



TO: Ohio Senate Finance Committee

From: Crystal Faulkner, Tax Partner, Cincinnati Market Leader
MCM

Date: May 23, 2019

RE: Am. Sub. HB 166 – Proposed Business Income Deduction Changes

Chair Dolan, Vice Chair Burke, Ranking Member Sykes and Members of the Ohio Senate Finance Committee, thank you for allowing me to share my views on proposed changes to the Business Income Deduction. I am Crystal Faulkner, a partner and the Cincinnati Market Leader for MCM CPAs and Advisors, a CPA and consulting firm with offices in Ohio, Kentucky and Indiana. I am also the soon to be President Elect of the Ohio Society of CPAs but am speaking on behalf of my firm. Before joining MCM, I was the owner and co-founder of Cooney Faulkner & Stevens, LLC (CFS). We founded CFS in 1999 and operated it as a small Ohio business for more than 16 years before we merged our firm with MCM.

The vast majority of our clients (both when we were CFS and now MCM) are closely held private and family businesses. Our clients not only have offices in Ohio but have locations in surrounding states (KY, Indiana, PA, Michigan and all over the Midwest). Our clients are very successful entrepreneurs, many of whom operate as pass through entities (PTEs) such as LLCs, S Corporations and sole proprietorships. Many of these companies have choices as to where to grow their businesses and jobs. I am writing today to share my thoughts and concerns (as well as those of my MCM partners and clients) about the House changes to the Ohio Business Income Deduction (BID) contained in AM. Sub. HB 166. It is critical to preserve the BID to allow Ohio to maintain a competitive tax climate important for business owners, especially those that are mobile and can choose to grow jobs outside of Ohio. As you may know, effective for tax year 2013, Ohio enacted the BID and currently the BID enables a business owner who files single or married filing jointly to deduct 100% of business income up to \$250,000 from the adjusted gross income they report on their Ohio personal income tax return. Any remaining business income above the thresholds is taxed at a flat 3% rate. This legislation was designed to increase jobs and mitigate Ohio's broad municipal income tax system, as well as to help level the taxation playing field between PTE businesses and C Corporations. While PTE businesses and C Corps both pay the Commercial Activity Tax, PTE owners must also pay personal income tax on that same business income (whether they take the money out of the company or not), while C corporations (including some of the state's largest businesses) do not pay Ohio income tax.

I have many clients that have chosen to remain in Ohio (both their businesses as well as individually) because of the competitive tax incentive provided by the BID. I have several clients who were going to move out of Ohio prior to the BID becoming law and changed their minds keeping their businesses and residences in Ohio due to the additional tax incentives. The \$250,000 exemption as well as the 3% cap has allowed many of our clients to reinvest funds back into their businesses that would otherwise have been used for taxes. I have heard some say that the BID is not significant enough to warrant adding jobs but that is false. I have specific instances where the savings was so significant it allowed my business

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clients to invest in jobs and capital that they would not have otherwise been able to do. I personally can attest to this. I am a CPA but also a business owner. As a business owner of a small and large CPA firm (CFS and now MCM), the savings afforded by the BID absolutely allows us to invest in greater technology, give people raises and add jobs. The deduction allows us to keep more money in our business as opposed to taking out additional funds to pay taxes. And as for me personally, the BID has been the determining factor in my decision to remain in Ohio instead of moving across the river to Covington Ky for both me individually as well as choosing where our MCM office would be located (Cincinnati or Kentucky).

As a practicing CPA, having worked with the BID for many years, I do believe there are several ways to close a few "loopholes" that exist in the current BID language and make it better to help those that were intended to benefit – Ohio business owners. However, this does NOT include reducing the \$250,000 exemption or the 3% cap. The \$250,000 exemption and the 3% cap are driving business growth in this state. Instead of making changes to these two incentives perhaps you could consider eliminating language that currently allows certain taxpayers to benefit from the BID even if they are not creating jobs or driving investment. For example, passive investors could be excluded from taking the BID. This would be more in line with the original intent of the BID. Passive investors are not creating jobs. I have clients who merely invest with a brokerage firm (think Merrill Lynch, Morgan Stanley, etc.) and receive a K-1 with business income which is eligible for the BID. In these cases, the underlying investment is not in Ohio nor are these investments creating jobs in Ohio. Another example of where Ohio could change the BID rules to be more in line with economic growth is narrowing the income eligible for the BID. Currently all qualified business income (whether generated in Ohio or out of Ohio) is eligible for the BID which does not seem to be aligned with the spirit of job growth in the state. Consideration could be given to limiting the BID to only qualified Ohio apportioned income.

I strongly urge the Ohio legislature to postpone any action related to the BID until a complete evaluation of what true loopholes exist before picking one or two issues to focus on. A thorough evaluation and study of what is driving economic growth as it relates to the BID is much more prudent than picking a couple of issues that really are working (the exemption and the cap) but leaving other abuses in the law. This is too important to Ohio businesses to react without a thorough analysis. Also, the proposed language making any changes retroactive to the beginning of 2019 is not fair. It is like changing the rules in the middle of the game. These business owners have made business and budget decisions based on the law we all thought was in place. Any provision to effectively raise taxes on Ohio businesses should be prospective, certainly not retroactive.

I appreciate the opportunity to share my views and those of my firm and the thousands of clients we work with on this important tax provision. If you have any questions or wish to discuss this issue with me further, please don't hesitate to contact me at 513 607-7041 or crystal.faulkner@mcmcpa.com.

Sincerely,

MCM CPAs and Advisors



Crystal Faulkner, CPA