assess business net profit income tax.

1. Attack on Home Rule

To begin, the Village of Jefferson’s top concern is that House Bill 49 encroaches upon its home rule powers. Article XVIII of the Ohio Constitution provides municipalities like Jefferson certain “home rule” powers that include the power of local self-government, the exercise of certain police powers, and the ownership and operation of public utilities. Included in the power of local self-government is the right to determine how the Village of Jefferson should administer its municipal income tax code and the choice to contract for services in the collection of income tax. House Bill 49’s centralizing of the collection of business net profit income tax violates these Home Rule principles by removing Jefferson’s choice in the matter.

Like Abraham Lincoln, I firmly believe in a government of the people, by the people, and for the people and there is no government closer to the people than that of municipal government. The Village of Jefferson is governed by its own residents who care for and believe in their community and wish to take responsibility for charting its course. These residents, including myself, decided many years ago to self-administer the municipal income tax code and not contract those services to a third-party agency because of the great deal of talent we have and the

attention we provide to our taxpayers. The state, through House Bill 49, threatens that conscious decision and violates our home rule powers as a result.

The state's proposed usurpation of our community's decision, combined with a lessening of the local government fund, also fails to recognize Ohio's strong tradition of helping and promoting our local governments and communities and begs the question of how long before the state begins usurping other choices of municipalities like Jefferson and begins to demand centralization of other income taxes.

The home rule provisions also come into play when discussing how Jefferson is able to settle delinquent accounts, abate penalties and interest, and to decide when to file criminal or civil charges against delinquent taxpayers. Will the Ohio Department of Taxation assert a new role when discussing delinquent business net profit income tax accounts? Will I as the Tax Administrator need to cede some of my decision making authority to the state? These are questions that are unanswered but that could have major implications for Jefferson's home rule.

2. Removal of Personal Service and Assistance

In addition to the home rule encroachment, I have severe reservations about the impact House Bill 49 will have on the personal service and assistance my office provides to our taxpayers.

My and Tina's availability and willingness to work directly with taxpayers to settle ongoing disputes, aid in the filing of necessary documentation, and otherwise assist taxpayers with navigating our municipal income tax code and requirements is potentially the greatest asset to Jefferson's taxpayers. Importantly, this has become even more important as taxpayers wrestle with the State's over-complication of municipal income tax through the adoption of House Bill 5 that affected incomes earned after January 1, 2016.

Every taxpayer who walks into the Village Hall is greeted and helped as soon as possible by Tina or me. We take the time to review a person's filings, double-check paperwork, and identify any glaring issues before we even formally process the paperwork to avoid unnecessary delays or confusion on behalf of the taxpayer. Tina and I also coordinate with local businesses and individuals to ensure accuracy of payments and compliance with the relevant provisions of the municipal income tax code. Taxpayers have become familiar with Tina and I as a result of this coordination and have come to know what to expect when they come into our office, and we too have come to know what to expect of our taxpayers and their individual needs and methods of operation.

I shudder to think of the day when Jefferson might be unable to properly assist a taxpayer and need to either call or refer the taxpayer to call the Ohio Business Gateway, Ohio Department of Taxation, or some other third-party service to confirm amounts, request documentation, or attempt to settle outstanding accounts.

I wanted to share an example of where this personal service and assistance made a true difference. There is an ongoing business in Jefferson that decided to use Ohio Business Gateway, which I will refer to as OBG, to process its withholdings in hopes that it would save

time and money and be simpler and more user-friendly. This business' first experience was nothing short of a nightmare.

As background, when a business pays money through OBG, the Village is notified of the availability of those funds with what is called an OBG NACHA file. A NACHA file is a very vague document that has the information needed for our bank to process payments made through OBG but gives little information to us about the particular business.

My Tax Clerk reviewed and processed a NACHA file for this particular business that had an issue by sending it to our bank to process the deposit. The bank returned a report showing that this particular business' money was not deposited due to insufficient funds, causing fees to be assessed by both the bank and the Village against the business. My department and the business investigated the matter and discovered that the business did in fact send its payment to OBG, that the account number was correct, but that OBG did not deposit the funds into the account to be withdrawn by the Village. To be clear, this was a mistake by OBG and OBG alone.

However, the business was not forced to pay for OBG's mistake. Instead, through the relationships and trust I have built over the years among employers and financial institutions in our community, I waived the Village's fees for insufficient funds and was able to convince the bank to waive the fees. This is merely one example of where the personal service and attention that my department can give to our taxpayers is vastly superior than what the Ohio Department of Taxation and OBG can provide.

3. Ability of Jefferson to Audit, Correct, and Assess Business Net Profit Income Tax

Along the same lines as my concerns about House Bill 49 taking away the personal service and assistance I can offer taxpayers is my concern that House Bill 49 will rob Jefferson of its ability to accurately audit, correct, and assess business net profit income tax.

Currently, Tina sorts through every taxpayer's information, inspects the relevant documentation, and ensures that all the numbers, accounts, and balances agree. She does this for filings through the Ohio Business Gateway as well as those filed independently by accountants or taxpayers themselves. Even if the centralized collection and payment provisions of House Bill 49 pass unedited, Tina will still be reviewing all of this information to ensure it was entered correctly, that it was paid at the appropriate rate, that no taxpayer is escaping tax liability, and that each business that should have filed through OBG did so based on previous years' records.

However, if the appropriate documentation is missing or incorrect, the Village would be unable to rest assured that it had accurately audited, corrected, and assessed the business net profit income tax, or even worse, that it will have to do so through a state bureaucracy now serving these same needs for hundreds of other municipalities, each with individual needs and tax rates. Doing these audits is vital because it is only through this intense inspection of taxpayers' records that Tina and I have been able to unearth some large-scale withholding errors of various employers within the Village.

In short, House Bill 49's requirements are not going to save the Village of Jefferson any time or money, and in fact will likely cost more of both.

One reason why the Village goes to such great lengths to ensure accuracy with tax filings with OBG in particular is because we average two to three mistakes per year from OBG filings. This is remarkable because the Village has 121 businesses within its limits and 19 use it for withholding and only one uses it to file its net profit income tax return.

In addition, there are four villages and one county in Ohio with Jefferson in the name, which can cause confusion. The villages are Jefferson, Ohio where I serve as Clerk-Treasurer, West Jefferson, Jeffersonville, and Port Jefferson while the county is simply called Jefferson County.

I bring this to your attention because we have received, and continue to receive, OBG NACHA files for businesses that operate in one or more of those villages. Therefore, if OBG is unable to ensure that these items are done correctly, how can we be sure that it will correctly enter our income tax rate at 1.5%; or that the correct amount of business income tax revenue will be sent to us as the proper payee and in a timely fashion; or that the businesses will select the appropriate villages when selecting where they do business in the state of Ohio?

I have very real concerns that my ongoing and repeating issues with OBG remain unresolved, yet now the Governor is proposing to put even more work on the Tax Commissioner's plate and play with even more of Jefferson's money to solve a nonexistent problem. As a result, instead of lessening my problems with OBG, I expect the Governor's proposal will only increase them and cause significantly greater burdens and issues for taxpayers, my department, and the Village of Jefferson.

4. Ability to Enforce the Village Tax Code

As I have already alluded to, I also have serious misgivings about the ability of Jefferson to enforce its tax code if House Bill 49 becomes law. The Solicitor for the Village of Jefferson, Michael Hamper III, and I have spoken at length regarding this particular issue and how it might impact Jefferson's ability to pursue delinquent business income tax accounts in the future and who might be liable if a business goes out of business with an outstanding municipal tax bill.

Based upon my conversations with Mr. Hamper and my review of the Legislative Service Commission's bill analysis, House Bill 49 currently proposes to completely move the laws governing the calculation of a business' taxable income, filing and payment requirements, and the issuance of assessments and refunds to a new statutory chapter, Revised Code Chapter 5718 that gives the Tax Commissioner the obligation and authority to perform all duties related to administering the municipal income tax code.

To summarize and repeat, because I want that to sink in: House Bill 49 is seeking to remove local control on a matter of local self-government, add an unnecessary middleman, and give the responsibilities to bigger government. This is not the path to success and severely inhibits my ability to enforce the Village income tax code.

5. What is House Bill 49's Ultimate Purpose?

The question that continues to gnaw at me throughout this entire process is this: What is House Bill 49's ultimate purpose? What is the Governor attempting to do and who does it benefit? I can definitively state that his proposals do not benefit the Village of Jefferson nor its taxpayers.

As I grappled with these questions, I began thinking and asking myself why the Governor believes that people who do not live in a community, who do not understand its needs, who are not invested in its future, and who have no appreciation for how hard our taxpayers work are going to be more sensitive to the needs of businesses than me or my office. Plainly, they are not. In fact, I cannot think of a single person in Jefferson who believes that the state is better equipped at knowing what goes on in Jefferson than its residents.

So, as I thought about these questions more and more, I have come to the conclusion that House Bill 49 is an attempt to accumulate more power and money for the state and taking it away from local governments. This bill it is not about the businesses.

With quarterly payments of municipal income tax revenue, as proposed by House Bill 49, the State is able to hold municipal money and generate interest and investment income on that money that otherwise should have belonged to the municipalities themselves. In addition, the state is then taking a 1% cut in exchange for inconveniencing municipalities by holding the revenue back, adding a middleman to the process, and creating new regulations for our small businesses to follow.

As I look forward from today, if House Bill 49 passes including the centralization language, I foresee further attempts to consolidate collection and payment of municipal income taxes and proposals to raise the 1% fee as the Tax Department's administrative expenses grow with this program, all of which would be needlessly incurred, and all of which accrue to the State's bottom line, despite a \$2 billion rainy day fund.

D. Throwback Rule Testimony

The second part of House Bill 49 that I wish to testify about today is the Throwback Rule for sales tax. As quick review, the throwback rule adds net profits to business income that is attributable to the Village of Jefferson for businesses that make sales of goods that are shipped from Jefferson and delivered outside of Jefferson to a place where the business does not regularly solicit sales through its own employees.

Jefferson Village Council again expressed its great concerns about this provision in Resolution 3062, specifically that there may be significant reduction of reportable tax revenue available to Jefferson as a result. I share the Council's concern.

I would also add that House Bill 49's elimination of the Throwback Rule will create even further budget holes for municipalities across Ohio that will need to be filled through cutting services or increasing tax rates on residents and the businesses the bill is supposedly trying to help, albeit in a misguided fashion.

As a final note on the Throwback Rule, I want to draw the Committee's attention to an interesting point I discovered while preparing for today's testimony: House Bill 49, as drafted, will maintain the Throwback Rule for sole-proprietorships. I am unsure of the discussions, policy arguments, or reasoning for such an exception, but creating a second class of business in this way is not supportive or attractive way to do business for our residents, small businesses, and entrepreneurs who, for whatever reason, are unable or decide not to incorporate a business.

D. Conclusion

In summary, I want to again reiterate that despite the talking points and support that House Bill 49 may have among certain circles, it does not help local governments or businesses to remove control out of the hands of local officials and centralize them in a call center or office hours outside the boundaries of the Village of Jefferson. Local control of local issues is a tried and true method of governance. However, these centralization efforts, combined with elimination of the Throwback Rule for all businesses except sole-proprietorships and further reduction in the Local Government Fund, despite a massive rainy day fund, should tell Ohioans all they need to know: House Bill 49 is a big business deal that aggrandizes state power, lines state pockets, and hurts local governments, all while doing an inferior job compared to municipal Tax Administrators.

RESOLUTION NO. 2017-R-3062

A RESOLUTION STRONGLY OPPOSING THE STATE OF OHIO GOVERNOR'S PROPOSED 2017-2018 BUDGET, INCLUDING THE CENTRALIZED COLLECTION OF NET PROFIT TAX RETURNS AND OTHER PROVISIONS RELATED TO THE MUNICIPAL INCOME TAX WHICH WILL CAUSE A SUBSTANTIAL LOSS OF REVENUE NEEDED TO SUPPORT THE HEALTH, SAFETY, WELFARE, AND ECONOMIC DEVELOPMENT EFFORTS OF OHIO MUNICIPALITIES INCLUDING THE VILLAGE OF JEFFERSON, AND DECLARING AN EMERGENCY.

WHEREAS, the Mayor and Council of the Village of Jefferson, Ohio have been advised of a proposal by Ohio Governor Kasich and his administration to institute a state-operated program for the centralized collection of Ohio Municipal Income Tax; and

WHEREAS, the proposal for a state takeover of collection of the municipal income taxes of municipal corporations such as the Village of Jefferson, Ohio is a clear attack on the home rule powers granted to municipal corporations by the Ohio Constitution; and

WHEREAS, the Village and other municipalities have provided, and will continue to provide the personal service and assistance to its taxpayers in the preparation and filing of their necessary tax reports and returns more efficiently, immediately, and scrupulously than the state; and

WHEREAS, only municipalities can ensure the prompt and proper auditing of local tax returns to ensure all applicable deductions and declarations are reported, thus also ensuring that all taxpayers pay their fair share without causing higher costs of compliance for all, and taxpayers must be able to do so without burdensome and costly restrictions included in the Governor's budget proposal created with the only purpose being to restrict municipalities from correcting and/or auditing business return filings or making assessments; and

WHEREAS, the proposed state takeover of the collection of municipal income tax also includes a provision that would eliminate a portion of the Business Allocation Formula's sales factor, known as "throwback," thereby substantially reducing reportable tax revenue to municipalities with warehouses, distribution centers, and any business providing online sales; and

WHEREAS, provisions in the proposed budget will hamper the Village and other municipalities' ability to audit and correct municipal income tax business returns, to equitably enforce the municipal income tax laws because the proposed budget has been crafted as a vehicle to control the administrative process of municipal income tax to the benefit of specific taxpayer interests; and

WHEREAS, the recent reduction in the Local Government Fund, elimination of the Estate Tax, and accelerated phase-out of promised reimbursement for loss of revenues due to the repeal of the Tangible Personal Property Tax all have resulted in substantial loss of revenue to the Village of Jefferson; and

WHEREAS, the Village of Jefferson, Ohio vehemently objects to this latest attack on municipal home rule under consideration by the State of Ohio and urges all municipal corporations to make it clear to the Governor and General Assembly that this proposed usurpation of constitutionally-granted local municipal power shall not take place without a vigorous legal challenge by affected municipal corporations; and

WHEREAS, the municipal income tax is the single largest revenue source, which provides essential municipal services, promoting a positive quality of life that residents and businesses alike rely upon, and any forced reduction in this revenue will have a negative impact on residents and businesses, creating an environment detrimental to retaining and attracting business in Ohio;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Jefferson, Ohio that:

Section 1. The Village of Jefferson does hereby formally urge the Ohio General Assembly to request the immediate removal of all language pertaining to municipal income tax collection and administration from the Governor's proposed budget, and to promote upcoming changes to the Ohio Business Gateway as a solution for businesses to file municipal income tax returns in a more simple and efficient manner, with the Ohio Business Gateway continuing to act only as a portal to remit payments and filing information directly to municipalities, and not to the Ohio Department of Taxation for processing.

Section 2. The Village of Jefferson does hereby formally urge the Ohio General Assembly to preserve and safeguard the "throwback" provision of the Business Allocation Formula for municipal income tax purposes to ensure a fair, uniform, and equitable imposition of tax among taxing jurisdictions.

Section 3. The Clerk of Council be and hereby is authorized and directed to send a certified copy of this Resolution to Governor Kasich, State Representative Patterson, and State Senator Sean O'Brien.

Section 4. This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the citizens of the Village of Jefferson, Ohio, and to provide for the usual daily operation of a municipal department, to wit: to preserve the financial resources of the Village of Jefferson in order to provide for the critical municipal services for the citizens, institutions, businesses, and visitors of the Village of Jefferson, Ohio, and for timely adoption of this Resolution in order to encourage the state legislature to remove certain provisions from the proposed state budget, and shall take effect immediately upon passage.

Passed by Council on the 20 day of March 2017.

Effective Date: 5 Years 0 Nays

AUTHENTICATION:

Patricia A Fisher

Patricia Fisher
Clerk/Treasurer

3-20-17

Date

Judy Maloney

Judy Maloney
Mayor

3-20-17

Date