



**BEFORE THE HOUSE WAYS AND MEANS COMMITTEE
REPRESENTATIVE BILL ROEMER, CHAIRMAN**

**HOUSE BILL 121
PROPONENT TESTIMONY OF JUSTIN D. COOK
THE OHIO MANUFACTURERS' ASSOCIATION**

April 25, 2023

Chairman Roemer, Vice Chair Merrin, Ranking Member Troy, and members of the House Ways and Means Committee, thank you for the opportunity to provide testimony in support of House Bill 121.

My name is Justin Cook, and I am a partner in the law firm of Bricker Graydon LLP and chair of the firm's tax practice. I am here today on behalf of The Ohio Manufacturers' Association (OMA).

The Ohio Manufacturers' Association is Ohio's largest statewide business association comprised solely of manufacturers. Established in 1910, the OMA's mission is to protect and grow Ohio manufacturing. It represents manufacturers of all sizes in every subsector of the industry. As you may know, manufacturing is Ohio's largest economic sector, employing approximately 690,000 Ohioans and contributing more than \$130 billion annually to the state's economy.

Ohio is a state with hundreds of villages and cities, each with the authority to impose a municipal net profit tax. At the same time, employees are demanding greater flexibility in the form of fully remote (work-from-home) or hybrid work arrangements. However, this reality places a significant burden on small and large businesses alike in their good faith desire to comply with all applicable tax obligations. Determining where returns must be filed, and subsequently preparing those returns, may in some instances be more costly to businesses than the underlying tax. Against this backdrop, we believe H.B. 121 is a step towards reducing unnecessary administrative burdens on Ohio manufacturers and other businesses operating within the State.

R.C. Chapter 718 forms the basis of all municipal net profit tax codes adopted by City ordinance and calculates "municipal taxable income" based on the well-known three-factor formula. Specifically, municipal taxable income is calculated by multiplying a company's "net profit" by the average of the following ratios:

- **Property Factor** - The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business in the municipal corporation during the taxable period to the average original cost of all of the real and tangible

personal property owned or used by the taxpayer in the business during the same period, wherever situated.

- **Gross Receipts Factor** - Total gross receipts of the business from sales and rentals made and services performed during the taxable period in the municipal corporation to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.
- **Wages Factor** - Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business for services performed in the municipal corporation to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed.

Under current law, a single remote employee working from his or her home in a city where an employer has no other business activity may be enough to trigger a municipal net profit tax filing obligation. To illustrate the administrative burdens of current law, consider the following:

- First, if the remote employee uses, for example, an employer-owned laptop or other computer equipment as part of his or her home office setup, this will result in a small apportionment of net profit to the city under the Property Factor.
- Second, under the Gross Receipts Factor, gross receipts from the sale of services are situated to the municipal corporation where such services are performed. Thus, if a remote employee provides a revenue generating service from their home—for example, a consulting service to support products manufactured by their employer—revenue from the employee's services will be situated under the Gross Receipts Factor to the employee's city of residence.
- (For the sake of clarity, we note the Wage Factor already has certain reasonable limitations. Thus, wages paid to an employee working from home generally will not result in apportionment under the Wage Factor.)

Ultimately, the amount of net profit, and thus municipal taxable income, apportioned under the example situations described above is likely *de minimis*. However, the employer would need to undertake these calculations, file a return, and potentially incur professional fees as a result. This problem can be magnified—and very often is—if the employee has many remote employees spread across the State.

H.B. 121 addresses this issue by allowing the employer to assign a remote employee—solely for municipal net profit tax purposes—to a “Qualifying Reporting Location.” The bill sets forth a number of rules to determine an appropriate Qualifying Reporting Location for each employee, and it is likely to be a jurisdiction in which the employer already has robust business operations. Thus, by being granted the ability to consolidate the reporting locations of its remote employees, an electing employer will be subject to preparing fewer municipal income tax returns. From a mechanics standpoint, H.B. 121 modifies how the apportionment factors apply for electing employers, deeming any tangible personal property use or services performed by a remote employee to occur at the Qualified Reporting Location.

H.B. 121 should reduce the instances in which *de minimis* amounts of income are allocated to municipalities where an employer’s only connection to the taxing jurisdiction is a remote employee. Thus, while H.B. 121 would not impact municipal income tax withholding obligations, we believe it is a sensible step towards reducing administrative burdens on Ohio businesses.

Thank you very much for the opportunity to appear here today in support of House Bill 121. I’d be pleased to answer any questions.