

Proponent Testimony
Prepared for House Bill 515
The Ohio House Ways & Means Committee
February 15, 2022

Chair Merrin, Vice Chair Riedel, Ranking Member Sobekli, and Members of the Ohio House Ways & Means Committee, thank you for this opportunity to offer proponent testimony on behalf of The Ohio Society of CPAs (“OSCPA”) and our over 24,000 members. My name is Tom Zaino, and OSCPAs supports House Bill 515.

The Ohio Department of Taxation began auditing resident business sales around 2019 because of the Ohio Supreme Court’s decision in [Corrigan v. Testa](#) (May 4, 2016). The LSC analysis of H.B. 515 states the current “tax treatment of income from the sale of an ownership interest in a business is affected not only by statute, but also by Supreme Court precedent and Department of Taxation guidance” through Information Release [IT 2016-01](#) – originally issued by ODT after *Corrigan* on October 7, 2016 but revised and reissued on February 1, 2019.

H.B. 515 clarifies that gains from the sale of an ownership interest in a business is considered “business income” for Ohio income tax purposes, provided the sale satisfies either of the following: (1) the sale is treated for federal income tax purposes as the sale of assets; or, (2) the seller was involved in the day-to-day management of the business during the taxable year in which the sale occurred or during any of the five preceding years.

Many businesses sell assets (not stock or ownership interests) in a complete or partial disposition of their business and the resulting gain is deemed business income. However, buyers of closely held businesses sometimes want to simply purchase the legal entity (stock or ownership interest) because it is easier, and the buyers can still obtain a stepped-up tax basis in the assets because of federal elections or treatment. No matter which method is chosen to sell the business, typically, a large part of the overall gain is goodwill¹ which is a capital gain. H.B. 515 equitably allows the business income deduction and the 3% flat rate for capital gains resulting from the sale of a business treated as an asset sale. The proposed change ensures if federal law treats a sale as a sale of assets, then Ohio will also treat the sale the same way.

Under current law, the LSC analysis also states that generally “nonresidents would pay no Ohio tax on income from the sale of their ownership interest if it is considered nonbusiness income” unless the owner materially participates in the business, but notes that “the different circumstances in which that situation can occur appear to be rather fact-dependent and elude generalizations.” H.B. 515 fills this gap by defining material participation consistent with IRS rules.

As currently drafted, H.B. 515 is a remedial measure intended to clarify existing law. It also applies to any petition for reassessment or any appeal thereof; to any application for refund or any appeal thereof pending on or after the effective date; and to any transaction that is subject to an ODT audit on or after the effective date. The goal is to clarify the law so it can be applied to currently pending audits.

On behalf of the OSCPAs, thank you for allowing me the opportunity to share our support for House Bill 515. I would be happy to answer any of your questions.

¹ Goodwill is the portion of the purchase price that reflects the value of a company’s brand name, solid customer base, good customer relations, good employee relations, and proprietary technology that is usually generated by the efforts of an owner involved in the day-to-day management of the business.