Senator Kristina D. Roegner
Sub. S.B. Bill 97

Ohio Senate Ways and Means Committee
May 12, 2021

Chair Blessing, Ranking Member Williams, and Members of the Senate Ways and Means Committee, thank you for the opportunity to provide sponsor testimony for Substitute Senate Bill 97 which clarifies some confusion between municipal tax withholding and municipal tax liability caused by the passage of HB197 in response to the Covid-19 pandemic.

Prior to the Covid-19 pandemic, Ohio workers paid a portion of their city income tax to the municipalities in which they physically worked. This was fair as it helped pay for the services that the city would provide to that worker while they are physically there. This was the case whether the individual worker was a resident of the city or not. As long as they physically worked in the city for more than 20 days, they paid the income tax.

In March of 2020 because of Covid-19 Ohio's governor declared a state of emergency and through the Department of Health started to issue executive orders in rapid succession. Students were sent home from schools, government agencies such as BMV's were locked down, polling locations on the eve of the 2020 primary election were shuttered, restaurants, bars and small businesses were ordered closed and everyone except "essential workers" were ordered to "stay at home". The world as we knew it seemingly overnight had changed. However we were reassured that these draconian measures were to just "flatten the curve" and any reasonable person would assume then that they were temporary.

Ohio General Assembly was left with the task to address the fallout from these closures and to dampen any resulting shockwaves and we had to do so quickly. HB197 passed unanimously on March 25th 2020[1]. Thanks to HB197, seniors in high school could still graduate, state testing was waived, school report cards put on hold, people could still drive on expired licenses, and municipal income tax withholding was frozen. Companies could continue to withhold and remit local tax for their employees to the city where they **used to work**… not necessarily **where they were currently working**.

[1] https://www.legislature.ohio.gov/legislation/legislation-votes?id=GA133-HB-197

One of the obvious reasons for making what we all thought was a temporary change was to avoid businesses from having to suddenly determine where each of their employees was residing and change their withholding. To not do so would have been a bureaucratic nightmare for businesses and none of us wanted to impose this additional burden on companies already trying to cope with the shut downs. This was supposed to have been a temporary fix to help companies avoid the additional bureaucratic nightmare of withholding tax for employees now sheltering in place in their home offices across the state.

However, there should be no confusion around the fact that **tax withholding** and **tax liability** are two entirely different things. Historically, an employer's withholding responsibility as been separate and quite distinct from the responsibility of the employee, who at the end of the day bears the liability for the tax. It is for this reason that nonresident employees have always been permitted to obtain refunds for a tax withheld by an employer when the employee did not actually work in that municipality. This is reasonable since the employee did not nor could they receive city services in a location where they were not present.

SB97 clarifies

- that from March 9 2020 to January 1 2021- if in response to the Covid 19 pandemic- an employee is required by the employer to work at home or other location besides their principal place of work, Employers may (but don't have to) continue to use the principal place of work to:
    - WITHHOLD municipal taxes for that employee
    - CALCULATE (apportioning or situsing) the employers net profit
- Employers may change the employee's principal place of work
- Most importantly Sub. SB97 clarifies that nothing in section 29 applies in determining WHERE a nonresident employee's work was completed for the purpose of determining the employee's municipal tax LIABILITY.

To be crystal clear, Sub. SB97 in section 3 again states "…section 29 of HB197 of the 133rd General Assembly is intended to apply only to an employer's municipal income tax withholding responsibilities and to the apportionment or situsing of an employer's net profit and NOT for the purposes of determining the location at which a nonresident employees work was completed, services were performed or rendered or activities were conducted for purposes of determining the employees municipal income tax liability."

An additional layer of protection for the employers is found in section 4, which clearly states that employers will NOT be assessed any tax, penalty or interest if they withheld and remitted tax from an employee's qualifying wages to the municipal corporation in which the principal place of work is located.

Sub SB97 also clarifies that if the employee seeks a refund, the tax administrator cannot require a statement from the employer as a condition to process the refund claim.

I sincerely appreciate the committee's thoughtful consideration of this important issue and would be happy to answer any questions at this time.