

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

Presented by Richard B. Fry, III
Ohio State Bar Association
Before the Senate Ways and Means Committee
John Eklund, Chair
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Chairman Eklund, Ranking Member Williams and members of the Senate Ways and Means Committee, thank you for allowing me to present proponent testimony in favor of House Bill 292. I am Richard B. Fry, III, the Chair of the Ohio State Bar Association Taxation Law Committee, and participated with Representative Scherer, the Ohio Department of Taxation, and other organizations in drafting House Bill 292.

In 1993, the Ohio General Assembly enacted the original version of what is known as the bright-line domicile rule for Ohio personal income tax purposes. The purpose of this rule, hence its name, was to provide clear and definitive steps an individual could take to ensure he or she would be treated as a non-resident for Ohio income tax purposes, but without requiring that individual to sever all ties to Ohio. Recently, the Ohio Supreme Court weakened this rule by holding that the common law domicile test may be applied, even in cases where the statutory requirements under the bright-line domicile test were satisfied. This ruling has created uncertainty for taxpayers planning to move outside the state, yet wishing to maintain connections here for family, business, or various other reasons.

House Bill 292 would restore certainty for taxpayers in this area. Representative Scherer worked with interested parties to formulate specific criteria that an individual could meet to establish non-Ohio residency for 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, individuals wishing to definitely establish non-Ohio residency may not:

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

An individual meeting this test must also file an affidavit thereby notifying the Ohio Tax Commissioner of his / her nonresidency for income tax purposes. This criterion was crafted to ensure individuals were not taking advantage of certain benefits offered by or derived from Ohio, but failing to contribute to the state by avoiding tax on non-Ohio sourced income. It is important to remember that non-Ohio residents are still obligated to pay tax on their income derived from, or sourced to, Ohio.

Restoring certainty for the bright-line residency rule will benefit taxpayers planning to relocate outside the state, as well as the Ohio Tax Commissioner who will then have a definitive framework to follow when determining income tax residency. The nebulous common law domicile test is disfavored because it creates doubt and increases taxpayer disputes since it is based upon balancing several factors related to the individual's connections to the state – it fails to provide a clear, bright line for taxpayers and taxing administrators to follow. Establishing this bright-line rule will further the fair administration of Ohio individual income tax.

Once again, Chairman Eklund and members of the Senate 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.