



TESTIMONY BEFORE THE HOUSE WAYS AND MEANS COMMITTEE

OPPONENT TESTIMONY

HB 157

April 13, 2021

Chair Merrin, Vice Chair Riedel, Ranking Member Sobecki, and members of the House Ways and Means Committee, to thank you for the opportunity to provide testimony on the amendments that have been drafted for HB 157.

The League appreciates the language in AM0832 that extends Section 29 of HB 197 until December 31, 2021, and the effort to ensure that municipalities or businesses that operate in municipalities have adequate time to understand the short-term and long-term impacts of post pandemic employment policies.

To provide us with greater understanding of what impacts might be involved with AM0833-1 and AM0955-1, the League asked several municipal income tax administrators and the Regional Income Tax Agency (RITA) to review the proposed amendments and their questions and concerns are detailed in this testimony.

The first amendment is AM0833-1, which changes the small business exemption from \$500,000 to \$1,000,000. The League is seeking more clarity on this amendment, which doubles the amount of gross receipts that allow a business to only withhold to their fixed location, and not where the employee is necessarily performing their work. There is also the question of how many more businesses would be exempt from municipal income tax withholding based on where an employee is working.

There is also a concern that this number will continue to increase to a point where more employers are only withholding where the business is located, and municipalities are unable to determine how much of their revenue is subject to refund based on this withholding.

Additionally, while this amendment is an effort to make withholding easier for more employers, however it does create more burden for the employees, as the increase leaves the employees of those businesses to figure out where they owe tax.

As for AM0955-1, this amendment changes the intent of the original language of Sec 29 of HB 197, which as demonstrated by LSC's analysis, potentially impacted withholding and liability of the employee and the employer. The language included in I HB 197 that temporarily freezes the withholding practice maintained the status quo during the state of emergency. From page 6 of the LSC analysis of HB 197:

“For municipal income tax purposes, treats income earned by an employee required to work at a temporary worksite because of the emergency as being earned at the employee’s principal place of work, potentially affecting the municipal income tax withholding and liability of the employee and the employer.”

LSC provided guidance and made it clear to that Sec. 29 of HB 197 was not just a withholding-only provision. To retroactively try to change the intent at this point contradicts the LSC guidance provided with Sec. 29 of HB 197, and the original intent of the legislature.

Cities, taxpayers, and businesses have made decisions based on the application of Section 29 of HB 197. Municipalities continued to fund services based on revenue supported by this provision. Additionally, retroactively changing a law from over a year ago, impacting a tax year that is “closed” and where millions of taxpayers are already filing returns, would result in an unnecessary, chaotic environment.

A handful of lawsuits have been filed on this issue. The proposed withholding clarification amendment is inconsistent with what the Ohio Attorney General argued in a legal brief on this litigation, which is that the Ohio General Assembly has the legal right to allow for cities to tax employees temporarily working from home to be taxed to the principle place of work and that the Ohio Constitution does not prohibit the General Assembly from doing this.

The League strongly believes that the courts will decide this issue regarding refunds and that the legislature should not up-end the original intent of the legislation.

We request that only the time extension amendment be included in HB 157 and that the other changes to the municipal income tax be considered in separate legislation, providing more time to work with the legislature and other interested parties so as to better understand the consequences of what is being considered.

Thank you for your time and for your consideration of our concerns.