

Proponent Testimony
Prepared for House Bill 121
The Ohio House Ways & Means Committee
April 25, 2023

Chair Roemer, Vice Chair Merrin, Ranking Member Troy, and Members of the Ohio House Ways & Means Committee, thank you for this opportunity to offer proponent testimony on House Bill 121 on behalf of our 22,000 members. I am Greg Saul, Director of Tax Policy for The Ohio Society of CPAs.

The OSCPA is pleased to support H.B. 121 and its objectives to continue similar tax policies that were originally enacted in the previous budget bill (see Sections 610.115(D) and 757.40(B) of H.B. 110, 134th GA). H.B. 110 provided a mechanism for apportioning or situsing the employer's municipal net profits tax for nonresident employees, but that language sunset at the end of 2021.

For any taxable years ending on or after January 1, 2022, H.B. 121 permits businesses to elect an alternative apportionment system to simplify tracking of remote workers. The three-factor apportionment formula for the net profits tax is based on the business' payroll, sales, and property. The election effectively treats the three factors generated by a remote worker at a remote work location as being located at the remote worker's regular reporting location at the employer's place of business. This only applies to the net profits tax, not the withholding tax (generally 80-90% of a municipality's income tax).

The election simplifies the need to track a remote employee's activity, including such employee's use of company property and the number of gross receipts the company derives from such employee's activity in the remote location. While the election will simplify the cost of complying with the net profits tax, it should not significantly increase or decrease the overall amount of net profits tax owed by businesses. However, each business is given the flexibility to compare the amount of tax that may result with the cost savings from simplified reporting. Any taxpayer who prefers to pay the tax in multiple locations is not required to use the elective method.

H.B. 121 essentially restates the original apportionment provision in Ohio Revised Code 718.02 or 718.82 and then adjusts that language as described above. Making the provision self-contained into one section – proposed 718.021 and 718.821 – is simpler for taxpayers. An election for one municipality is an election for all municipalities, and an election stays in place until revoked by the taxpayer.

To avoid mistakes and surprises for the taxpayer, a taxpayer is permitted to make the election with an originally filed net profits tax return, during a net profits tax audit, or upon appeal of a net profits tax assessment. Once again, H.B. 121 does not impact the requirement of all employers to properly withhold income tax on the wages of a remote worker.

Another important benefit of H.B. 121 is the optional reporting method eliminates the barrier for Ohio and non-Ohio employers to hire Ohio-based remote workers who can stay here. Without this language, such employers would be faced with filing net profits tax returns in multiple municipalities simply because they use remote employees. Any concerns about aggressive tax planning that a company might engage in is significantly mitigated by the following factors:

- Employers are required to act in good faith when designating reporting locations. Any city concerned about the location can challenge an employer on this point.

- If the employee would otherwise be reporting to an Ohio location, the employer must use that location. Therefore, employers cannot just send employees home and then assign them to non-Ohio locations (unless the Ohio location is closed—in which case, cities will still receive withholding taxes for those workers who remain residents).

On behalf of the OSCPA, thank you for allowing me the opportunity to share our support for House Bill 121. I would be happy to answer any of your questions.