

June 13, 2023

Chair Roemer and members of the House Ways and Means Committee,

Thank you for the opportunity to provide testimony on H.B. 166. My name is Larry Marsh, President of D & K Harvesting. I have been the sole owner of the company since 1993. We are a Florida based company who has 15 years of experience with the H-2A program, supplying dependable labor to companies like Bayer and DuPont.

Green Circle Growers is a family owned company with over 50 years in the business of growing indoor plants, including seasonal crops, tropicals, foliage, and succulents. For several years, Green Circle Growers has utilized H-2A workers as part of its seasonal workforce. H-2A workers are foreign nationals authorized to work in the United States to fill temporary agricultural jobs. The H-2A program is heavily regulated by the federal government. Recently, Green Circle Growers completed a facility in Norwalk, Ohio to provide housing for its H-2A workforce. Previously, the company primarily utilized extended stay hotels to provide housing for H-2A workers. D & K Harvesting is engaged by Green Circle Growers to provide their H-2A workforce.

We oppose H.B. 166. The legislation imposes a regulatory mandate and burden on our company just because some members of our workforce are foreign nationals, who are working here legally. Under Ohio law, employers are required to withhold local income taxes from wages paid to employees performing services within a municipality. Further, many municipalities further assess an income tax on individuals who are residents of the city. Where those taxes apply, there is no obligation for the employer to also withhold those municipal income taxes unless the employee requests it. H.B. 166 is an expansion of Ohio tax law.

Green Circle Grower's facility, where the H-2A workers perform their jobs, is located in a township that does not impose an income tax, therefore we are under no obligation to withhold local income taxes, according to current Ohio law, unless an employee requests withholding of tax for the city in which he or she is a legally domiciled resident.

Consider a hypothetical company located in a township, Township A, that does not impose a municipal income tax. An employee of this company, a resident of a different Ohio township, Township B, maintains a hybrid schedule. This employee routinely travels to and works at the company's headquarters. When doing so, the employer will often pay for the employee to stay at an extended stay hotel (located in a nearby city, as there are no extended stay hotels in Township A) for a few months out of the year. That city where the hotel is located imposes an income tax on its residents. Under these circumstances, the employee is not a resident of the city, because the city is not considered the employee's domicile. Consider any of the residency factors contained in R.C. 718.012 (B): location of the individual's bank accounts, location of their primary healthcare providers, or location of the individual's dependents, among many other factors. Under current law, this employee is not subject to the city's municipal income tax (employee is not performing services within the city and is not a resident), and the employer has no obligation to undertake withholding for the city's tax.

That is essentially the same situation for employers of H-2A workers. Yet, H.B. 166 would impose a tax specifically on and targeted at H-2A workers because of their foreign national status.

Our opposition to this proposal is rooted in fairness. Our company, and others that employ H-2A workers would have a new mandate imposed on them that wouldn't apply to other employers.

We care deeply about all our employees, and feel obligated to also speak up on behalf of our H-2A workforce, who might not otherwise have their voices heard during this process. If we provided the same temporary housing for domestic employees, it's unlikely that a municipal income tax could apply to them either, again based on commonly accepted definitions of residency and domicile. H.B. 166 unfairly targets our employees.

It's also unfair to portray our H-2A workforce as only "users" of public benefits without paying their fair share. They spend money in the community on groceries, clothing, entertainment, and other similar necessities, paying all applicable taxes.

Moreover, all property taxes and utilities at the Norwalk site are paid for.

We truly value our relationship with the city of Norwalk and understand their rationale for pushing for and supporting this proposal, but H.B. 166 fundamentally shifts Ohio tax law by creating a new unprecedented requirement and burden on certain employers. For that reason we oppose the legislation.

Thank you for the opportunity to provide testimony to this committee.