

**George Lang**  
State Senator  
4<sup>th</sup> Senate District



**Kristina Roegner**  
State Senator  
27<sup>th</sup> Senate District

## MEMORANDUM

**To:** All Senate Members  
**From:** State Senators George Lang and Kristina Roegner  
**Date:** September 24<sup>th</sup>, 2021  
**Re:** Co-Sponsor Request: Clarify applicability of the BID to the sale of a business

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We will soon introduce legislation which aims to keep entrepreneurs in Ohio by clarifying the applicability of the business income deduction (“BID”) to the sale of a business.

The BID provides that a taxpayer’s first \$125,000/\$250,000 of business income is fully deductible, while the remaining amount of business income is taxed at a flat rate of 3% (approximately 1% less than the new highest marginal tax rate). Beginning about 2018 and following the Ohio Supreme Court’s *Corrigan v. Testa* decision (2016), after decades of applying the definition of “business income” as broadly as possible to ensure nonresidents pay Ohio personal income tax upon the sale of businesses with Ohio operations, the Ohio Department of Taxation (“ODT”) changed its approach as to what constitutes business income in certain circumstances. For example, ODT began making distinctions between a legal sale of assets versus a legal sale of an ownership interest; (a sale of assets is generally treated as generating business income).

ODT’s new approach disadvantages Ohio-resident business owners because its position may result in many sales being excluded from the BID – meaning that residents may be subject to a higher tax rate when selling their business. ODT’s approach has also provided nonresidents with a tool to assert that gains are not taxable in Ohio at all. As a result, many Ohio business owners planning to sell their businesses are now being advised to become Ohio nonresidents, thereby potentially eliminating all tax on the sale of the business.

Additionally, ODT’s approach is inconsistent with federal treatment, and can result in inconsistent treatment of a seller and buyer of the same business in the same transaction. Furthermore, under ODT’s approach, the BID treatment depends on the legal structure of the sale, rather than the substance of the transaction. Someone may pay significantly more tax depending on the way in which they sell their business.

Our legislation will provide clarifying guidance which specifies that the BID treatment applies to both:

- A sale that is treated as an asset sale for federal tax purposes; and
- A sale by a person who was actively involved in managing the business during the year of sale or previous five years (including a nonresident with sufficient Ohio activity).

This legislation will protect Ohio-resident business owners from an unexpected Ohio personal income tax increase upon the sale of their business, in addition to eliminating an incentive for business owners to move out of Ohio before selling their business.

If you would like to co-sponsor this legislation or have any other questions, please contact [lang@ohiosenate.gov](mailto:lang@ohiosenate.gov) or [roegner@ohiosenate.gov](mailto:roegner@ohiosenate.gov) by the close of business on **Friday, October 1<sup>st</sup>**.

Thank you for your consideration.