

Senator John Eklund
Chairman,
The Ohio Senate Ways and Means Committee
Senate Building, 1st Floor
Columbus, OH 43215

Chairman Eklund, Vice Chair Tehar, Ranking Member Williams and members of the Senate Ways and Means Committee:

The City of Cincinnati strongly opposes the timing and proposed language added to Am. H.B. 69 because it threatens significant financial harm to the City's budget and retroactively overrides our local tax code.

In the Ohio Supreme Court's recent decisions in *McDonald v. Cleveland* and *McDonald v. Shaker Heights*, the Court ruled that compensation reported on a taxpayer's 2006 Form W-2 from a Supplemental Executive Retirement Plan (SERP) was not taxable. The court reasoned that the cities exempted pensions in their municipal tax ordinances but did not define "pension" by ordinance. Cincinnati Municipal Code Section 311-9-P2, effective January 1, 2016, defines "pension" as "any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form."

SERPs are nonqualified deferred compensation plans used by high-earning executives. These executives contribute the maximum contributions to their qualified plans, and then also contribute to SERPs or similar nonqualified plans. SERPs can be designed as either a defined benefit or defined contribution plan. The employee receives a tax deferral until the payments are received. For municipal tax purposes, SERP income is taxed when it is no longer subject to substantial risk of forfeiture and appears in Medicare Wages Box 5 of the employee W-2 form. The Ohio Revised Code currently allows municipalities to exempt SERP and other nonqualified deferred compensation from taxation. Cincinnati has not elected this option and does tax SERP income.

The "Tax Cuts and Jobs Act" currently under consideration in the U.S. Congress could significantly impact how nonqualified deferred compensation plans are designed in the future. Passing any major changes to local tax laws like Am. H.B. 69 at this time should be deferred until the federal law changes are enacted and their consequences more fully understood.

Cincinnati estimates that the exemption of SERP income would result in a negative impact of \$250,000 per year. This lost revenue will increase significantly if the exemption extends to all deferred compensation plans like 401(k). In addition, the retroactive nature of Am. H.B. 69 could potentially require Cincinnati to refund two years worth of SERP taxes, a significant revenue loss that Cincinnati did not forecast.

Due to the negative revenue impact to the City of Cincinnati's budget, the retroactive nature of the amendment, and the potential changes to federal tax law, we strongly urge you to reject the language exempting all defined benefit and defined contribution plans as proposed in Am. H.B. 69.