THE OHIO COUNCIL OF

Retail Merchants

The voice of retail since 1922

TESTIMONY REGARDING AMENDED SUBSTITUTE HOUSE BILL 166

Before the Senate Finance Committee

David A. Froling
Tax Counsel for the Ohio Council of Retail Merchants

May 23, 2019

Good morning, Chairman Dolan and members of the Committee. My name is Dave Froling. I am a state and local tax partner with the law firm Vorys, Sater, Seymour and Pease LLP. I am testifying today on behalf of the Ohio Council of Retail Merchants. The Council appreciates the opportunity to address the Committee today.

At the outset it is important for the Committee to understand how important retailers are to Ohio, the State's economy, and the State's tax revenues. As to Ohio's economy, last year the retail industry accounted for approximately $39.2 billion of Ohio's annual Gross Domestic Product and the retail industry supported 1.5 million jobs which is roughly one in four of all Ohio jobs - - more than any other industry. As to the State's fisc, simply put, the more taxable sales retailers make, the more Ohio sales tax retailers collect and remit to Ohio. Further, the more sales retailers make, the more profitable retailers become, which leads to retailers hiring more employees and opening new retail stores. Previous General Assemblies recognized these facts and have passed legislation to maximize the collective interests of retailers and the State. Relative to the budget bill, the Council would like to offer comments on four tax proposals that the House adopted.

1. **Ohio Use Tax: Proposed amendment to the definition of "Substantial Nexus with this State."**

The House-passed budget bill imposes use tax nexus on any out of state seller that has at least $100,000 of taxable sales or at least 200 transactions with Ohio consumers. This amendment effectively codifies the U.S. Supreme Court's 2018 landmark decision in *South Dakota v. Wayfair, Inc.* Forty states have codified the Court's decision. Ohio should do the same. The Council was pleased that the House added this important amendment to the State's budget bill and encourages the Senate to accept the House's amendment.

2. **Ohio Use Tax: Proposed amendment requiring marketplace facilitators to charge, collect, and remit Ohio use tax.**

One necessary offshoot associated with codifying *Wayfair* is requiring marketplace facilitators to charge, collect, and remit Ohio use tax on behalf of internet retailers that utilize a marketplace facilitator to make Ohio retail sales to Ohio consumers. Twenty-six states have adopted marketplace facilitator legislation while another fifteen states are in the process of doing so. Ohio needs to pass marketplace facilitator legislation to effectively modernize its use tax laws following *Wayfair*. The Council was pleased that the House added this important amendment to the bill. That said, we are aware that some of our members have a difference of opinion regarding the House-passed language. As such, we are neutral on the specific issue of concern to them.

3. **Ohio Individual Income Tax: Proposed reduction of the business income tax deduction from $250,000 to $100,000 and elimination of the 3.0% tax rate on business income.**

The Council fails to see how reducing the business income deduction and eliminating the 3.0% tax rate on business income helps grow Ohio's economy. On the contrary, the Council anticipates these changes would have a negative impact on recent economic growth. From the Ohio Tax Commissioner's 2018 annual report: Small businesses are the drivers of Ohio's economy. Small businesses make up roughly 98% of all Ohio businesses and they employ half of Ohio's private sector workforce.

While it is hard to quantify how the business income deduction has benefited Ohio's economy directly, by any reasonable measure, the deduction has done just that. The Council, in reviewing various state agency websites, observed the following. Since 2012:

A. Ohio's Gross Domestic Product is up 18% while the U.S.'s GDP is up 10.5%.

B. Ohio's economy has gone from 20th largest in the U.S. to 7th largest.

C. The number of individuals employed in Ohio has increased by 3.9%.

D. The number of individuals unemployed in Ohio has decreased by 37.7%.

E. The total number of Ohio personal income tax returns filed has increased by 4.5%.

F. The total number of Ohio personal income tax returns filed by residents has increased by 3.4%.

G. The total number of Ohio personal income tax returns filed by nonresidents has increased by 21.9%.

H. Ohio personal income tax collections have decreased by 13.5%.

I. The number of taxpayers filing CAT returns has increased by 1.2%.

J. CAT collections have increased by 20%.

K. Sales/use tax collections have increased by 24.5%.

The Council further observes that for 2017, the business income deduction was claimed on approximately 693,000 Ohio personal income tax returns. This year, Ohio individual income tax collections are up 7.3% compared to last year and currently, the Ohio unemployment rate is the lowest since July 2001. The Council finds the aforementioned statistics remarkable and compelling and fails to see how reducing the business income deduction and eliminating the 3.0% tax rate on business income will help business owners and the Ohio economy. The Council strongly urges the Senate to not reduce the business income deduction or eliminate the 3% tax rate on business income.

4. **<u>Pass-through Entity Withholding Tax: Proposed amendment reducing the withholding tax rate from 5.0% to 3.0% and allowing nonresident individuals to make estimated income tax payments.</u>**

The Council appreciates that the House added this important amendment to the budget bill. The Council has been advocating for this amendment for the past four years. Currently, the withholding tax rate is a flat 5.0% which is two-thirds *greater* than the 3.0% income tax rate on business income in current law. When the General Assembly enacted the pass-through entity withholding tax in 1997, the 5.0% withholding tax rate was one-third *lower* than the highest marginal income tax rate. That made sense in order for Ohio to effectively account for certain federal income tax deductions that the State incorporated into the Ohio individual income tax. There is no reason for the State to mandate over-withholding. No Ohio taxpayer should make an interest-free loan to the State. This is harmful to the business owner and the Ohio economy. In addition, non-resident investors should be permitted to make quarterly estimated payments at this lower rate just as resident investors are able to do. The Council encourages the Senate to retain this House amendment.

Members of the Committee, this concludes my prepared remarks. The Council appreciates your time and attention to these important issues. On behalf of the Council, I would be happy to answer any of your questions.