House Bill 49 Testimony
Robert Wright, City of Bowling Green
June 6, 2017

Chairman Oelslager, Ranking Member Skindell and members of the Senate Finance Committee, my name is Robert Wright. I am the Tax Commissioner for the City of Bowling Green and I also serve as the President of the Northwest Ohio Tax Commissioners Association. I come before you to express concerns about the language in the budget bill regarding the administration of municipal income taxes.

The House made some positive changes to House Bill 49. The removal of mandatory centralized collection of the municipal income tax on businesses is a great relief. The proponents of centralized collection claim that it will reduce the burden and cost of filing municipal income taxes. Tax Commissioner Testa has stated it would save business up to $800 million. This figure cannot be accurate. Since municipalities collect taxes on the net profit of businesses, we would support a measure that increases taxable income by $800 million if we believe this figure to be true. I have not seen the specific calculations used to create this figure since Taxation has not provided the figures. The Regional Income Tax Agency (RITA) has made a public records request to Taxation for how this figure was created, but has not received a response yet.

The House heard testimony from accountants stating that centralized collection as proposed in the Governor's budget would increase the time needed to file a business return. Centralized collection would create an additional step of data entry into the OGB by the tax preparer after previously completing the municipal return. Taxation is proposing changing OBG to allow electronic uploads from tax preparer software directly into OBG, but Taxation and the State's past history on delivering computer upgrades on time does not give me confidence this wil1 happen anytime soon. Without this upgrade, there is no time savings from centralize collection except from using a single portal to submit returns instead of mailing returns to different municipalities. This convenience is currently available with the OBG.

The convenience of filing to a singular entity was a selling point of the Ohio Business Gateway. The OBG is supposed to be the singular portal for businesses across the state to use so that a return would not need to be sent to each municipality the business has situs. Since the majority of Ohio businesses do not use the OBG, these businesses have made the choice that the local tax office is easier and friendlier to use. Testimony in the House by the Ohio Society of CPAs claimed the reason businesses do not use the OBG more often is due municipalities requiring copies of the federal return to be sent to the local office in addition to OBG return. This additional submission outside of the OGB is due to Taxation not following ORC 718.05 (F) (3). 718.05 (F) (3) states that "The department of taxation shall publish a method of electronically submitting the documents required under this division through the Ohio business gateway on or before January 1, 2016. The department shall transmit all documents submitted electronically under this division to the appropriate tax administrator." That was not accomplished.

This noncompliance is not unique with the Ohio Department of Taxation. ORC 5745.16 mandates that the tax commissioner shall adopt rules governing the terms and conditions under which reports and information from electric utility and telephone company tax filings shall be available for inspection by a municipal corporation. This was effective 1/1/2001, and to date, **this is still not in place.** Municipalities have no access to see, review, or verify the filings or payments of electric and telephone deregulated companies.

Since Taxation has not met these statutory requirements, I have concerns it can meet the mandates in Commissioner Testa's latest proposal for centralized collection.

The new proposal allows business filers to submit one return to Taxation and then Taxation will calculate the percentage of tax dollars to be allocated to each municipality with situs. I do not believe any accountant or tax preparer is willing to let the Ohio Department of Taxation calculate a tax due without first preparing the municipal return in order to verify that Taxation's calculation is correct. There would not be any less time used in the preparation of municipal tax returns with centralized collection. Where is the reduction in the expense of filing municipal tax returns coming from?

Commissioner Testa provided a revised centralized collection proposal in recent testimony that allows net profit filers the one time choice of filing through the OBG. Unless this proposal eliminates the current statutory language regarding allocation of net profit income, a business will still be required to collect the same information as it currently does. The business will need to maintain where sales take place, where wages are earned, and where real property is located. The filer would then provide this information to Taxation which in turn would calculate the allocation percentage for each municipality. The time consuming, hard work is collecting and compiling the data, not calculating the percentage. The only time savings to the business is that this information would be submitted once to the Ohio Department of Taxation instead of the responsible municipality or municipalities. What will Taxation actually be doing to justify the 1% fee?

This choice to file with Taxation instead of the municipal tax office then requires the business to file with Taxation for a five year period that will automatically be renewed. So if Taxation disallows an alternative allocation formula or provides poor customer service, the net-profit filer does not have the option to go back to the local tax administrator until after the five year period expires, and only if the net profit filer properly asks to stop filing with Taxation and the Tax Commissioner agrees to the change.

The proposal states the Commissioner will propose rules, prescribe forms, audit, issue bills, assessments and refunds, handle appeals, certify debts, and conduct all other necessary administrative functions. Commissioner Testa's proposal would create different filing requirements between the businesses that chose to use the new system versus the business that continues to use the municipal tax office. The fiscal year filers will be filing at later date then the IRS requires. The fiscal year filer will not need to file until April 15 of the following year after the end of the fiscal year. A fiscal year filer with a tax year ending January 31 will have 11 extra months before filing and paying its taxes (without paying interest) instead of the IRS filing deadline of three and a half months after the end of the fiscal year.

The better response to businesses complaints about the municipal income tax cost is to improve the Ohio Business Gateway. The House heard this recommendation from both local tax administrators and from tax preparers and responded by adding

$24 million appropriation to improve the OBG. Before disrupting the current system by pushing more businesses to the OBG, shouldn't we let the OBG be upgraded and make this change unnecessary?

The House heard concerns about the elimination of the throwback provision in the three part apportionment formula and modified that language. As originally proposed, the business that claimed sales in a different municipality would need to file a return in each municipality a sale is reported. Instead of accepting the proposed change, the House created a "nexus to nowhere" apportionment. The business would not need to report sales to the other municipality. A business will be able to lower the allocation percentage in the city where the business is physically located by delivering products outside to city without needing to report taxable income from the sales to the other taxing jurisdiction, if applicable. For example, there are two restaurants in a city. One restaurant has only dine-in and carryout sales. The other restaurant is mostly delivery sales. If both restaurants had the same taxable income, before allocation, the delivery restaurant will pay a tax up to a third less than the dine-in restaurant. Under the "nexus to nowhere" provision, the delivery restaurant would not pay any income tax on sales outside of the municipality it is located. This is not equitable.

Thank you for the opportunity to present my concerns.