



HOUSE OF REPRESENTATIVES
REPRESENTATIVE GARY SCHERER
HOUSE DISTRICT 92

Sponsor Testimony for House Bill 292
House Ways and Means Committee
September 19th, 2017

Chairman Schaffer, Ranking Member Rogers and members of the House Ways and Means Committee, thank you for allowing me to come before you today and present sponsor testimony on House Bill 292.

This legislation is intended to address issues arising from *Cunningham v. Testa* — the Ohio Supreme Court case decided in early July 2015 --- that incorporated the common law of domicile into Ohio's bright-line residency statute (R.C. 5747.24).

Current law to establish a bright-line residency test, the legislature must amend the statute to limit the concept of domicile to the definition contained in R.C. 5747.24; thus clearly showing their intent to repeal a settled rule of the common law.

To obtain an irrebuttable presumption of non-residency in Ohio under former R.C. 5747.24(B)(1), a taxpayer must file an "Affidavit of Non-Ohio Domicile" verifying that two factors occurred during the entire taxable year in question: (1) having "no more than 182 (currently 212) contact periods in this state," and (2) having "at least one abode outside this state (whose location must be identified)." However, the presumption becomes rebuttable if it contains a "false statement," and the individual is then presumed under 5747.24(C) to have been domiciled in Ohio.

This bill would modify the test for determining an individual's state of residence for income tax purposes by replacing the nebulous common law standard that currently applies by adding to the existing test several explicit criteria for establishing that an individual is not domiciled in Ohio, and therefore not an Ohio resident for tax purposes, specifically, that the individual:

- Did not claim a federal depreciation deduction (which is available only for property used in business or held for the production of income -- e.g., as rental property) for an abode located outside the state, which the person was required to have for the entire taxable year under current law.
- Did not hold a valid Ohio driver's license or identification card.
- Did not receive the benefit of an Ohio homestead exemption.

- Did not receive a tuition discount based on residency for attending an Ohio institution of higher education.

These criteria, in addition to the existing criteria of having fewer than 213 "contact periods" (i.e., overnight stays), having a non-Ohio abode for the entire taxable year, and filing a truthful statement attesting to such those specific facts, creates an irrebuttable presumption of non-Ohio domicile. The bill also extends the deadline for filing such a statement from the 15th day of the fourth month following the close of the taxable year to the 15th day of the tenth month following the close of the taxable year.

Once again, Chairman Schaffer and members of the House Ways and Means Committee, thank you for the opportunity to offer sponsor testimony on behalf of HB 292. I would be happy to answer any questions.