



Representative Scott Oelslager  
Chair, House Finance Committee  
Ohio House  
77 S. High St., 13<sup>th</sup> Floor  
Columbus, Ohio 43215  
***Delivered via email: [Allie.Harris@OhioHouse.gov](mailto:Allie.Harris@OhioHouse.gov)***

The Honorable Chairman Oelslager,

The OBL is the foremost trade association for the Ohio banking industry – and is Ohio’s only organization focused on meeting the needs of *all banks and thrifts* in the Buckeye State. The non-profit association is comprised of 190 FDIC-insured financial institutions including commercial banks, savings banks, and savings and loan associations ranging in size from just over \$14 million in assets to more than \$2.5 trillion. For more than 125 years, the OBL has been the voice of the Ohio banking industry fostering a cooperation that has made it one of the strongest and most reputable financial trade associations in the country.

On behalf of our members, I write to you to discuss a number of the changes included in the substitute version of House Bill 166. As many of the comments are centered around the Financial Institutions Tax (FIT), I will provide a brief overview of the FIT for the sake of context. One of the most important concepts to get across early is the fact that the basis for this tax is capital, not profit or earnings. Capital was used as the basis for the tax to provide the State with more predictable tax revenue that is not as susceptible to fluctuations in an economic downturn. Bank earnings or net profit are typically much more volatile than capital during an economic recession. As for the current FIT structure, there are three tiers. The first tier is from \$0 to \$200 million in capital and is taxed at eight mils or 0.8%. The second tier is from \$200 million to \$1.3 billion in capital and is taxed at four mils or 0.4%. Finally, tier three is capital over \$1.3 billion and is taxed at two and a half mils or 0.25%.

### **FIT Cap**

First, we appreciate the inclusion of a provision long advocated for by OBL that would cap the FIT so that it does not apply to capital in excess of a fourteen percent ratio to assets. Currently, the FIT is paid on all of a bank’s equity capital, which includes all tier one capital plus a few other items. Stated more simply, if you take all of a bank’s assets minus all liabilities, what is left is the capital that a bank is taxed on. For regulatory and other purposes, this is typically discussed as a percentage of capital in relation to assets. For community banks, current regulatory guidelines state that eight percent capital is adequately capitalized, and ten percent capital is well capitalized. This provision removes a disincentive for banks to build and maintain capital and greatly helps some of the smallest, safest, and soundest banks in the state.

## **Repeal of Credit for Pass-Through Investor's Share of FIT**

Twenty-one Ohio community banks, ranging in assets from \$40 million to \$2.7 billion, are organized as Subchapter-S Corporations (S-Corp) and thus treated as pass-through entities. These banks are spread throughout the Buckeye State from Racine in Meigs County to Cincinnati, up to Deshler in Henry County across to Spencer in Medina county and many places in between. A provision that will cause problems for these banks is the proposed repeal of the credit for a pass-through investor's share of the FIT, which would be effective for taxable year 2019. Currently, under Ohio Revised Code (ORC) Section 5747.65, which would be repealed under Sub-HB 166, an investor in a bank that is a pass-through entity can receive a credit on the investor's personal income taxes for the investor's share of the FIT. This provision, in addition to some of the changes discussed below could lead to a significant tax increase on those banks' shareholders.

## **Business Income Deduction**

The same one-tenth of community banks in Ohio mentioned above would also be impacted by the proposed change reducing the business income deduction (BID) from \$250,000 to \$100,000. If further changes are made to eliminate the flat tax of three percent on business income above the threshold, whether \$250,000 or \$100,000, this would result in a major tax increase for those community banks. The credit for a pass-through investor's share of the FIT and the BID provision combined help equalize treatment between banks organized as S-Corps, who pay taxes on both capital under the FIT and on income flowing to the owners, while Subchapter-C Corporations simply pay the FIT. The BID allows banks to reinvest in their banks and the communities they serve and should be retained.

## **Marketplace Facilitators Language**

Nearly every state has addressed, or is in the process of addressing, Marketplace Facilitator legislation in the wake of the *Wayfair* decision. While we believe the legislative intent is to ensure remote sellers are collecting and remitting sales tax to Ohio, our concern is that banks and payment processors should not have tax collection responsibilities under these laws. Only the entity that provides and operates the actual marketplace, the actual seller, should have this responsibility. Numerous states, including North Dakota and Indiana, have explicitly exempted payment processors from the definition of marketplace facilitators. Out of an abundance of caution, we ask that the same exemption be added to Ohio's law as well. Below is an example of language, similar to the language in the other states mentioned, that could achieve this result:

Marketplace facilitator does not include a payment processor business appointed by a merchant to handle payment transactions from various channels, including credit cards and debit cards, and whose sole activity with respect to marketplace sales is to handle payment transactions between two parties.

We appreciate Vice-Chair Scherer's work on this issue and his willingness to engage in further discussions to address this concern as Substitute House Bill 166 continues through the legislative process.

## Conclusion

We appreciate all of the hard work that has gone into crafting Substitute House Bill 166 and the inclusion of the FIT cap in the legislation. However, the addition of the other provisions mentioned raise several concerns for our members that we would like to see addressed. Please feel free to contact me if you have any questions regarding our position at [dboyd@ohiobankersleague.com](mailto:dboyd@ohiobankersleague.com) or (614) 340-7608.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Boyd", written in a cursive style.

Don Boyd  
State Government Relations Director  
& Legislative Counsel  
Direct: (614) 340-7608  
Email: [dboyd@ohiobankersleague.com](mailto:dboyd@ohiobankersleague.com)

CC: Members, House Finance Committee