

Chair Eklund, Vice Chair Terhar, Ranking Member Williams and members of the Senate Ways and Means Committee, my name is Ted Bernert and I am an attorney with BakerHostetler. I am the attorney who litigated the Supreme Court case that we are attempting to codify in the amendment before you. I appreciate the opportunity to testify in support of Amendment AM0936X1 to House Bill 69, which codifies the decision of the Ohio Supreme Court in *MacDonald v. Cleveland Income Tax Bd. of Rev.*, Slip Opinion No. 2017-Ohio-7798, decided September 26, 2107. That decision found that the common meaning of the word “pension” applied to the National City Bank Supplement Executive Retirement Plan (“SERP”). Supreme Court Justice DeWine was very clear in rejecting the arguments against the exemption. “An ordinary speaker of the English language would have little difficulty in concluding that what the MacDonalds received from National City was a pension.” ¶ 16 of the *MacDonald* decision.

The language of the amendment will not expand the scope of the pension exemption in R.C. 718.01(C)(3), first effective January 1, 2016. Prior to 2016, the word “pension” appeared in municipal ordinances and beginning in 2016 the word “pension” appears in the Ohio Revised Code. Benefits such as 401(k)s (and other elective deferrals), non-retirement deferral plans and incentives such as stock options and stock rights plans were not exempt and will not be exempt under this amendment. Nor will the amendment take away the pension exemption for any taxpayer. The amendment codifies the Supreme Court decision and nothing more. There can be no doubt that if the Supreme Court had found that a SERP was not a pension, that the statutory pension exemption of R.C. 718.01 would not apply to SERPs. For the same reason, because the Court found that the common meaning of the word “pension” includes SERPs, the pension exemption under R.C. 718.01 applies.

The amendment has no retroactive effect. Prior to January 1, 2016, any retiree working or living in a municipality with a pension exemption was not subject to tax on the SERP. Effective January 1, 2016, those retirees are exempt under the statute, which provides an exemption for “pensions.” The Supreme Court’s decision applies equally to the state statute and the municipal ordinances.