



**Chair Merrin, Vice-Chair Riedel, Ranking Member Sobecki and Members of the House Ways & Means Committee. Thank you for the opportunity to submit written testimony in relation to the matter before you today: Substitute Bill 157. My name is Kevin Robison and I am the Director of Taxation City of Dublin. I would like to express how detrimental the new language Substitute House Bill 157 regarding the intent of Section 29 of House Bill 197 could be to municipalities in Ohio. This language could be catastrophic to the cash flow of tax revenues and create a potential for a substantial increase in requests for refunds for the majority of cities throughout the State.**

**The new version of Substitute H.B. 157 extends the withholding provisions of section 29 for businesses and cities through December 31, 2021. This amendment is greatly appreciated. There are several issues with Substitute H.B. 157 that would be detrimental for the City of Dublin. Please see the following bullet points with the significant issues contained within the Substitute H.B. 157:**

- The new language the bill removes the language that was considered as treating wages earned by employees temporarily working from home during the established emergency as taxable to the “principal place of work” (PPW). The current language in Section 29 of H.B. 157 that considered these wages taxable to the PPW per the Ohio Attorney General’s and City of Columbus Auditor’s legal briefs in their lawsuit with the Buckeye Institute has now been changed. This change of intent would be made retroactive to be effective back to March 9, 2020.**
- The language in Substitute Bill 157 is changing the interpretation and the intent of Section 29 of H.B. 197 as supported by many City Attorney’s and Law Directors in Ohio. Per the original Legislative Service Commission Analysis for HB 197 on page 6, it was clear that the intent of the bill was for employer withholding and liability for the employee to be taxable for the PPW city. The change of intent in this substitute**

bill if passed into law could cause Dublin to issue a substantial amount of refunds to employees required to shift work location during the emergency declaration period.

- From the LSC final bill analysis of Sec 29 of HB 197, page 6:

*“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.”*

- This substitute bill allows the employer to determine the PPW for each employee during the established emergency. Changing the PPW would now be at the discretion of the employer and not by definition under O.R.C. 718.011 and may cause a reduction in tax revenues. Section 718.011 of the Revised Code provides legal guidance and requirements on determining the PPW, and this language should continue to serve businesses in determining PPW. The basis for Sec 29 of HB 197 is the determination of PPW at the onset of the emergency declaration, so this basis should remain intact throughout the duration of this language and effective period.
- The bill amendment disallows the wages earned at the employee’s home from creating a filing requirement for the business to file a municipal net profit return. The language treats wages as taxable to the residential taxing jurisdiction for withholding purposes, but not taxable or create a municipal return filing requirement to be filed by the business in the resident employee’s taxing jurisdiction. The bill would treat employee wages and employer net profit in two disparate manners.
  - Wages would be reportable and treated as creating withholding nexus at the employee’s home (or temporary location), but the net profit resulting from those wages and work performed would be treated as creating net profit nexus at the PPW.
  - What this means is that the employee performing work for the business in a location other than the PPW is generating net profit for the business, which, in turn, is reportable and taxable to a location where the work was not performed.

- With the new language tax, penalties and interest may not be assessed by resident city taxing jurisdiction for failure to properly withhold to their jurisdiction during the emergency. This provision is business friendly but has a negative impact on cities to enforce their tax ordinances.

The largest portion of Dublin's tax revenue is received through employer withholding taxes—usually around 81% of total tax revenues. The tax revenue received from employer withholding taxes in 2019 was \$72.7 million dollars. Based upon historical knowledge of the employer withholding returns filed by employers, around 87% of employees working in Dublin are nonresident individuals. Based upon this data the maximum exposure for potential refunds to nonresident employees for Tax Year 2020 since the beginning of the COVID-19 emergency would be \$47.6 million dollars. Additionally, upon a detailed review of resident individual accounts, the maximum potential revenue that we might receive from resident employees temporarily working from home would be \$22.3 million dollars. For Tax Year 2020, the overall loss in tax revenues related to the 20 Day Rule as applied to the COVID-19 emergency if refunds would be required to be paid would be over \$25.3 million dollars. This data shows how very important and impactful the effects of the 20 Day Rule interpretation and any amended language modifying H.B. 197 may be on Dublin and other cities' budgets throughout the State of Ohio.

In conclusion, I believe that the language included in Substitute Bill 57 would be very detrimental to tax revenues for the majority of municipalities in Ohio. Additionally, Substitute Bill 157 will create an administrative burden for businesses to review and sign the request for non-resident employee refunds and for the municipalities to process the additional request for refunds. This bill should not be allowed to be passed in its current version with the new language. Most importantly, the current language of Section 29 in HB 197 should remain intact until the courts in Ohio have been able to provide decisions on the legality of the constitutionality of this language. The success of this process is vital to all stakeholders, and I welcome the opportunity to be part of this process.