

Before the Senate Ways and Means Committee

Wednesday, May 11, 2016

Melinda J. Frank, City of Columbus Income Tax Administrator

Chairman Peterson and Members of the Senate Committee:

My name is Melinda Frank and I am the Income Tax Administrator for the City of Columbus which is a party to and administers and collects the tax for a number of Joint Economic Development Districts. Thank you for affording me the opportunity to speak before you with regard to Substitute House Bill 182.

My review of the language of Sub H.B. 182 as passed by the House has raised some issues which I feel should be clarified in the best interest of application. In general, it must be kept in mind that a JEDD Board must adopt the tax ordinance of the entity which will administer and collect the income tax within the JEDD. Any ordinance must conform to ORC Chapter 718, specifically §§718.02, 718.03 and 718.04. These referenced sections stipulate what income is subject to the tax, how tax is to be withheld from employee wages and grants the ability to levy a tax on income and a withholding tax if they are levied in accordance with the provisions and limitations specified within Chapter 718.

The following comments relate to the current language of the referenced Bill:

- The term “redevelopment” as used in Line 62 is not defined within this Bill.
- Individuals are now permitted to reside within the JEDD (Line 98). Will this result in the preclusion of residents in pre-existing JEDDs being dropped? Previously, parties with existing mixed-use facilities have razed those facilities to ensure that there were no residents within the JEDD. Will it now be possible for mixed-use structures to be located in pre-existing JEDDs, or will they still be precluded from residential use?
- How is the exclusions of parcels within the JEDD (Line 115) reconciled with the provisions of ORC Chapter 718?
- How may the JEDD contract granting the power to the Board to levy a tax on some portions of the district and not on others (Line 147) be reconciled with the provisions of ORC Chapter 718?
- The language found in 715.72((F)5)(b) at Line 160) indicates that the “income tax levied within the district is subject to Chapter 718...” however, it is subject to the code of the party that will administer and collect the tax within the JEDD as it is that code which establishes the rate within the district. Municipal tax jurisdictions may adopt language within their codes so long as it does not conflict with the provisions of Chapter 718. The language in the section should reflect that the income tax levied is subject to the administering jurisdiction’s code as reflected in 715.72(F)(5)(c) at Line 165
- There is no exception within the provisions of ORC Chapter 718 for the exclusion of the application of the tax within a jurisdiction as set forth in 715.72(F)(5)(e) at Line 174 as well as the process set out at 715.72((I)(1)(b).

- What is meant in 715.72(I)(1)(c) at Line 255 by “a *schedule* for the collection of the tax”? If the Board adopts the code of the party with a tax in place, the board will follow the provisions of the tax code of that party.
- The procedures set forth in 715.72(J) at Line 261 fail to set forth how a refusal to consent to the district is registered.
- At line 275, there is no explanation of what constitutes “written notice of the petitions”. Also if someone other than the record owner of the real property or the owner of the business signs the certified mail receipt of such “written notice” does that result in the failure of effective notice and thus the failure to provide a response within thirty (30) days of the date the notice was sent is not binding upon the owner of real property or the owner of the business and there is no deemed signing of the petition for the purposes of the section. The mere signing for a certified mailing by an individual at an address for the real property or business owner does not demonstrate actual notice to the addressee.
- The recitations within 715.72(K)(1) fail to include residents within the district in existing mixed-use structures. How are those individuals to be advised of the imminent application of a tax to their earned income?
- The language in 715.72 (K)(1)(a) references those real property owners or business owners who did not sign the petition or was not deemed to sign the petition, but there are no provisions as to how this is accomplished, as if one fails to sign the petition once given notice, they are deemed to have signed. Exactly how are those owners to successfully register their rejection of the petition?
- The provisions of 715.72(L) are in conflict with the provisions of ORC 718 as if the property is within the JEDD the businesses and employees on or in that property are subject to the income tax. There is not provision within 718 for exclusions as referenced within this section.
- Within the language of 715.72(L) there is no provision for the method of a record owner of property or the owner of a business to reject the petition. A lack of response does not necessarily equal consent, especially if there has not been successful service on the owners of the real properties or businesses within the proposed addition to the district.
- With regard to representation on the Board as set forth in 715.72(P) there is no representation of those individuals who are residents of the JEDD and thus subject to the tax.
- The provisions of 715.72(Q) allow for the exemption from the income tax of a business and its employees so long as found in sub-sections (a) thorough (c) apply. However, no exemptions are provided for within Chapter 718. Aside from the lack of exemptions within 718, there is a lack of clarity with regard to sub-section (c) as what information is to be provided to determine if the material benefit to be derived from the plan of the district by the business and its employees is negligible in comparison to the income tax which would be generated from the net profits of the business and the wages of its employees? This would require the submission of tax returns (federal) of the business as well as year-end reconciliation of wage information for all employees of that business/employer.

- There is no exemption found within ORC Chapter 718 with regard to the director's approval of an application granting an exemption from the tax of a business and its employees located within the JEDD.
- The provisions of 715.72(U) fail to acknowledge that the provisions of the section, in numerous areas, contravene the language of ORC Chapter 718. Additionally, although the recitations of 715.72(F)(5)(b) state that the income tax within the district is subject to the provisions of ORC Chapter 718, the balance of the section, with regularity, grants powers to the JEDD Board and to the Director of the State Department of Development which do not conform to the requirements of Chapter 718 and are not found within any exemptions set forth in Chapter 718. In fact, it appears the terms of the JEDD contract override the provisions of Chapter 718. See 715.72(U)(1) at line 663.

I would be happy to answer any questions.