



HOUSE OF REPRESENTATIVES
REPRESENTATIVE GARY SCHERER
HOUSE DISTRICT 92

Sponsor Testimony for House Bill 334
House Ways and Means Committee
September 19th, 2017

Chairman Schaffer, Ranking Member Rogers and members of the House Ways and Means Committee, thank you for allowing me to come before you today and present sponsor testimony on House Bill 334.

This bill would provide compensation and guaranteed payments paid by a professional employer organization (PEO) to the owner of a pass-through entity that has contracted with the organization will legally constitute a distributive share to the owner.

PEOs provide comprehensive human resources services. A PEO handles the administration of workers' compensation insurance, medical benefits, and payroll and wage related tax withholding and remittance. PEOs also help their clients comply with the myriad of employment-related state and federal regulations.

Starting in 2013, business owners in Ohio became eligible for the small business deduction. Naturally, and as they should have, business owners using a PEO claimed the deduction. Years went by and the owners of these small and mid-sized businesses continued to do so. Then, last fall, some of these individuals were audited by the Department of Taxation. They were told that because they used a PEO they were not eligible for the deduction unless they met certain criteria – one criterion being that they own at least 20 percent of the PEO with whom they contract. And, therein lies the problem.

HB 334 will remedy this technicality and ensure that business owners who made the choice to hire a PEO – a choice they made to ensure efficient human resources administration and regulatory compliance – are not penalized.

In addition, HB 334 is consistent with the Ohio statute governing PEOs and the PEO-client employment relationship. ORC 4125 stipulates for the purposes of tax credits and incentives the client company is the sole employer. That language was enacted to ensure a PEO client company does not lose access to any tax benefit due to being in a PEO arrangement.

As of September 7th, 2017, the Department of Taxation's Audit Division has suspended audit activities related to individuals who received compensation from a PEO that they do not own,

and who claimed a small business/business income deduction. All existing audit cases that have not reached an assessed status will be placed on hold and thus not progress to any further stages of the billing cycle. If the legislation passes, the Department will work with taxpayers to resolve the existing audits and billings related to the issue under current law. If the legislation fails to pass, the Audit Division will continue to apply the current law.

Once again, Chairman Schaffer and members of the House Ways and Means Committee, thank you for the opportunity to offer sponsor testimony on behalf of HB 334. I would be happy to answer any questions.