



BEFORE THE OHIO HOUSE WAYS AND MEANS COMMITTEE
TESTIMONY ON HOUSE BILL 157
March 10, 2021

Good Morning Chairman Merrin, Vice Chair Riedel, Ranking Member Sobecki, and members of the committee. My name is Tony Long, and I am the Director of Tax & Economic Policy for the Ohio Chamber of Commerce. On behalf of the Ohio Chamber, I am testifying as an interested party on House Bill 157.

In March of 2020, the business community employers identified the complexity of municipal income tax withholding as an issue that needed to be addressed in light of the developing health pandemic. During lengthy rounds of meetings, a course of action was identified and agreed to with support from municipal organizations. Although the specific language was not adopted, the legislature did hear the concern and added Section 29 (temporary language) to HB 197 while it was pending in the Senate during the 133rd General Assembly. See Exhibit A of my testimony. This language was seen as a temporary solution tied to the duration of an executive order. At the time no one foresaw an executive order being in place for this length of time.

HB 157 would simply repeal Section 29 of HB 197. The six-line bill does not indicate if the repeal is retroactive or would simply return withholding to the permanent laws found in Ohio Revised Code (ORC) Chapter 718 ninety-days after enactment of the bill. Currently, business community employers are still navigating the pandemic landscape and have not begun to set firm dates for

return to offices or made decisions surrounding the workplace post pandemic. Will employees come back full-time to the old office? Will employees work partly at the office and partly at a remote location? Will some employees simply work from a remote location? With these questions still unanswered it is too soon to remove the temporary language of Section 29 found in HB 197.

Given the uncertainty of the specific work location(s) for employees after the pandemic, the mere repeal of Section 29 of HB 197 will not address the complexity of municipal income tax withholding and we would request that the committee also examine the need to modernize the municipal income tax withholding provisions in ORC 718 to meet the new workplace dynamic that will develop post pandemic.

Under current law, employees are forced to track employee work locations to determine if the employee performed work at each location. Once an employee works in that location for more than 20 days, withholding is required. Small employers are exempted from this exercise under paragraph TT of ORC 718.01. As an example, let us say that an employer has an office located in city A, and that one of the employees occasionally works at that office, but also performs work from home in city B, and travels to care for an elderly relative in city C where the employee will also perform work tasks as needed. Under current law, the employer must track the workdays of this employee in each of the three cities. Once the twenty-day rule is tripped, the employer must begin to withhold local income taxes for that city.

An expansion of the small employer exception may alleviate the complexity for the employer. However, that now places the extra-work on the employee to track days in and out of the office and then spend time gathering forms and paperwork to meet the various city requirements to successfully file tax returns and to determine if a refund is due. I will avoid the conversation on the credit mechanisms used by cities that in the end shift monies from one city to

another leaving a refund applicant with little or no money in their pocket unless the employee lives in a township.

Under the current law, there is either complexity at the front end of the process or complexity at the back end, and there is no easy solution to address both to entirely avoid the complexity of ORC 718. Attached to my testimony as Exhibit B is ORC 718.011. This is just the qualifying wage provision of the chapter. There are 59 sections in ORC 718 to cover municipal income tax on both individuals and businesses.

As this committee deliberates HB 157, we simply ask that consideration be given to holding a larger conversation on finding long-term solutions for the shortcomings of ORC 718. Conversations that will bring all parties together to work through the complexity of the withholding statute and also find solutions for other issues faced by the business community employers around municipal income tax compliance. These issues include how to apportion income for the net profits tax and how to address the compensation based economic development agreements put in place before the pandemic built on assumptions that employees would exclusively work at the fixed location of the employer.

Thank you for the opportunity to testify on HB 157. I will try to answer any questions you may have for me.

(133rd General Assembly)
(Amended Substitute House Bill Number 197)

AN ACT

To amend sections 122.075, 125.831, 131.45, 133.01, 133.06, 133.07, 133.18, 135.142, 305.31, 306.322, 307.671, 307.672, 307.674, 307.678, 307.695, 319.301, 321.03, 321.20, 323.154, 323.155, 351.01, 351.03, 351.141, 718.01, 718.021, 929.01, 1545.041, 1545.21, 1711.15, 1711.16, 3316.03, 3316.06, 3317.01, 4301.20, 4582.024, 4582.26, 4582.56, 4723.43, 4729.01, 4761.17, 5104.31, 5701.08, 5701.11, 5701.12, 5703.04, 5703.211, 5703.54, 5703.94, 5703.95, 5705.03, 5705.13, 5705.19, 5705.195, 5705.213, 5705.252, 5705.29, 5705.315, 5705.34, 5705.35, 5705.36, 5705.49, 5709.201, 5709.43, 5709.48, 5709.53, 5709.61, 5709.80, 5709.85, 5709.93, 5713.03, 5713.30, 5713.351, 5715.13, 5715.36, 5721.06, 5721.191, 5721.39, 5725.98, 5726.50, 5726.98, 5727.02, 5727.11, 5727.23, 5727.32, 5727.33, 5727.80, 5727.83, 5727.84, 5729.98, 5733.042, 5733.05, 5733.052, 5733.055, 5733.40, 5733.98, 5735.026, 5735.06, 5739.01, 5739.011, 5739.02, 5739.021, 5739.028, 5739.03, 5739.034, 5739.08, 5739.09, 5739.21, 5740.02, 5743.05, 5743.08, 5743.33, 5743.65, 5745.14, 5747.01, 5747.011, 5747.012, 5747.013, 5747.02, 5747.058, 5747.061, 5747.07, 5747.082, 5747.11, 5747.231, 5747.41, 5747.51, 5747.52, 5747.55, 5747.98, 5748.08, 5748.09, 5751.01, 5751.08, 5751.09, 5751.50, 5751.51, 5751.98, and 5753.11; to enact sections 4723.433, 4723.434, 4723.435, 5739.091, 5739.092, 5751.40, 5751.41, and 5751.42; and to repeal sections 901.13, 5705.211, 5727.87, 5733.46, 5739.105, 5747.75, and 5751.23 of the Revised Code and to amend Section 757.40 of H.B. 166 of the 133rd General Assembly to continue essential operations of state government and maintain the continuity of the state tax code in response to the declared pandemic and global health emergency related to COVID-19, to make appropriations, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 122.075, 125.831, 131.45, 133.01, 133.06, 133.07, 133.18, 135.142, 305.31, 306.322, 307.671, 307.672, 307.674, 307.678, 307.695, 319.301, 321.03, 321.20, 323.154, 323.155, 351.01, 351.03, 351.141, 718.01, 718.021, 929.01, 1545.041, 1545.21, 1711.15, 1711.16, 3316.03, 3316.06, 3317.01, 4301.20, 4582.024, 4582.26, 4582.56, 4723.43, 4729.01, 4761.17, 5104.31, 5701.08, 5701.11, 5701.12, 5703.04, 5703.211, 5703.54, 5703.94, 5703.95, 5705.03, 5705.13, 5705.19, 5705.195, 5705.213, 5705.252, 5705.29, 5705.315, 5705.34, 5705.35, 5705.36,

contrary, the Ohio Public Works Commission may automatically extend project schedules. The extension shall be for a duration determined by the Commission. The Commission shall not provide for an extension if federal law does not provide for or allow an extension regarding any particular project. The Commission also may waive penalties and late fees owed to the Commission from the issuance of outstanding loans.

(B) Notwithstanding Chapter 6121. or 6123. of the Revised Code or any other provision of law to the contrary, the Ohio Water Development Authority may waive penalties and late fees owed to the Authority from the issuance of outstanding loans.

(C) Notwithstanding Chapter 3734., 3745., or 6119. of the Revised Code or any other provision of law to the contrary, the Ohio Environmental Protection Agency may waive penalties or late fees owed to the Agency from the issuance of outstanding loans or permits. The Agency also may suspend reporting requirements for water research recovery facilities or solid waste facilities.

SECTION 28. (A) Notwithstanding section 5703.35 of the Revised Code, the Tax Commissioner may do any of the following during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020:

(1) Extend to any company, firm, corporation, person, association, partnership, or public utility affected by the emergency a further specified time within which to file any report required by law to be filed with the Commissioner, in which event the attaching of any penalty for failure to file such report or pay any tax or fee shall be extended accordingly, without regard to the forty-five-day limitation of section 5703.35 of the Revised Code;

(2) Extend to any company, firm, corporation, person, association, partnership, or public utility affected by the emergency a further specified time within which to make any estimated or accelerated payment that would otherwise be due pursuant to Chapter 718., 3734., 3769., 4303., or 4305., or Title LVII of the Revised Code, in which event the attaching of any penalty for failure to file such report or pay any tax or fee shall be extended accordingly;

(3) Waive the payment of interest that is calculated at the rate per annum prescribed by section 5703.47 of the Revised Code and that would otherwise be due pursuant to Chapter 718., 3734., 3769., 4303., or 4305., or Title LVII of the Revised Code for any payment extended under division (A)(1) or (2) of this section.

(B) If the Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (A) of this section or division (G) of section 5747.08 of the Revised Code during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, a taxpayer shall automatically receive an extension for the filing of a municipal net profit tax return under section 718.85 of the Revised Code during that period. The extended due date of the municipal net profit tax return shall be the same as the extended due date of the state income tax return.

SECTION 29. Notwithstanding section 718.011 of the Revised Code, and for the purposes of Chapter 718. of the Revised Code, during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, and for thirty days after the conclusion of that period, any day on which an employee performs personal services at a location, including the employee's home, to

which the employee is required to report for employment duties because of the declaration shall be deemed to be a day performing personal services at the employee's principal place of work.

SECTION 30. (A) During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, the requirement of division (A)(2)(a) of section 4723.09 of the Revised Code is suspended. Accordingly, during such period, the Board of Nursing shall grant to an applicant described in division (A) of section 4723.09 of the Revised Code a temporary license to practice nursing as a registered nurse or as a licensed practical nurse if the conditions of divisions (A)(1) and (A)(2)(b) to (d) of section 4723.09 of the Revised Code have been met.

(B) A temporary license issued under this section shall be valid until whichever of the following dates occurs first:

(1) The date that is ninety days after December 1, 2020;

(2) The date that is ninety days after the duration of the period of the emergency described in division (A) of this section.

SECTION 31. (A) Notwithstanding section 3310.03 of the Revised Code, Section 265.210 of H.B. 166 of the 133rd General Assembly, as amended by S.B. 120 of the 133rd General Assembly, and any other provision of law to the contrary, the Department of Education shall not accept, process, or award first-time performance-based Educational Choice scholarships under section 3310.03 of the Revised Code for the 2020-2021 school year to students who are eligible for the scholarship for the first time for the 2020-2021 school year and whose scholarships would have been paid for under Section 265.210 of H.B. 166 of the 133rd General Assembly, as amended by S.B. 120 of the 133rd General Assembly.

However, the Department shall accept, process, and award scholarships for any of the following:

(1) Students who received a scholarship in the 2019-2020 school year;

(2) A student who satisfies all of the following criteria:

(a) The student's sibling received a scholarship under section 3310.03 of the Revised Code during the 2019-2020 school year.

(b) The student is enrolled in or would be enrolled in a building that, in the 2019-2020 school year, met any of the conditions prescribed in section 3310.03 of the Revised Code.

(c) The student was enrolled in a public or nonpublic school in any of grades kindergarten through twelve or was homeschooled for the equivalent of those grades for the 2019-2020 school year, or will be enrolled in kindergarten or will start homeschooling for the equivalent of kindergarten in the 2020-2021 school year.

As used in this section, "sibling" means a brother, half-brother, sister, or half-sister, by birth, adoption, or marriage, without regard to residence or custodial status, or a child residing in the same household as a foster child or under a guardianship or custodial order. As used in this section, "foster child" means a child placed in a family foster home, as defined in section 5103.02 of the Revised Code.

(3) Students who were eligible for scholarships for the 2019-2020 school year, regardless of

718.011 Municipal income tax on qualifying wages paid to an employee for the performance of personal services.

Exhibit B
page 1 of 3

(A) As used in this section:

- (1) "Employer" includes a person that is a related member to or of an employer.
- (2) "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.
- (3) "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.
- (4) "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.
- (5) "Fixed location" means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.
- (6) "Worksite location" means a construction site or other temporary worksite in this state at which the employer provides services for more than twenty days during the calendar year. "Worksite location" does not include the home of an employee.
- (7) "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (B)(1)(a) of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.

For the purposes of this division, the location at which an employee spends a particular day shall be determined in accordance with division (B)(2) of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

(B)

(1) Subject to divisions (C), (E), (F), and (G) of this section, an employer is not required to withhold municipal income tax on qualifying wages paid to an employee for the performance of personal services in a municipal corporation that imposes such a tax if the employee performed such services in the municipal corporation on twenty or fewer days in a calendar year, unless one of the following conditions applies:

(a) The employee's principal place of work is located in the municipal corporation.

(b) The employee performed services at one or more presumed worksite locations in the municipal corporation. For the purposes of this division, "presumed worksite location" means a construction site or other temporary

worksite in this state at which the employer provides services that can reasonably be expected by the employer to last more than twenty days in a calendar year. Services can "reasonably be expected by the employer to last more than twenty days" if either of the following applies at the time the services commence:

(i) The nature of the services are such that it will require more than twenty days of actual services to complete the services;

(ii) The agreement between the employer and its customer to perform services at a location requires the employer to perform actual services at the location for more than twenty days.

(c) The employee is a resident of the municipal corporation and has requested that the employer withhold tax from the employee's qualifying wages as provided in section 718.03 of the Revised Code.

(d) The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure.

(2) For the purposes of division (B)(1) of this section, an employee shall be considered to have spent a day performing services in a municipal corporation only if the employee spent more time performing services for or on behalf of the employer in that municipal corporation than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:

(a) Traveling to the location at which the employee will first perform services for the employer for the day;

(b) Traveling from a location at which the employee was performing services for the employer to any other location;

(c) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;

(d) Transporting or delivering property described in division (B)(2)(c) of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;

(e) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.

(C) If the principal place of work of an employee is located in a municipal corporation that imposes an income tax in accordance with this chapter, the exception from withholding requirements described in division (B)(1) of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to the municipal corporation in which the employee's principal place of work is located.

(D)

(1) Except as provided in division (D)(2) of this section, if, during a calendar year, the number of days an employee spends performing personal services in a municipal corporation exceeds the twenty-day threshold described in division (B)(1) of this section, the employer shall withhold and remit tax to that municipal corporation for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in that municipal corporation.

(2) An employer required to begin withholding tax for a municipal corporation under division (D)(1) of this section may elect to withhold tax for that municipal corporation for the first twenty days on which the employer paid qualifying wages to the employee for personal services performed in that municipal corporation.

(3) If an employer makes the election described in division (D)(2) of this section, the taxes withheld and paid by such an employer during those first twenty days to the municipal corporation in which the employee's principal place of work is located are refundable to the employee.

(E) Without regard to the number of days in a calendar year on which an employee performs personal services in any municipal corporation, an employer shall withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the municipal corporation in which the employer's fixed location is located if the employer qualifies as a small employer as defined in section 718.01 of the Revised Code.

To determine whether an employer qualifies as a small employer for a taxable year, a tax administrator may require the employer to provide the tax administrator with the employer's federal income tax return for the preceding taxable year.

(F) Divisions (B)(1) and (D) of this section shall not apply to the extent that a tax administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of section 718.03 of the Revised Code.

(G) In the case of a person performing personal services at a petroleum refinery located in a municipal corporation that imposes a tax on income, an employer is not required to withhold municipal income tax on the qualifying wages of such a person if the person performs those services on twelve or fewer days in a calendar year, unless the principal place of work of the employer is located in another municipal corporation in this state that imposes a tax applying to compensation paid to the person for services performed on those days and the person is not liable to that other municipal corporation for tax on the compensation paid for such services. For the purposes of this division, a petroleum refinery is a facility with a standard industrial classification code facility classification of 2911, petroleum refining.

Notwithstanding division (D) of this section, if, during a calendar year, the number of days an individual performs personal services at a petroleum refinery exceeds twelve, the employer shall withhold tax for the municipal corporation for the first twelve days for which the employer paid qualifying wages to the individual and for all subsequent days in the calendar year on which the individual performed services at the refinery.

Added by 130th General Assembly File No. TBD, HB 5, §1, eff. 3/23/2015, applicable to municipal taxable years beginning on or after 1/1/2016.

Related Legislative Provision: See 133rd General Assembly File No. TBD, HB 197, §29.

Exhibit B
page 3 of 3