



STATEMENT OF THE OHIO STATE BAR ASSOCIATION
IN SUPPORT OF HOUSE BILL 292

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Ohio State Bar Association
Before the House Ways and Means Committee
Tim Schaffer, Chair
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Chairman Schaffer, Ranking Member Rogers, and members of the House Ways and Means Committee, thank you for allowing me to present proponent testimony in favor of House Bill 292. My name is Kelvin Lawrence, and I am the immediate past Chair of the Ohio State Bar Association Taxation Law Committee. I was among the representatives of the OSBA, the Ohio Department of Taxation, and other organizations that worked with Representative Scherer to draft House Bill 292.

Ohio residents generally must pay Ohio income tax on all of their income, regardless of its source. Nonresidents, on the other hand, generally pay Ohio income tax on income earned in or otherwise having its source in Ohio. This distinction led to contentious and invasive disputes over whether individuals were properly considered residents for Ohio income tax purposes. So, in 1993, the Ohio General Assembly enacted the original version of Revised Code section 5747.24, which became known as the “bright-line” statute, with the goal of providing clear and definitive steps an individual could take to be treated as a non-resident for Ohio income tax purposes without severing all ties to the state. Recently, the Ohio Supreme Court held that even when an individual has otherwise satisfied the requirements of this statute, common law domicile principles still apply, and may rebut the statute’s otherwise “irrebuttable” presumption of non-Ohio residency. This ruling has created uncertainty for taxpayers who intend to retire outside Ohio, but who want to retain connections to the state for family, business, or other personal reasons.

House Bill 292 would restore certainty for these taxpayers. Representative Scherer worked with interested parties to formulate specific criteria on which individuals and the state could exclusively rely to establish non-Ohio residency for income tax purposes. If House Bill 292 is passed, in addition to the current requirements of maintaining a non-Ohio abode for the entire year and spending less than 213 contact periods (i.e., overnight stays) in Ohio, an individual wishing to definitively establish non-Ohio residency may file an affidavit attesting that he or she did not:

- Claim a federal depreciation deduction available for business or rental property for that non-Ohio abode;
- Hold a valid Ohio driver’s license or identification card;
- Claim the Ohio homestead exemption; or
- Receive in-state tuition at an Ohio institution of higher education.

H.B. 292 extends the deadline for filing this affidavit to ten months after the close of the taxable year to allow for extensions, and makes clear that these facts are intended to replace the more difficult to administer common law standard, and are the only basis for finding this affidavit is untrue. These criteria were carefully crafted to reflect the mutual needs of taxpayers and tax administrators, and will do nothing to change the fact that these Ohio nonresidents will remain obligated to pay Ohio income tax on their income derived from, or sourced to, Ohio.

Restoring certainty for the bright-line statute will benefit taxpayers planning to retain connections with Ohio after leaving the state, as well as the Ohio Tax Commissioner who will have a more definitive framework to follow when determining residency for income tax purposes. This bill should replace the nebulous common law domicile test because that test creates doubt and increases disputes as it relies on balancing all of the facts and circumstances of an individual's connections to the state. Because the common law can rebut its presumptions, current R.C. 5747.24 does not offer the clear, "bright line" it was intended to provide. Establishing this bright-line rule will further the fair administration of Ohio individual income tax for taxpayers and the Tax Commissioner alike.

Once again, Chairman Schaffer and members of the House Ways and Means Committee, thank you for the opportunity to offer proponent testimony on behalf of House Bill 292. The OSBA urges the committee to favorably refer House Bill 292. I would be happy to answer any questions.