

Before the Ohio Senate
Finance Committee

Testimony of:
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Chairman Oelslager, Vice Chairman Manning, Ranking Member Skindell and members of the Senate Finance Committee. My name is Melinda Frank and I am the Income Tax Administrator for the City of Columbus. Thank you for affording me the opportunity to speak to you today regarding proposals to amend as well as proposals put forth not yet in amendment form to H.B. 49, the Biennial State Operating Budget, which would impact the administration and collection of the municipal net profits tax. The City of Columbus, as well as all local taxing jurisdictions in Ohio, appreciated the introduction and adoption of the amendment to House Bill 49 by the House of Representatives removing that language related to the centralized collection of municipal net profits tax.

It is imperative that municipalities retain the ability to administer all aspects of the local income tax. Administration includes the auditing, collection and enforcement of that tax. It also includes development of forms, rules and regulations as well as communicating with and directly serving those individuals and entities subject to the tax. Imposition and enforcement of a local income tax falls within the police powers of a municipality. Interference by the State in this area is a disregard of home rule, which recognizes the value and need for control at the local level in order to best serve all who live, work and do business in a municipality.

Presently, the language of ORC 718 *Municipal Income Taxes* provides for:

- A uniform net profits base
- A uniform withholding base
- Uniform penalty and interest rates
- The use of a generic form rather than that of a specific municipality
- Uniform filing and payment due dates as well as provisions for extensions
- A 5 year net operating loss carry-forward in all municipalities
- The filing of estimates and annual returns via the Business Gateway
- The submission of payments related to those filings through the Business Gateway with funds coming directly to municipalities

Additionally, ORC 718.051 provides for the permissive use by a business or profession of the Ohio Business Gateway for the filing of a municipal income tax return, estimated municipal income tax return or extension for filing a municipal income tax return and the making of payment amounts shown as due on such returns. That section also gives employers the option to make payment of tax withheld from employee wages through the Gateway. All of this is without a charge to the municipal corporation or a mandated participation term imposed on businesses. Perhaps the most important language of that section is found in 718.051(E):

(E) The use of the Ohio business gateway by municipal corporations, taxpayers or other persons pursuant to this section does not affect the legal rights of municipalities or taxpayers as otherwise permitted by law. This state shall not be a party to the administration of municipal income taxes or to an appeal of a municipal income tax matter, except as otherwise specifically provided by law.

Currently, the majority of businesses using the Gateway with regard to municipal income tax use it for employer withholding transactions. Columbus, like many municipalities in our state, has its own e-file/e-pay application. As of March 1, 2017 Ohio Business Gateway Transactions numbered 6,200 for 3,486 distinct accounts with related payments of \$13,723,909.79, while the number of transactions made to the Columbus application totaled 58,211 for 16,169 distinct accounts with related payments of \$91,053,503.72. Annual figures for 2016 show there were 31,496 transactions for 4,437 distinct accounts with related payments of \$82,209,835.62 submitted through the Gateway by Columbus taxpayers, compared to 335,857 transactions for 23,266 distinct accounts with related payments of \$527,093,514.17 submitted through Columbus' e-file/e-pay option. Clearly businesses in Columbus prefer to use the Columbus application with regard to their filings and payments.

When the original version of House Bill 49 was presented proposing mandatory centralized collection of net profit tax through the Ohio Business Gateway, testimony was presented by municipalities as well as tax practitioners to the House Finance Committee as well as a subcommittee regarding the inadequacies of the Gateway in its current state. A summary prepared for the bill as originally submitted (attached) indicates that only 4000 businesses operating in Ohio utilize the Gateway for filing net profit returns. This low number is not the fault of municipalities. It is due to the fact that the Gateway is not a "user friendly" application for the filing of net profit returns. Columbus had a total of 28,494 net profit returns filed in 2016. During 2016, 228 business accounts used the Gateway for the filing and payment of estimates, credits, liabilities or zero returns, only 40 of which were annual net profit return filings. It is most likely that the Gateway was used primarily to make quarterly estimated payments. Cincinnati has 13,000 net profit return filers with an estimated 25 of those filers utilizing the Ohio Business Gateway. The Regional Income Tax Agency processed 71,341 net

profit returns in 2015, 197 of which were received through the Ohio Business Gateway. During testimony offered to the House Ways and Means Committee on March 7, 2017, it was indicated that should the Gateway not be prepared to accept the electronic filings of business net profit returns as of January 1, 2018 as mandated by proposed House Bill 49, the Department of Taxation would accept paper filings. The current proposal drafted by the Department of Taxation states:

718.85(C)(20(b) A taxpayer that files an annual return electronically through the Ohio business gateway or in another manner as prescribed by the tax commissioner shall either submit the documents required under this division electronically as prescribed at the time of filing ***or, if electronic submission is not available, mail the documents to the tax commissioner.*** The department of taxation shall publish a method of electronically submitting the documents required under this division on or before January 1, 2019. (Emphasis added)

Establishing a mandate (for a five year opt-in period) to use a system for a specific purpose before that system may be demonstrated as suitable for that specific purpose would be bureaucratically burdensome and definitely not business friendly.

When the Legislature enacted House Bill 5 in December of 2015, the intent was to bring uniformity and simplicity to municipal income tax. As mentioned previously, uniformity has been achieved in those aspects of municipal income tax which impact net profit filers. The proposed amendment creates a separate set of rules and regulations, forms and code requirements, different interest and penalties and methods of enforcement dependent upon whether a business "opts-in" to filing through the Ohio Business Gateway or chooses to file directly with those municipalities in which its business is transacted. In short, it undermines the uniformity previously achieved. Presently, businesses have the option to utilize the Gateway without being subjected to a five year term and may elect to discontinue such use at will. Information and payments related to these business filings are transmitted directly to those municipalities in which the businesses operate, without the department of taxation processing the information or the State Treasurer processing the payments. Clearly this recent proposal serves only to create disparate treatment of similarly situated taxpayers and epitomizes governmental bureaucracy. This proposed language fails to provide any benefit at any level and should not be given your consideration.

If I may, I would like to address language within House Bill 49 addressed by amendment SC4094X1. This amendment corrects a drafting error in the original bill which would result in a revenue shift for municipalities. Unfortunately, in the House version of the Bill, no distinction was made between the timing of fourth quarter estimate payments made by individuals as opposed to non-individual taxpayers. As a result, the fourth quarter estimated payments, currently made by businesses on or before the fifteenth day of the twelfth month of the taxable

year will be shifted to the following year. This shift of estimated net profit revenue would be damaging to the financial wellbeing of municipalities across the State. This amendment also has the support of the Ohio Society of Certified Public Accountants. I ask you to give it your consideration and adopt amendment SC4094X1.

This completes my testimony. I would be happy to answer any questions you may have.



BUILDING FOR OHIO'S NEXT GENERATION

BUDGET OF THE STATE OF OHIO • FISCAL YEARS 2018-2019

SIMPLIFYING LOCAL TAXES FOR JOB CREATORS

New Reforms Lift a Cumbersome Burden from Businesses Seeking to Comply with Ohio's Complicated Filing System for Municipal Tax on Net Profits

More than 600 cities and villages in Ohio levy a tax on net profits, requiring a business to separately file a return and pay taxes to each of those municipalities where the business earned any portion of its profits. Each municipality can have own forms, collection practices and interpretations of law, creating a paperwork nightmare for businesses struggling to comply with these laws. Businesses operating in multiple municipalities (some in hundreds of cities and villages) often pay more to prepare all those returns than the total amount of taxes owed.

THE GOVERNORS REFORMS

In his Executive Budget, Governor John R. Kasich is proposing - and business groups are supporting - a solution that provides one centralized filing system to serve all businesses and municipalities at a lower cost to all involved. These reforms will:

- Expand the existing capability of the Ohio Business Gateway (OBG) to process all municipal net profits tax returns. Currently about 4,000 business tax returns are filed annually via OBG. Once scaled up OBG would be employed to process all returns and payments from the hundreds of thousands of businesses filing this tax.
- Engage the Ohio Department of Taxation to administer the filing process, audit returns when appropriate, and distribute tax receipts to the intended municipality at a lower cost than most municipalities currently pay for these services.

BENEFITS TO BUSINESS

- Uniformity and simplicity: one return, one place to file, one set of rules, one (potential) audit rather than responding to multiple audit requirements from municipalities imposing tax.
- Reduced cost of compliance, bookkeeping, paperwork and red tape,

BENEFITS TO MUNICIPALITIES

- Reduced administrative costs: the Ohio Department of Taxation would retain only one percent of the collections vs. the 2.5-3.0 percent rate now charged to the cities by third party administrators.
- Increased compliance/collections through enhanced screening and cross-checking of returns filed for other Ohio taxes.
- Municipalities would retain control of tax rates and credits.

BOTTOM LINE: For decades, businesses, study commissions and tax analysts have identified Ohio's municipal income tax system as a significant compliance challenge for businesses. The General Assembly made some improvements to the system two years ago, but Ohio's antiquated system remains one of the most complex and administratively burdensome setups in the country. Centralizing the filing of the municipal tax on business profits, as in the same manner used successfully for years in Ohio with the sales tax, school district income tax

and municipal tax paid by public utilities, would greatly simplify the process, ease the burden and cost of compliance borne by businesses, and deliver cost savings and additional revenues to municipalities.