

Interested Party Testimony on Substitute House Bill 49  
Prepared by The Ohio Society of CPAs for  
The Ohio House of Representatives  
Finance Committee

Chairman Smith, Vice Chair Ryan, Ranking Member Cera and Members of the House Finance Committee, thank you for this opportunity to offer interested party testimony on Substitute House Bill 49. I'm Greg Saul, Director of Tax Policy for The Ohio Society of CPAs (OSCPA), and I will primarily discuss the recent changes to the two municipal income tax proposals contained in Substitute H.B. 49: (1) centralized collection of the municipal net profits tax, and (2) elimination of the municipal "throwback" rule.

**Centralized Collection of the Municipal Net Profits Tax**

The Society has been on record for numerous years supporting some form of centralized collection and administration for business filers, most recently in our Ohio Tax Reform Task Force report issued to the Ohio 2020 Tax Policy Study Commission in June 2016. Why should a plumber or electrician be required to file in 30 different taxing jurisdictions, writing 30 different checks for amounts often less than the costs to comply? As a result, the Society is opposed to the changes that have been made in Sub. H.B. 49 to the municipal net profits tax for the following reasons.

Current Ohio law allows taxpayers the option to file net profits returns and make payments via the Ohio Business Gateway (OBG) free of charge, but each return must be filed individually and paid separately. Sub. H.B. 49 still allows for the filing of a single return, but now actually charges the taxpayer a 1% fee to do so. This is unprecedented for taxpayers to be charged for the convenience of merely filing your taxes in a certain manner. It is also unclear whether the substitute bill allows for a single payment, so the taxpayer may still need to make separate payments.

Further, the Ohio Department of Taxation (ODT) retaining a percentage of local tax collections to defray its administrative costs is standard procedure. The ODT already processes payments for other local governments and distributes revenues back only after retaining the following: county sales taxes (1%), school district income taxes (1.5%), and municipal electric, light, & telephone companies (1.5%). Please keep in mind that the 1% administrative fee as originally proposed was only charged on the business net profits tax, which averages just 14% of total municipal tax collections. As a result, there would be no state administrative fee assessed on cities for the remaining 86% of municipal income tax revenue.

The previous capital bill appropriated funding for the OBG 3.0, but the part for net profits only creates a feature to upload attachments. Sub. H.B. 49 reduces ODT's Dedicated Purpose Funds (DPF) group appropriation 110605 by \$9.6 million over the biennium. As a result, there is no longer money appropriated toward OBG an upgrade allowing for commercial software compatibility to upload municipal tax documents into the OBG. This drawback is one of the main reasons why very few tax professionals utilize the current OBG filing option, and why so few will use the OBG under the substitute bill changes.

Sub. H.B. 49 also removes the auditing authority from ODT and returns it to the cities. Giving audit authority to the state would have provided significant relief to businesses that currently must deal with widely varying interpretations from city to city, resulting in predictability and consistency of treatment. That relief is now gone. Further, the 1% fee on cities – now shifted to taxpayers – was largely to pay for the state taking over the audit, appeals and administration functions.

The following Sub. H.B 49 concessions address many municipal concerns: (1) delaying the effective date one year (from 1/1/18 to 1/1/19), (2) increasing the distribution of the municipal income tax (cash flow will be semi-monthly instead of quarterly), and (3) moving the provisions from Title 57 back into Chapter 718.

On the third point above, I would be remiss if I did not point out that the LSC Redbook has been updated to reflect that Fiduciary Fund Group 7095 110995 is merely an appropriation item used to distribute revenue from municipal taxes on business income administered by ODT rather than the ability of the state to keep a city's money. Further, the other local government taxes are already located in Title 57: county sales taxes (RC 5739), school district income taxes (RC 5748), and municipal electric, light, & telephone companies (RC 5745).

### **An Alternative Proposal**

While OSCPA's goal is to achieve administrative relief for all Ohio business taxpayers, we do recognize that a number of cities have concerns with the "as introduced" version of H.B. 49. An alternative proposal recently has been brought forth: an "opt in" approach under which businesses who are burdened by the need to file in multiple jurisdictions can opt in to having their net profits filings through the OBG, and having ODT perform any needed audits, appeals and other administration. Taxes due would also be filed through the OBG and distributed to recipient municipal governments. A 1% fee on the recipient cities would be assessed, and the cities would also have access to the businesses' filing information to cross check for accuracy.

We think this is a very positive compromise that will address the needs of currently burdened business owners filing in potentially dozens of cities, yet allow all other businesses wishing to file directly with their cities to do so. Remember: the net profits tax makes up roughly 14% of a city's income tax revenue, and per the Ohio Municipal League, 87% of businesses file in three or fewer cities (meaning 13% file in four or more). Assuming most businesses filing in three or fewer cities are pleased with their experiences with local tax officials, this means that the

impact on cities likely will be about 13% of the 14% net profits revenue will be assessed the 1% fee. We think this compromise is a viable fix that meets the concerns of both taxpayers and tax recipient cities alike and hope you will seriously consider including this option in the omnibus amendment.

### **Elimination of the Municipal “Throwback” Rule**

We continue to support the second proposal that was maintained in the substitute bill: eliminating the municipal “throwback” rule. We also support that Sub. H.B. 49 now extends the repeal to sole proprietorships. This outdated rule requires that sales of goods shipped to a customer in another tax jurisdiction (destination) where the seller does not have an employee that regularly engages in the solicitation of sales (e.g., internet sales companies) are “thrown back” to the jurisdiction (origin) from which the goods are shipped.

No other state determines if a sale must be thrown-back based upon the person that solicited the sale or whether the person solicited the sale at the delivery location. This practice discourages economic development in our state, as companies can easily locate in another state whose cities do not impose this punitive tax.

### **Other Tax Provisions**

The Society also supports the following proposals contained in Sub. H.B. 49, and appreciates your efforts in these areas:

- 1) Reducing Ohio’s income tax brackets from nine to seven.
- 2) Eliminating the sales tax rate increase and the base expansion to other services.
- 3) Changing the municipal income tax penalty language to “not exceeding 50%” of the unpaid withholding amount rather than “equal to 50%.”
- 4) Requiring the Deputy Auditor of State to be a CPA.
- 5) Combining ODT’s sales and use tax forms.
- 6) Clarifying that various electronic services are not the true object of the transaction and not taxable under the sales tax when they are provided primarily for the delivery, receipt or use of another nontaxable service.

Thank you again for this opportunity to offer interested party testimony on Sub. H.B. 49, and for your consideration of our views. I’m available to answer any of your questions.