



Written Testimony Regarding Substitute House Bill 5
Timothy H. Riordan, City Manager, Dayton Ohio

Ohio House of Representatives
Ways and Means Committee
Representative Peter Beck, Chair

Wednesday October 30, 2013

Chairman Beck and Members of the Committee, thank you for the opportunity to testify regarding Substitute House Bill 5. The Dayton Area Mayor's and Manager's Association and the City of Dayton have been actively working to promote municipal income tax uniformity and believe that **uniformity can be reached with a solution that is revenue neutral**. Substitute House Bill 5 does not achieve this objective, and as such, we strongly oppose its passage. We believe this bill has overstepped its bounds by preferring to push tax cuts and reforms under the guise of uniformity.

The Dayton Area Mayor's and Manager's supported uniformity with revenue neutrality starting in the summer of 2012, with thirty-two other communities in seven-county region passing resolutions. On January 30, 2013, House Bill 5 was introduced, and since that time, Ohio municipalities have had to shift from a proactive policy to make tax regulations more uniform for businesses, to a defensive stance, to protect the tax revenues.

In the last biennial budget, Dayton lost \$9 million a year from the state. We were told that we needed to not rely upon the state to fund our local operations. We now must rely more heavily on our income tax collections to support service delivery. The changes proposed in Substitute House Bill 5 will further decrease the amount we can collect from our own communities. It is essential for the success of our cities that we produce a bill that is revenue neutral.

1. *Net Operating Loss Carry Forward*
 - a. Why is the 5 year Net Operating Loss Carry Forward (NOL) the main priority of the other side? Because their priority is tax breaks, not uniformity or revenue neutrality.
 - b. Does the 5 year NOL cost municipalities revenue- yes- cities have consistently shown the potential losses and the impact it will have on services to our communities (*see Attachment A*).
2. *20 day rule- Occasional Entrants*
 - a. The current system is uniform
 - b. The other side's approach is 20 days tax free.
 - c. Our compromise:
 - i. Preponderance of a day
 - ii. Businesses with less than \$500,000 in gross revenue are excluded.
 - iii. 20 days

3. *Tax Neutrality*

- a. The municipalities worked all summer with Chairman Beck- painstakingly working to get rid of all the esoteric items that might be called tax increases. We did our part on neutrality- counting on the other side to do the same.
- b. This bill does not represent the neutrality we were striving for, but the Ohio cities have all the language to do so. *Attachment A* shows all of the items that will still have a negative impact for municipalities. The OML coalition has language prepared that could be added as an amendment to address all these items.

4. *Audits, Compliance, Increasing Bureaucracy, and Complexity*

- a. The municipalities put in a Taxpayer Bill of Rights.
- b. Substitute HB 5 increases administrative and operations costs and makes taxes more difficult to collect.
 - i. No 1099's
 - ii. Increased requirements of certified mail.

In conclusion, we ask the committee to insist that the sponsors put in the OML language that guarantees uniformity with revenue neutrality for municipalities in Ohio.

1. Put in a tiered NOL Carry Forward system (0, 1, 3, or 5 years).
2. Remove the Tax Free 20 Days.
3. Eliminate all of the administrative road blocks that this legislation puts up.

Attachment A: Review of Substitute House Bill 5 - LSC 130 1581-2
City of Dayton
October 30, 2013

Line Number	Item	Comments	Impact
276 - 280	Offsets of Pass thru entity losses against net profit income of the resident.	Revenue loss	☹
311	Exemption of "pension payments and benefits" would allow a deduction for SERP.	Revenue loss	☹
409 - 413	Exempts the income of nonresident employees who work in a community if the employer has less than \$500,000 in wages (and is not withheld), and for first 20 days not withheld for principal place of work.	Revenue loss. (20 day rule)	☹
418 - 421	If an employer chooses to withhold for place of work for first 20 days, wages are not exempt.	Revenue loss (if employer does not opt to withhold)	☹
422 - 435	Wages are not exempt if the employer chooses to withhold for principal place of work, and the employee receives a refund for not working or living in muni corp.	Revenue loss (no way to identify who received refund unless cities notify each other)	☹
436 - 442	"Compensation that is not qualifying wages paid to a nonresident individual...." This section is an attempt to possibly exempt Director's Fees, nonemployee compensation, self employment. Language is not clear. IRC defines "compensation" as money paid for services rendered as an employee.	Revenue loss (no way to identify what type of income is attempted to being exempted by this section.)	☹
500 - 548	NOL - 5 year, with 50% phase in taxable years 2017, 2018, 2019, 2020, 2021. Full offset for individuals would occur in 2016, and limits NOL carry forward for each of the five years to 50% for individuals and businesses for taxable years 2017, 2018, 2019, 2020, 2021.	Revenue loss for any municipality with zero or less than 5 year NOL. Revenue loss for JEDD and JEDZ with zero or less than 5 year NOL.	☹
625	Removed language stating that "person" does not include a grantor trust.		
766 - 769	"Net operating loss" definition includes unutilized losses from basis limitations, at-risk limitations, or passive activity loss limitations, resulting in possible double deduction due to timing, or duplication of losses taken.	Revenue loss	☹
819 - 836	Added "written finding of tax administrator" as something that would require certified mail; "written finding" is not defined, and could be an assessment or correction notice, resulting in a tremendous increase in postage due to mandatory certified mailings.	Increased administrative cost / burden	☹
954 - 961	20 day rule - removes the requirement for employer to withhold retro back to day one when 20 days is exceeded. Only requires withholding on days subsequent to first 20.	Revenue loss. (20 day rule)	☹

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962 - 972	where work was performed, election is made on annual tax return. States that tax withheld and paid for first 20 days to principal place of work is refundable to employee. This is not accurate, as employee may live in principal place of work municipality.	Revenue loss. (No requirement to withhold for first 20 days worked in municipality.)	☹
979	\$500,000 rule should be based on "taxable year", not preceding "calendar year"		
20 day rule NOTE	Any reference to the employee being taxed at the location where work is performed, or requiring the employer to report qualifying wages not withheld upon due to the 20 day rule have been removed from this version of the bill. We are no longer able to require the payment of tax on qualifying wages earned in the municipal corporation (by the employee) if there was not withholding done based on principal place of work (and/or the employee requested a refund), or if employer opted to not withhold back to day one. If the employee receives a refund because they did not work or live in the principal place of work, there is no mechanism by which the municipal corporation where work is performed will know that a refund occurred.	Revenue loss	☹
Domicile NOTE 1001 - 1007	Language was changed from Muni Coalition draft where individual would have to demonstrate that tax administrator unreasonably concluded that factors determined domicile, instead allowing taxpayer to show, based on factors described, that preponderance of factors demonstrate their position. Problematic language change, unsure of intent by drafters.		☹
Domicile NOTE	Removed the definition of "spouse" from Muni draft.		
Domicile NOTE	Removed sentence that would have appeared in line 1055 - "A taxpayer's intention to change a domicile will not effect such change unless the taxpayer ceases to reside in the domicile."		☹

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1135 - 1143	<p>In Muni Coalition bill, taxpayer had to have "prior approval of" tax administrator to use alternative apportionment formula, sub HB 5 now only requires that the taxpayer "notify" the tax administrator before filing the return. Same language change has occurred for timely filed amended returns. While line 1141 says "if approved", there is no method for approval or disapproval of an alternative apportionment method outlined in this section. Language is now conflicting on how / when approval process would occur, and appears that the taxpayer need only "notify" the administrator prior to the filing of the alternative apportionment method.</p>	<p>Administrative burden, potential revenue loss</p>	☹
1470 - 1478	<p>Removes requirement for employer to remit information with Reconciliation regarding commissions and other compensation received by individuals.</p>	<p>Administrative burden</p>	☹
1775 - 1776	<p>Removes requirement for taxpayer who is an individual to remit 1099-MISC unless RECEIVED by the taxpayer. Muni Coalition version would have required 1099-MISC as issued by taxpayer as well. Also removed requirement to report Fed Form 4797.</p>	<p>Administrative burden, potential revenue loss</p>	☹
1783 - 1806	<p>Excluded Fed Form 4797 from reporting; added Form 2106 to taxpayers who are not individuals to report (makes no sense); removes Form 1099-MISC from reporting by businesses.</p>	<p>Administrative burden, potential revenue loss</p>	☹
1821	<p>Annual withholding reconciliation- changed "all" to "any"; Removed requirement for reporting of informational returns for each person who receives payments on commission or fee basis as non-employee compensation.</p>	<p>Administrative burden, potential revenue loss</p>	☹
1843, 1893, etc	<p>Raises the minimum amount to be remitted with a tax return from \$5 (in Muni draft) to \$10. Elsewhere in document, increases minimum refund amount to \$10. (State is at \$1). Refund increase may not offset loss of revenue from balance due minimum increase.</p>		☹

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2023 - 2029	Changes requirement for State Tax Commissioner to provide documentation from deregulated electric and telephone returns (collected by the State) from 30 days to 60 days. Problematic since refunds by the municipal corporation must be made within 90 days. We would consider leaving it at 60 days and adding language that upon our request to the State Tax Commissioner, the statute of limitations for issuing a refund is "tolled" until the requested information is received by the municipal tax administrator from the State Tax Commissioner.		
2096 - 2150	(AT&T provision). New definition of "affiliated group of corporations" (see language) excludes incumbent local exchange carriers primarily engaged in business of providing local exchange telephone services in Ohio (etc). Also excludes this same group from definition of "consolidated federal taxable income". ILAC - Incumbent local exchange carriers - excludes them from both definitions.	Possible revenue loss.	☹
2132 - 2150	Provides an opt-in / opt-out every five years for municipal tax purposes from filing a consolidated municipal income tax return (even when consolidated federal income tax return is filed for that particular taxable year). While it allows for tax administrator to approve opt-out request for good cause, denials will result in lengthy litigation process. Opt-out allows for different municipal treatment as opposed to federal treatment, and possibility of income shifting to avoid municipal tax.	Possible revenue loss.	☹
2185 - 2211	Muni coalition language required that an affiliated group would deduct from the group's consolidated federal tax return the profits from a pass through entity that is included in the consolidated federal taxable income of the affiliated group, and add back any loss incurred by the pass through entity that is included in the consolidated federal taxable income of the affiliated group. Sub HB 5 allows for the OPTION to either exclude the net profit or loss, or include net profit or loss.	Possible revenue loss.	☹
NOTE Consolidated Return	Line 2230 - adds "for any taxable year beginning before January 1, 2020" as part of the opt-in / opt-out provisions. This would need to be removed as well as the opt-in / opt-out provision.		☹

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2300 - 2302	Language is unnecessary. Persons with disabilities would have an agent or someone with power of attorney acting on their behalf, and such language is not required.		
2727 - 2744	Requires that a tax administrator who loses an appeal by a taxpayer must pay interest on any amount of overpayment.		
2819 - 2875	Certified mailing process for written determinations and written findings. This process is cumbersome and unnecessary, and should be removed. This process is intended to discourage tax administrator from sending notices on assessments / correction notices / etc. NOTE: When a taxpayer requests a "written determination", they are anticipating a response, and this service process is unnecessary. This is clearly intended for all of the notices sent as assessments, audits, corrections, etc. which would now all be captured under the undefined wording "written finding" (as noted earlier in this document.)	Administrative burden, administrative increased cost.	☹️
2898 - 2902	Requires that a refund be filed "within three years after the tax was due or paid, whichever is later." This changes current statute of limitations, since the trigger in this new wording is the "tax due or paid", not the filing of the tax return or the due date of the tax return. This language is problematic and must be changed back to current statute.	Problematic language.	☹️
3151 - 2153	Muni Coalition draft stated penalty would be federal short term rate rounded to nearest whole percent plus fifteen percent. Sub HB 5 changed to just show fifteen percent as penalty rate.	Hampers compliance.	☹️
3365 - 3368	New language, states that taxpayer intending to file amended consolidated municipal income tax return shall notify the tax administrator before filing the amended return. Under current law, unless they are now filing an amended return as a consolidated return for the first time (original return was not a consolidated return), the taxpayer had to obtain permission to file the consolidated return. No special permission is needed to file an amended return. This appears to be a way to again bypass the authority process of the tax administrator, and file an "amended" consolidated municipal tax return without prior approval of the tax administrator.	Administrative burden, potential revenue loss	☹️

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4246 - 4252	Requires that municipalities break down revenue collected and refunds issued by type. May be problematic for some municipalities to provide clear breakdown of refunds issued. For example, many munis refund to individuals from the employer withholding account. May need to clarify "if refund by type of income is available for reporting" or some similar language.	Administrative burden	
4426 - 4431	Totally unacceptable language. This is an attempt to cherry pick scenarios that will not show any true NOL loss results. For example, Cleveland already has a five year NOL, so there would be no impact. There are no cities that come to mind who have more business taxpayers (total entities) than residential taxpayers, leaving no municipalities to draw data from (from this portion of the "representative sample"). Any "representative sample" should come from cities with no current NOL, or less than five year NOL, and should be a sampling based on region, size of community, and those who can readily draw this information together from existing information. As many municipalities that can participate should be permitted to participate. (AND, of course, the 5 year NOL language should not be included in this bill if a Study Committee is required to determine the impacts. This clearly indicates a pre-determined result without benefit of the research.	Problematic language and process.	☹

Testimony before October 30, 2013 House Ways & Means Committee

by Patrick E. Titterington, City of Troy Director of Public Service and Safety and
John Stickel, CPA and Troy City Auditor

Good afternoon Chairman Beck and members of the Committee. My name is Patrick Titterington and I am the City Director for the City of Troy, which is located north of Dayton. I am here with John Stickel, who is the elected City Auditor of our City. John serves as our Finance Director and is a Certified Public Accountant. We are here representing Mayor Michael Beamish, the Troy City Council and the 25,058 residents of our city.

I have been in local government in Ohio for 23 of the past 26 years. During that time, I have seen policy changes by the state legislature regarding local government funding, estate taxes, annexation, workers compensation, prevailing wage, utility services, minimum wage, EPA regulations, property taxes, pensions and others too numerous to list. I've lived those changes and it has been easy to conclude that the state either has no understanding or no regard for the negative impacts those policies have had on municipalities' ability to serve its residents and businesses. Furthermore, and more concerning, it has been clear that the State of Ohio severely undervalues the important role municipalities play in the state's economic development successes.

Simply put, without municipalities meeting with and addressing the concerns of Ohio's existing businesses, all of the expansion we've enjoyed and for which the state takes credit, wouldn't have occurred. If the municipalities weren't maintaining the health, welfare, safety, and quality of life businesses and their employees require, the state wouldn't be seeing the job growth from new businesses. The state does offer economic development incentive money, often as a pass through from federal funds and for that we are grateful. But, the state of Ohio has long failed to recognize that their policy changes, while benefiting a few special interest groups, have slowly eroded Ohio's competitiveness in economic development retention and expansion – not helped further our economic development success.

So, why should we have expected that the version of HB5 that is before you would be any less of a detriment to economic development than it clearly is? The sponsors incorrectly claim that HB5 is pro-business and pro-economic development. What they mean to say is that HB5 is pro-"some" businesses, and pro-"some" economic development. What they don't say is that HB5 is not a uniformity bill, it's a tax reform, tax cheat protection, and special interest tax break bill. And, at its core, HB5 is anti-municipality, anti-employee, anti-resident, and anti-economic development.

An analysis of the proposed imposition of a five-year net operating loss carryforward is a great example. According to the Ohio Business Gateway, Troy is one of 233 municipalities in the state that offers less than a five year NOL, or 42.5% of those municipalities with an income tax. Those 233 municipalities represent 3.4 million of your residents. In Troy's case, by not offering this special tax break to a few select businesses, we instead have been able to maintain a relatively low income tax rate of 1.75% and full reciprocity. Many other municipalities cannot claim that low rate or full reciprocity.

Having no NOL carryforward in Troy also allows us to maintain a lower cost of living for our residents and businesses, thus allowing us to offer a very high quality of life through full-time police, fire, and EMS/Paramedic services, as well as an aquatic park, indoor entertainment arena, historic downtown,

350 acres of parkland, road maintenance, and our own income tax department that will meet and assist any business or resident with any municipal income tax issue, such as withholding for their employees, requesting extensions or refunds, or even helping to fill out their tax return at yearend.

A five year NOL carryforward would cost the City of Troy a minimum of \$750,000 per year. That is not an exaggeration, that is not pie in the sky, and that is not a wild guess. That is based on a detailed audit of the City's business net profit tax returns. Our staff analyzed the income tax returns of our top 100 business taxpayer accounts for tax years 2006 through 2010. We then calculated the average net taxes due and applied the carry forward loss to offset net profits. This estimate is as precise as any blue ribbon study group could analyze in the next two years. Please don't be fooled: putting in a delayed NOL carryforward and claiming the ability to remove it before it takes effect is a ruse. Once it's in, it's in. And any legislator who dares suggest to take it out will be accused of supporting a tax increase.

Our NOL impact number is an average over five years. It accounts for the before, during and after period of the recession. It is conservative because it does not include 2,900 additional business net profit tax returns we receive annually. It also does not include 2,000 landlords, sole proprietors, and farmers who report losses on federal schedules C, E and F. The impact is real, it is factual, and it would hurt the City of Troy very badly. We only audited 2% of our business returns and yet our impacts are stunning – at least to a City of our size.

So, what does the City of Troy provide that's so important that we can't lose ANOTHER \$1 million dollars? Here are our major General Fund obligations, which in 2013 total nearly **\$20,500,000**:

1. **\$350,000** to support the City's participation in our County-wide Public Health District as mandated by the Ohio Revised Code;
2. **\$500,000** for a basic road repaving program that barely keeps up with major repairs to our 340 lane miles of road;
3. **\$1,100,000** to do routine maintenance to our streets, including fixing potholes, mowing our right-of-way greenspace, plowing and salting, and responding to emergency situations;
4. **\$700,000** to maintain and upgrade the City's traffic light system, which includes 44 traffic lights and 2,627 streetlights;
5. **\$1,400,000** to collect 5,184 tons of trash and 1,704 tons of recycling materials annually from 8,951 residences;
6. **\$1,500,000** for the historic Hobart Arena, where Elvis performed in the 1950s and which provides a recreational venue to thousands of residents and visitors each year who enjoy our skating rink, sporting events and activities, and national and international entertainment acts;
7. **\$1,000,000** to maintain 350 acres of parkland in 23 different parks, offering soccer and football fields, tennis and pickleball courts, playground equipment, and 9 miles of bike trails;
8. **\$350,000** to maintain 100 acres of cemetery memorial parks on behalf of 21,000 of our founders and former Troy residents;
9. **\$1,600,000** in capital improvements to maintain public facilities valued at over \$85.7 million dollars;
10. **\$250,000** to maintain our municipal outdoor swimming pool and aquatic park, which served 31,160 visitors during the 2013 summer season;

11. **\$800,000** to support the operations and maintenance of the city's public 18-hole golf course, which hosted 26,800 rounds of golf this past summer and was the Readers Choice Award winner in 2012 and 2013 for all public golf courses in Miami County;
12. **\$5,200,000** to staff a CALEA-certified Police Department with 39 full-time police officers and command staff to patrol City streets, investigate all criminal activity, and provide DARE/School Resource Officer services to 5,600 students in 11 schools; and,
13. **\$5,300,000** to staff a Fire/EMS Department with 38 full-time firefighters and command staff, all of which are trained paramedics, in three fire stations to provide fire suppression, prevention and education, and EMS/Paramedic ambulance service not only to City of Troy residents and businesses, but also to two and a half adjacent townships, serving the third largest geographic area in the state of Ohio.

The City of Troy lost over \$1 million in annual General Fund revenues due to the State eliminating the estate tax, various property taxes and, most important to us, cutting the Local Government Fund in half. In response, we cut 10 full-time non-safety positions. In fact, in the past five years, we have trimmed our full-time staffing by over 10%. We will be hard pressed to ever return to previous staffing levels, yet our residents and businesses are demanding more and more services from us, particularly as the state, federal government and even the County push those responsibilities on us more often. Additional losses from this version of HB5 would mean that the City of Troy would need to lay off 8 to 10 Police Officers and Firefighter/Paramedics – or ask for more taxes from our residents and businesses.

While the State now sits on the “largest emergency savings account in Ohio history,” the sponsors of HB5 now expect the City of Troy to struggle further without \$750,000 to \$1 million if HB5 passes in its current form. We ask you:

- How is cutting important local services going to entice our businesses to stay and expand or attract new businesses?
- How are we going to convince workers that Ohio is a great place to be, even though we have no beaches and enjoy four full seasons of weather?
- How is it good for Ohio employees and residents when we are forced to raise taxes, fees, and assessments because a few special interests are getting special tax breaks at their expense?

In May of 2010 the OML, DATA and GDMMA became aware of a renewed push by special interests to change the municipal income tax laws under the guise of uniformity. Municipalities not only agreed that the current code does not promote simplicity but, before any bill was ever introduced, we began a rigorous and comprehensive review of the differences in our income tax codes. Unlike the coalition and bill sponsors, we were the ones who put our collective heads together to come up with a solution – a solution that tackles uniformity in as revenue neutral, tax increase free manner as possible. We've met over a 3-year period, participating in over 60 meetings, including 29 separate meetings with Chairman Beck to craft a comprehensive solution in a substitute bill that addresses the coalition's concerns, while minimizing the negative revenue impacts to municipalities. As a testament to our commitment, we've created that substitute bill knowing full well that all municipalities would have to sacrifice some revenues for the sake of a simpler, more uniform income tax system. Yet, for some inexplicable reason, our substitute bill did not make it to the floor of this committee.

We are committed to making the municipal income tax code more uniform without further reducing our revenues, but we are not in favor of providing special interest tax breaks for a select and privileged few at the expense of our residents and businesses, and we are adamantly opposed to substitute HB5. What you have before you continues to emphasize tax reform and special interest tax breaks over uniformity. This bill is not about what's best for Troy's residents and businesses but what is best for a few select coalition members. It's bad for economic development, bad for Ohio's businesses and employees, and it's simply bad law aimed at rewarding a few special interests to the detriment of everyone else.

We urge you to consider the enormous damage HB5 would do to your local communities; communities that are already hard pressed to offer even the most basic services to your constituents. Municipalities across Ohio are unified in believing that uniformity is good for Ohio's future. We're just not in favor of that uniformity coming at the expense of our ability to promote economic development on the State of Ohio's behalf, serving our citizens and your constituents, while special interests reap unfair rewards.

Thank you for your time and attention.



Ohio Municipal League

Our Cities and Villages ★ Bringing Ohio to Life

Mr. Chairman, Vice Chairman Boose and committee members, my name is Kent Scarrett with the Ohio Municipal League and I thank you for the opportunity to address some of the issues included in substitute HB5 and to briefly give you a little background on how I spent my summer. I wish I were here today to provide proponent testimony but the municipal league and our members have identified a number of treatments in the draft presented last week that will reduce already strained budgets and will impede the ability of the 592 Ohio municipalities (240 cities, 352 villages) with an income tax to raise revenue consistent with their current capabilities. As you have heard in previous testimony before this committee, for municipalities that have instituted an income tax to fund basic services, the revenue generated often makes up 70-80% of these communities' general operating funds.

Unpeeling the Onion

Mr. Chairman, if I may have your permission, I would like to share with your committee members some detail regarding the amount of work that has been undertaken by the municipal officials from across the state as we worked with you and other legislators to resolve issues in the proposed uniformity language and some of the directions taken by the municipal coalition during our numerous meetings with you.

The committee is aware that for the last several months, there has been a thorough analysis of the introduced version (and then several sets of unofficial substitute language) conducted by Chairman Beck along with other members of this committee and the General Assembly to try and identify and then determine what effects any intended and unintended consequences proposed treatments would have on business and municipal tax operations. Before the legislature adjourned, unofficial substitute language was developed by the sponsors of the bill which removed items presented in the original bill that were either unworkable or would result in too great of a negative revenue impact to municipal budgets. The previously offered substitute language also proposed new treatments that would generate revenue for municipalities by increasing certain taxes to offset HB5 treatments recognized as causing an adverse impact to municipal budgets. Information that accompanies my testimony includes a page with the areas the municipal coalition identified as "revenue raisers" in the alternative language previously offered by proponents of HB5. I want to be clear that the municipal coalition never asked for or endorsed any taxes being raised to offset the unnecessary losses municipalities would suffer if the as introduced HB 5 were enacted. We have always maintained that there are far more

reasonable and responsible ways to achieve greater simplicity, predictability and uniformity to the current municipal income tax system without reducing already depleted municipal budgets.

Some of the items included in the original HB5 that were removed in substitute language include: the creation of a Municipal Tax Policy Board, Problem Resolution Officer, language that would have prevented municipalities from enforcing their income tax if their tax ordinances were not replaced by reference with ORC Chapter 718 as their new ordinance and if other requirements weren't met. In addition, the "Throwback Rule" was also reinstated although after reviewing the new substitute language, there is a need to confirm that the new language clearly and fully reinstates this provision. We appreciate that some of these more onerous items in the original bill were removed and that others were altered in response to municipal concerns. We also appreciate that items previously removed from discussion or altered through reaching "common ground" remain so in the new substitute version currently under consideration.

Going through a bill of such magnitude, technical detail and interplay between other tax codes such as state and federal, takes an enormous amount of time and energy. Starting well before the legislature adjourned for the summer recess in late June, the members of our coalition of municipal tax, finance and administrative officials were meeting with Chairman Beck to identify what areas of the bill there was support for, what areas we had reservations about, areas that we were opposed to and how we could attempt to try and work through the difficult parts to try and reach common ground with the bill's sponsors and proponents. When the legislature returned to their districts June 30th, the intensity of our meetings with the Chairman increased significantly. Meetings occurred twice sometimes three times a week, every week, with at least one of the weekly meetings running four to five hours long. Also during at least one, sometimes two of the days a week when there were large group meetings (consisting of municipal officials from across the state) or small group meetings (Chairman Beck, Mr. Zaino representing the MITRC, Drew Davidson formally of the Speaker's office, and myself) we had the honor of being joined by either Rep. John Adams or Rep. Tom Letson. I want to thank Reps. Adams, Letson and the other members of this committee and the legislature who have spent such a large amount of time on this issue with us. The municipal coalition and the league especially thank Chairman Beck. The level of dedication, detail and unwavering commitment to try and identify every possible intended or unintended consequence to what was being proposed for change in the municipal tax system was extremely thorough and very impressive. The individuals who comprise the municipal coalition include the OML, Regional Income Tax Agency, Cleveland/Central Collection Agency, Dayton Area Mayors/Managers Assoc., Cuyahoga County Mayors/Managers Assoc., First Suburbs Consortium, United Ohio, Columbus, Cincinnati, Dayton, Toledo, Troy, Oakwood, Athens, Bowling Green, Dublin, Sharonville, Newark, and Shaker Heights.

Issues that the municipal coalition opposes in subHB5

Mr. Chairman, I would like to touch on a few critical issues that the municipal coalition continues to oppose as new parameters for municipalities to operate an effective municipal income tax under, which is contained in the sub language before you. In upcoming testimony, I hope you will hear from municipal officials from across the state on issues that affect their communities, providing you with a much better scope of detail and degree of information on treatments included in subHB5 and how they will directly impact their municipalities.

The Net Operating Loss Carry Forward provision remains the biggest threat to municipal revenues. Through information provided by the Department of Taxation, here are some general facts:

*175 cities and villages offer a zero year carry forward policy; 65 municipalities offer less than 5 years (1-4 years).

* 351 municipalities offer a 5 year NOL carry forward. One city offers 7 and one offers 10 years.

* 59% of Ohio municipalities have a 5 year NOL; 41% municipalities have a zero or less than 5 year policy and will experience revenue loss if mandated to carry a 5 year NOL.

*72 of 88 counties have at least one city or village within their boundary that has less than 5 years or no year treatment. Even more impactful is the fact that many of these are the county seat. (See map included in packet along with NOL white paper)

Our initial position on how to remedy the NOL non-uniformity concerns brought to use by coalition members was to offer that municipalities would all have to go to zero years as a uniform solution; our position then changed to offering that the status quo be permitted to continue. Today, we support the concept first advanced by the Dayton Area Mayors and Managers to replace the current ambiguity in the system with the requirement that each of the 592 municipalities would have to choose between four options for their NOL carry forward policy and after the election was made the treatment would be locked in for each municipality. The four options municipalities could choose from as their NOL carry forward period would be zero, 1, 3 or 5 years. There are roughly 300 cities and villages in Ohio that do not currently have an income tax. If any of these municipalities came on line with a new income tax, they would be required to offer a 5-year carry forward. This tiered system is a significant compromise offered by our municipal coalition sacrificing local control by locking in the treatment. But, we believe this approach: 1. addresses the concerns raised by some members of the MITRC who were seeking greater predictability in the current system; 2. offers simplicity and a greater step towards uniformity by allowing preparers to use a pull-down style list that categorizes which municipalities are included in the four categories of treatment and 3. protects municipal budgets by allowing municipalities to choose the appropriate treatment policy for their financial condition.

We support the proposal to create the Municipal Net Operating Loss Carry Forward Review Committee to study tax data from municipalities across the state to analyze the revenue impacts to municipal budgets that a 5-year NOL mandate would produce. However, we feel the deadline in the bill imposing a May 1, 2015 requirement for the committee to have completed their review and have a report to the Governor and legislature is far too aggressive and does not provide

enough time for a committee with such a serious and consequential assignment to complete its work.

We strenuously object to the language being offered that would put in place a 5-year NOL carry forward policy for cities and villages with an income tax prior to the NOL CF Review Committee study of the real revenue impacts of this mandate. I have previously mentioned the overriding source of our objection is the serious loss of revenue that 241 or 41% of Ohio municipalities would needlessly suffer. Municipalities who have conducted impact analysis and can identify the negative effects a 5-year carry forward would have on their budgets have a range from several \$100,000 annually to as high as several millions of dollars on an annual basis. These reductions would be in addition to the decrease in municipal budgets resulting from the previous state budget cuts to the Local Government Fund by nearly \$600 million, the \$300 million in annual revenue no longer flowing to cities and villages because of the elimination of Ohio's Estate Tax and the \$300 million in lost revenue because of the accelerated phase-out of the tangible personal property tax and dealer's intangible tax. Ohio municipalities can't withstand any more reductions or barriers to the ability to raise revenue on the local level to fund basic services. Businesses more than any member of a community depends on the vitality of their host municipalities to finance the services we all expect to be as robust as possible.

Offsets, gain/loss treatments are being changed through the proposed language that would result in a tremendous revenue hit to municipalities statewide as well, just as the NOL proposal has statewide implications. Additional time is needed for the municipal coalition to determine the effect the substitute language will have to local budgets, intended and unintended. I anticipate testimony will be presented before this committee by those more familiar than me with the nuances and critical specifics on current municipal treatment for handling offsets and how sub.HB5 would change that. It is safe to say that the proposed substitute language would greatly alter the current standards municipalities employ for treating apportioned versus unapportioned income and like versus unlike types of income generated by certain taxpayer pass through entities by allowing unlike sources of income to offset each other. The language offered in the latest proposal would result in another considerable decrease in municipal revenues by deviating from the current method used by municipalities to fairly and accurately distinguish between different sources of income and the appropriate balancing treatments to determine a taxpayer's actual municipal income tax obligation.

The occasional entrant rule changes being proposed are still very troublesome and will result in unnecessary financial challenges to communities who will lose revenue by preventing them from collecting taxes on workers who have been in their community earning an income, while benefiting from the municipal service structure financed through tax dollars. The municipal coalition from day one of our negotiations with business coalition representatives made it a priority to address the issues confronting Ohio's small businesses and the often challenging filing requirements they confront when having employees with work assignments in multiple municipalities.

The first thing we set out to do was to fix what was not addressed with the original 12-day rule in previously enacted HB 477 from the year 2000, by providing a definition of a “day”. The municipal coalition proposed that a “day” is considered to be where the employee spends the **preponderance** (largest portion) of their day. By defining a day as the preponderance of the time a worker spends in a municipality, an employer will only be required to withhold for this one location (if a municipal tax exists in this location) in any given day. This proposal will solve most of the issues for employers who currently have employees working in multiple cities and villages each working day. All agreed that this is a wonderful thing but the other side wanted additional changes. We then were presented with the request to lengthen the current uniform 12 day non withholding period to 20 days. Although this extension will increase the number of days withholding is not required by a community while a worker is on the job, we agreed to the proposal as long as the coalition agreed to allow municipalities to continue to collect the tax due back to the first day, once the new 20 day threshold had been exceeded by an occasional entrant. This offer was rejected but the 20 days remains. We believe the 12 days is still appropriate and the definition of a day will substantially reduce the number of filings required by small businesses.

The final proposal we made to address difficult filing issues faced by Ohio’s businesses and to ensure approaches are explored that can mitigate revenue loss to municipalities, through the sessions with Chairman Beck, was to offer the concept that when a business has less than \$500,000 in gross receipts in their previous annual tax filing period, the employer is only required to withhold tax for the principal place of work, and is not required to track or report to each municipality where work is performed. The establishment of this threshold for withholding would benefit 90% of the businesses in Ohio, as determined by research conducted by LSC. The municipal coalition needs more time to unravel all of the changes being offered to our language creating the withholding threshold proposal. It is important that all intended and unintended consequences that may jeopardize the intent of our offer be identified to make sure our straightforward proposal to assist small businesses is not twisted to further compromise our local budgets.

We are opposed to language in the substitute version that will result in revenue loss especially for smaller municipalities who are more isolated in a county where there are fewer cities and villages as neighbors but rather the county make-up is heavily populated by unincorporated areas. The inability to collect occasional entrant taxes from day one will impact these communities more disproportionately. I anticipate that upcoming testimony from municipal officials will be offered on this topic providing greater detail.

There are a number of other areas that have been changed in the substitute language that do not reflect the language we had been working off of over the past several months. The areas include consolidated return treatments, the assessment procedure, the definition of “written determination”, and language regarding pension treatments that been altered. More time is needed to determine the effects of the new language on municipalities.

Mr. Chairman and committee members, I hope there is no question that Ohio municipalities remain committed to advancing greater uniformity, predictability and simplicity in the current municipal income tax system. This commitment however, is not made in a vacuum, and there can be no denying that subHB5 changes current treatments that will have an immediate, negative financial impact on city and village budgets across Ohio. The members of the municipal coalition have dedicated countless hours to painstakingly work through all of the issues the MITRC presented as municipal tax policies that impede the state's economic development. We remain committed to reaching common ground that will benefit all Ohio taxpayers but will not unfairly benefit or offer undeserved tax relief to certain groups of filers. A good tax policy should be as transparent as possible and some of the changes made to the language in subHB5 are anything but transparent. I believe municipalities have more than stepped up to the plate to be an honest partner in resolving differences that remain, offering new municipal tax treatments that will result in greater tax uniformity, predictability and simplicity while protecting the lifeblood of 592 communities that is the municipal income tax.

Thank you for your time and I would be happy to answer any questions.

Testimony to
Ohio House of Representatives
Ways and Means Committee

October 30, 2013

William D. Duncan, CPA
Mayor, City of Oakwood

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(937) 298-0600

Good afternoon Chairman Beck and Honorable Members of the House Ways and Means Committee.

My name is William D. Duncan. I am a Certified Public Accountant in Dayton Ohio with 39 years of public accounting experience. I am a member of the American Institute of Certified Public Accountants and the Ohio Society of Certified Public Accountants. I have served on Oakwood City Council since May 2003 and was elected Mayor in January 2010.

Thank you for the opportunity to address you again regarding this matter and thank you for your service to the citizens of the great state of Ohio.

The proponents of this legislation offer a poorly drafted law that includes substantial revenue losses to Ohio municipalities. Cities and villages across Ohio support legislation to create uniformity, predictability and simplicity in the local tax structure. We oppose additional revenue reductions mandated by Columbus on local governments.

In the interest of brevity, I will only address two items of disagreement for your consideration.

If a city does not currently allow a net operating loss carryover, requiring cities to allow the same cannot be revenue neutral. It does not require a Municipal Income Tax Net Operating Loss Review Committee to conclude the obvious.

Many net operating losses result from IRS accelerated depreciation rules that allow deductions from taxable income to encourage investment in machinery and equipment. The State of Ohio disallows these deductions in the calculation of Ohio taxable income. Why did the Ohio legislature do this? They did so because the federal law caused a revenue loss to the State of Ohio. Does this sound familiar? Again, we do not need a commission to conclude the obvious.

The "Casual Entrant Rule," as written in this bill should be renamed the "Township Relocation Act." It allows certain groups of taxpayers to avoid paying municipal income taxes on qualifying wages. It is as simple as that.

The original intent of H.B. 5 was to reduce the tax reporting burden on small business. We offered to increase the casual entrant days from 12 to 20, redefined a day to be a preponderance of a day, and excluded any small business with gross receipts under \$500,000 from the multi-city filing requirements. Our plan solves the reporting burden for substantially all small businesses in Ohio. Nonetheless, the proponents want all this and 20 tax-free days in cities. It is a bridge too far.

As currently drafted, we cannot and will not support this bill.

Over the past several months, many cities across the state of Ohio met to draft alternative legislation to H.B. 5. There are about 50 items addressed in the original bill and we objected to about 20 items. We began with the proponents language and offered alternative language to address these items in a "revenue neutral" way. Our alternative eliminated the tax increases in their bill to pay for their net operating loss mandate. We have worked with Chairman Beck and believe he understands our concerns as well as our alternative to H.B. 5. He has worked in good faith with our group and we believe he is working on behalf of all citizens of our great state.

The proponents have one person drafting legislation on their behalf. We have a team of elected officials, city managers, tax and legal administrators across Ohio sharing comments and best practices with transparency to achieve consensus and uniformity. I submit to you; which group will present legislation fair to all and devoid of unintended consequences.

Do not allow H.B. 5 to become a law of unintended consequences. The revenue losses are real as are the adverse effects to local governments. Please read and study this legislation thoroughly and discuss it with the other members of your caucus. I believe you will find it does not have the support of the majority. We can then pass our alternative which eliminates the reporting burden on substantially all small businesses in Ohio in a revenue neutral way.

Again, I thank you for the opportunity to address you regarding this matter and thank you for your service to the citizens of the great state of Ohio.



Chairman Beck and members of the House Ways and Means Committee, My name is Robert Wright. I currently serve as the Tax Commissioner for the City of Bowling Green. I am also the President of the Northwest Ohio Tax Commissioners Association. I am here to support the concept of more uniformity in the administration of municipal income tax collections. House Bill 5 is creating more problems than it is solving.

I have great concerns with the changes to the occasional entrant or 12 day rule in House Bill 5. If the goal is to lessen the compliance burden on the employer, House Bill 5 does not meet that goal.

Current law requires the employer to withhold municipal income taxes from employees who work in a municipality for more than 12 days. The employer is required to withhold on all of the income earned in the municipality, i.e. going back to day one. House Bill 5 increases the number of days before mandatory withholding from 12 to 20 days. The House Bill 5 also alleviates the requirement to withhold on all the earned income. The withholding would start on the 21st day. The employer would still need to track the number of days the employee works in each municipality in order to determine when the 20 day threshold is met.

To properly administer this change, a new report from employers would be needed to document income earned in the municipality on days 1 through 20 for each employee. This could be incorporated into the annual withholding reconciliation or could be a separate report. It is not reducing compliance costs of the employer significantly since the employer will still be withholding income tax for the principal place of employment on days 1 through 20 and tracking where the employee worked.

The change to a preponderance of a day definition will reduce the amount of data collected on a daily basis, but the business will still need to track which city its worker has a preponderance of time so that it can determine if the 20 day total has been met.

Since the employee is still subject to the income tax for days 1 through 20 worked within the municipality, the compliance burden of this change is merely shifted from the employer to the employee.

The City of Bowling Green is not a mandatory filing city. If an employer properly withheld the city income tax for every day the occasional entrant worked in Bowling Green, the employee would not be required to file a return. The change to withholding starting on the 21st day would require the employee to file a return and pay the tax due on the income that was not subject to withholding. This would cause the employee to file returns in potentially many different cities.

For a municipal tax department, it would also increase the work load from auditing on a single employer's withholding reconciliation to auditing multiple employee returns. The compliance burden changes from the one employer to multiple employees. With a great number of filings, there is a greater potential for corrections made to tax returns. My personal experience as a tax administrator is that individual taxpayers would prefer an employer to withhold municipal income taxes than file multiple returns and paid taxes on the income that did not have withholding.

Bowling Green allows a five year net operating loss carry forward, but we do not allow the netting of losses across different entities. House Bill 5 would change this and mandate the netting of losses. This would cost Bowling Green revenue. I have not had the time to go through multiple returns to get an accurate amount of tax dollar lost.

House Bill 5 will greatly increase the number of certified letters our office sends each year at a current cost of \$4.81 per letter in postage. House Bill 5 mandates that a written determination be sent by certified mail. Our current practice is to send a letter charging the taxpayer any penalty and interest using regular first class mail at the current price of \$0.46. The Bowling Green tax office depends on the United States Postal Service to deliver our letters quickly and accurately. The requirement to send certified letters demonstrates a large distrust of the postal service. My

experience is that the vast majority of mail is delivered correctly. The taxpayer claiming that they never received the letter usually has forgotten about that letter, ignored the letter, or is being less than truthful. For example, if the Bowling Green income tax division needs to send a third letter requesting payment of pass due taxes, we will include a statement about possible litigation. I routinely hear the excuse that the taxpayer never received the first two letters, only the third letter even though all three were sent to the same address.

Bowling Green currently charges interest on late payments of 1.5% per month or part of a month or 18% annually. House Bill 5 lowers this rate to, currently, about 9% annually. The rate mandated in House Bill 5 is lower than what most credit cards charge. I would suggest that the interest charged on late tax payments being greater than the average credit card. The taxpayer who is in arrears should not be able to make a choice paying off their credit card before their taxes since that tax department is charging a lower rate.

Municipal income tax offices have the ability to build relationships with our local tax preparers. This allows for quicker response to questions from either side. House Bill 5 mandates a much more regimented interaction with taxpayers. It would deter the ability of the local tax office to call a taxpayer or tax preparer to ask questions or to inform them of a change to a return. The interaction would be more adversarial. Interaction with a tax office is an intimidating experience in most situations. Taxpayers believe the local tax office will behave in the same manner as the IRS behaves until they have any interaction with the local office. House Bill 5 moves the interaction to more IRS like environment. This is not what House Bill 5 should do. Local government is more responsive the needs to needs of its citizens do to the more intimate interaction. House Bill 5 is creating more restraints on these interactions.

Ways & Means October 2013 Testimony

Thank you for allowing me to testify before you today. I'm sorry for the length of my testimony; however, I feel it is important that I express my concerns in depth to help better explain my position. Although I have identified many issues with Sub HB5, today I would like to focus on two topics, the Net Operating Loss Carryforward (NOL) and the Casual Entrant Rule.

I would like to start with the NOL. The City of Athens currently does not allow a NOL carryforward. I testified earlier this year that a mandatory NOL would cost Athens \$64,000.00 per year. I provided a detailed spreadsheet (attached) showing how I forecast the anticipated loss. Since that time, I developed a report that compiled numbers from our 13,400 accounts for a 5 year time frame. The report listed Athens income and loss filed on each tax return per year. I was manually able to go through each account and apply the losses forward as they would have been used if Athens had just implemented a NOL. Although this took countless hours, I was able to get indisputable numbers. During the 5 year time frame over \$18,500,000.00 in losses were used. To the City of Athens that would have been over \$310,000.00 in lost taxes. That averaged to be around \$62,000.00 per year, close to what my attached chart had forecasted. I wanted to advise you of the tangible numbers so that you understand it is no longer a forecast, but a fact. Athens does not have a NOL carryforward, but we do allow current year offsets. Unfortunately, there is no way to track the amount of offsets used. However, I have attached three 2012 redacted business returns to show how offsets are utilized in Athens. As you can imagine, being a large rental and small business community, this is common for the City of Athens.

Sub HB 5 is mandating that we allow both a 5 year NOL and offsets. It is **unrealistic** to require that the City of Athens be able to offer both and still be able to maintain the level of services required to operate a city safely. If you insist on a

5 year NOL, losses should have to stay at the entity level as proposed in the as introduced version of HB5. If you allow a tiered approach to a NOL where you select your number of years, offsets should be given by municipalities with a zero NOL. However my opinion is it's irresponsible to require a municipality to offer **both** a 5 year NOL and current year offsets.

I'm not really sure where to start with the new 20 day language. So let me say that the municipalities stepped up to the plate to help small business owners with the compliance issue. However, instead of using the language municipalities provided, Sub HB5 stripped important details that made the concept work. Here are some of the issues with the new language:

- Page 14 lines 409-413. Business over \$500,000.00 – Section 16 of Sub HB5 has exempted the first 20 days income from taxation unless your employer chooses to withhold.
- Page 14 lines 409-413. Business with less than \$500,000.00- Sub HB5 has exempted their employees from paying tax in any municipality other than the business taxing location, unless the employer chooses to withhold and pay the tax to the correct municipality. However, what if the business is located in a township? That would mean that unless the business chooses to withhold and pay the tax; their employees are exempt from local municipality taxes, even if they work inside of that municipality for the entire year.

The language exempted employees from being required to pay tax unless their employer chooses to withhold the tax. There is no filing requirement to provide the municipalities with the employee information for collection because the employee is exempt per the above language. **This is an Un-Fair treatment of taxpayers.** You could have employees working on the same job for the same period of time and one paying tax and the other not because their employers location has exempted them. By exempting those employees of a non-taxing jurisdiction you have provided special treatment to businesses located outside a taxing jurisdiction. For cities in Southeastern Ohio like Athens, this would be devastating to local tax revenue. After surveying our local accountants, 70%-80% of all businesses in and around Athens fall under the \$500,000.00 exemption.

Athens is surrounded by non-taxing municipalities and townships. The language the municipalities provided was written to exempt the businesses from having to withhold and pay the tax. *There was never an exemption for the employee to pay the tax.* There were requirements in the language to require business to report the employee information to the municipalities yearly. Therefore, the municipalities would be able to verify that the employee had paid the correct taxes for working in their municipality. That ensured all employees would receive the same treatment and there wouldn't be any un-fair tax advantages.

The language in this section **must** be fixed to make sure that all employees are paying their fair share. You cannot allow employees to work in a municipality for more than the 20 days, or even an entire year, and not pay taxes due to their employer's location in a non-taxing jurisdiction. An easy fix to this problem is to use the language originally submitted by the municipalities.

The under \$500,000.00 exemption was never a good change for the City of Athens. We stood to lose approximately \$18,000.00 a year in withholding tax for the first 20 days being exempted. Because of the amount of businesses located outside of our municipality in a non-taxing jurisdiction, that number will be much higher as the language is proposed in Sub HB5. If we lost \$18,000.00 a year for the first 20 days, imagine how much we would lose for an entire year. This concept to exempt business under \$500,000.00 from withholding was one of the changes that municipalities supported to help small business owners with compliance. By making the bill revenue neutral and not forcing a mandatory NOL on us; municipalities were willing to give in areas like this in order to help simplify the tax code for small business. However, with the changes made in Sub HB5, the City of Athens no longer supports this alternative.

After years of hard work and numerous meetings on this bill, I feel we are still very much apart. Revenue decreases remain in this bill. Please explain to me how that is revenue neutral? Actually, the requiring of offsets in Sub HB5 is an additional revenue decrease for municipalities. That is a change from the as introduced HB5 that restricted all losses to be kept at the entity level.

To be able to fix this bill you must first look at the NOL/Offset issue. If you want to study the NOL, then that should be done before it is mandated in this bill. If it is determined at a later time to be workable, it should be added then. Once a NOL is implemented it will never be removed because at that point it will be a tax increase. In addition, if there is a study committee I would like to volunteer my city. I feel we have solid data and I have ample certifications to qualify me to analyze the data correctly.

In closing, I feel there are still many harmful issues in Sub HB5 and it still needs many changes. You should start by removing the mandated NOL and wait for the study committee findings before action is determined. Also, the casual entrant language needs corrected. The municipalities have already written and submitted this language. Why was it changed? The municipalities are still researching Sub HB5 and identifying harmful language that will decrease revenue, create additional administrative burdens and complexities for municipalities and taxpayers. There are still many issues to address that will be covered in testimony next week.

My opinion, as the Athens City Tax Administrator is that this bill is not **acceptable** and is **harmful** to the City of Athens. Although, we have worked very hard and are supportive of uniformity, the City of Athens does not support Sub HB5 in its current form. Municipalities have proposed many compromises to help become uniform while trying to keep their revenues in tack. Yet, only portions of our proposed language were included in this bill. I would like to thank you for allowing me to testify before you today. I would be happy to take any questions at this time.