



TESTIMONY BEFORE THE HOUSE WAYS & MEANS COMMITTEE

**HB49, STATE OPERATING BUDGET PROPOSAL TO CENTRALLY COLLECT
MUNICIPAL TAX REVENUE AND ELIMINATE THE “THROWBACK” PROVISION**

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Chairman Schaffer, Vice Chairman Scherer, Ranking Minority Member Rogers and members of the House Ways and Means committee, my name is Kent Scarrett and I am the Executive Director of the Ohio Municipal League. I appreciate the opportunity to stand before you today and express our opposition to proposals included in HB49, the State Operating Budget language, that expressly prohibits municipalities from administering the Net Profit tax on the income of a non-individuals for tax years beginning on and after January 1, 2018 and the elimination of the sales “throwback” provision for business net profit filings.

I will keep my remarks brief today in light of the large number of municipal officials from across the state and others who have taken time out of their demanding schedules to travel to the Statehouse to provide first-hand testimony. The Governor’s plan before you is this: to remove ORC 718.02 (A), the current statute providing municipalities taxable situs of Net Profit revenues within the boundaries of the municipal corporation, and replace it with a new state statute: ORC 5718, which would give the state tax commissioner sole authority to administer and enforce the municipal net profit tax and to prescribe all forms and adopt rules and regulations related to the administration of this once locally controlled tax. It is a bad idea for the state and its local taxpayers. The new powers that would be bestowed to current and future tax commissioners would not be subject to municipal appeal. This “power-grab” by the state and equally alarming “money-grab”, would strip the ability of municipal officials from over 600 cities and villages the ability to manage approximately 15% of their general operating budgets or \$600 million annually of municipal taxpayer dollars, instead surrendering this revenue to the state, for its management and promises of return.

Witnesses will also share with you, better than I, the consequences of what the significant revenue loss to their communities would mean by the arbitrary removal of the “throwback” provision, which is uniformly applied across the state. Just three years ago, the issue was vetted and ultimately removed, by you, from HB5, the massive municipal income tax uniformity and reform legislative package which became effective a little over a year ago.

As a quick reminder, under current law, sales of tangible personal property are “thrown back” or allocated to the location from which the property was shipped, if the seller of the property does not regularly solicit sales at that location of delivery through the use of its own employees. This issue was litigated during the in-depth discussions that were part of the development of HB5 which took about 5 years of interested party meetings and legislative redrafts. Throughout the examination of the potential consequences to the various proposed tax changes proposed in HB5, the over-riding objection legislators had with removing the “throwback” provision was the negative impact to municipal budgets cascading an immediate impact to local taxpayers, through either reduced services or requests for higher rates.

Impacts to economic development were also identified through lost opportunities for local investments in valuable business projects, as a result of the significant reductions in local revenue. Stripping this provision from the municipal income tax will not bring a new flurry of warehouse and distribution activity to Ohio; that type of commerce is alive and well in our great state because of where Ohio is blessed to be geographically and in relation to the rest of our country, which is six hours by car from 90% of the country.

Ohio is where distribution-related industries need to be located and businesses vote with their feet, and they choose to be in municipalities for numerous reasons. Ohio municipalities provide a high degree of dependable municipal services such as reliable police & fire protection, safe and plentiful water, access to land, to a stable workforce and ease of regulatory compliance, including local tax assistance.

Just last week, Site Selection magazine announced the winners of their prestigious “Governor’s Cup Award” that goes to those states that lead the way in providing the most attractive economic development environment for new businesses to locate. Ohio again was recognized as #2 nationally to be the best place for business development. 80% of all Ohio businesses are located in an Ohio city or village, making Ohio municipalities truly the “economic engines” of the state, there were numerous municipalities also recognized for their national achievements in providing environments that businesses across the world are looking for when planning expansions and new job opportunities. Cincinnati was recognized as being the fifth best city nationally with a population of 1 million or more for conditions business expansions value while Columbus came in 8th; Dayton was #3 and Toledo was awarded 7th place for areas with populations of 200,000 to 1 million; Findlay won first place, Wooster came in third while Celina, Defiance and Portsmouth tied for the tenth spot for rural areas.

Eliminating the “throwback” won’t have an appreciable effect on the business environment in Ohio but it will have considerable impact on the ability of countless municipalities to manage already fragile budgets and not place unnecessary pressures on local taxpayers to make up revenue shortfalls.

There are so many things that I believe are critical for this committee to consider as you deliberate on the changes the governor has presented to the future of the municipal income tax, but I will return to my efforts to be respectful of your time and that of the other witnesses here today. I want to focus on the central issue and that is how the state and municipalities can make filing requirements easier for the small percentage of business filers who have tax obligations in multiple taxing municipalities and find it difficult to file multiple Net Profit business filings with more than one city tax offices. The great thing is, the answer already exists and won't necessitate the state of Ohio and the Department of Taxation from absorbing a new tax, adding 40 or 50 new state employees to the DOT and directing an additional \$9 million of taxpayer dollars to accomplish something that already exists.

Many of you know that the state currently has a functioning central portal called the Ohio Business Gateway (OBG), part of the Third Frontier Initiative begun by Governor Taft, serving as a central point for the filing and collection of municipal net profit taxes. Although the current system is plagued with significant software limitations preventing users from experiencing a streamlined experience in completing filings, the program is not and should not be abandoned. In case members are not familiar with the state of Ohio's OBG program, the following is from the Ohio Department of Administrative Services' (DAS) website:

The Ohio Business Gateway is a nationally-recognized, collaborative initiative of state and local government agencies and an important part of Ohio's digital government strategy. Gateway services offer Ohio's businesses a time- and money-saving online filing and payment system that helps simplify business' relationship with government agencies.

Ohio businesses can use the Gateway to access various services and electronically submit transactions and payments with many state agencies. The Gateway also partners with local governments to enable businesses to file and pay selected Ohio municipal income taxes.

By offering a single website for electronic filing, the Gateway provides businesses with an easier means to comply with multiple regulatory requirements, and it reduces or eliminates the postage expenses, repetitious data entry, mathematical mistakes, and potential for overlooking required data that typically accompany paper-based methods.

The OML has advocated for years that the state should make the necessary financial investments in the program to address the software limitations and capacity challenges that have prevented the gateway from being the effective and efficient tool it was designed to be, in order for businesses to easily file municipal and other business tax obligations centrally, through a state-provided venue. A critical component to the gateway is the ability of a municipality to access the Net Profit filing intended for that community, providing municipal tax administrators the ability to review the information submitted and providing the level of accountability, and safeguards the state would not be able to replicate if the Governor's plans are embraced. Just as important, the community where the business activity takes place and where the delivery of services takes place receives the revenue that accompanies a filing, the next day.

We are happy to share with the committee that Lt. Governor Taylor and her team has been hard at work with a private vendor to redevelop the gateway and create the OBG 3.0 system. When complete, the rebuilt system will be capable of processing the required information necessary to successfully complete net profit filings without additional contact from taxing jurisdictions or extra work from preparers.

OBG 3.0 will also continue to function as a voluntary option for businesses which choose to access the portal. The ability of net profit filers to have the option to work through the state or continue the relationship established with a local tax office should not be discounted. It is our opinion that not every preparer or taxpayer would appreciate, with the same level of zeal expressed by the department of taxation, the new state mandate that municipal tax filings are to go exclusively through the state, closing the door to the benefits of working with smaller, more “customer oriented” local officials. The proposal before you is a classic example of government interfering in the operations of business, something that is often contrary to a “strictly pro-business move.”

Much like Kevin Costner and the movie “Field of Dreams”, the admonition to “build it, and they will come,” seems to hold promise that there is a better way to address the challenges some businesses and their representatives have expressed.

In closing, please consider the reaction of each of you if the actors involved were different and the Director of the Internal Revenue Service, along with the President of the United States announced to the members of the 132nd General Assembly, that as a “strictly pro-business move”, and to ease cost of compliance issues experienced by a small number of businesses that have filing requirements in multiple states, the federal government will include in its budget the removal of state’s ability to levy and collect business taxes, making it a federal tax which will be levied and collected on behalf of the states, with revenues distributed back to the states (through a central portal that has critical flaws but is being built), on a quarterly distribution schedule, with a service fee applied to receive state taxpayer dollars back to the rightful destinations. And the federal government will administer the tax for businesses better than the state does. I hope we can all agree on what the reaction would be to such reckless proposal.

On behalf of our 734 members, the nearly 9 million Ohioans who call a city or village home and the businesses who choose to locate within our municipal boundaries, of every size and variety, we ask that the issues related to changes to ORC 718 and the municipal income tax be removed from HB49, so that these items can receive additional study and better solutions can be explored to address existing weaknesses in the administration of this critical revenue source to Ohio’s economic engines.

Thank you for the opportunity to speak with you and I would be happy to answer any questions you may have.