



**Testimony of Thomas M. Zaino, CPA, JD**  
**on behalf of the**  
**Municipal Tax Reform Coalition**  
**House Bill 5 – As Introduced**  
**House Ways and Means Committee**  
**April 24, 2013**

Chairman Beck, Ranking Member Letson, and members of the House Ways and Means Committee, thank you for this opportunity to appear before you today on behalf of the Municipal Tax Reform Coalition (“the Coalition”). My name is Tom Zaino. I am a CPA and a tax attorney and also am an active member of The Ohio Society of CPAs (OSCPA), the Ohio Chamber of Commerce, and the Ohio State Bar Association. Thank you for the opportunity to provide testimony on House Bill 5, an important piece of legislation that will provide definitional uniformity to Ohio’s municipal income tax system. House Bill 5 simplifies and adds fairness to the municipal tax system, while also ensuring stable revenues for local government and making Ohio’s tax system more competitive with other states. These principles of simplicity, fairness, stability and competitiveness are cornerstones for a quality tax system. House Bill 5 creates a much better economic and business climate for present and future taxpayers in our state.

**Background:** The first municipal income tax was enacted in 1946 by Toledo. The municipal income tax proliferated in the 1960s. As far back as 1967, policy makers were concerned about this proliferation of local taxes and its impact. The Ohio Tax Study Commission issued a report warning that *“local earned-income taxes have posed problems that are likely to become increasingly troublesome, in view of the growing number of communities employing the tax.”*<sup>1</sup> That prediction was prescient. Ohio is now one of only ten (10) states

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<sup>1</sup> Ohio Tax Study Commission Report 1967, June 8, 1967, at page 10. The Ohio Tax Study Commission was established by Amended House Bill No. 261 of the 106<sup>th</sup> General Assembly. The Commission

where municipalities assess and collect an individual and business income tax. However, these ten states, except Ohio and Pennsylvania, have no more than a handful of cities that impose a municipal income tax. By comparison, over 600 municipalities impose the tax in Ohio. Ohio is the only state where each municipality is permitted to create its own definition of income, to set its own rules and regulations, to mandate information required on its forms, and to establish its own audit and assessment process.

Municipal income tax reform has long been a legislative priority for many in the business community. The current structure is an economic development barrier to retaining and attracting jobs, as well as a costly regulatory burden for business and individual taxpayers. International site selectors have even identified our state's complex local tax structure as one of the top barriers to economic development in Ohio.<sup>2</sup>

The compliance burden is particularly acute for small businesses who cannot afford to hire dedicated staff or outside professionals to research the potentially 600 different definitions, rules and regulations. This adds an expense to doing business in Ohio that does not exist in any other state. In fact, for taxpayers who prepare and file their taxes in multiple municipalities, it is not uncommon for the cost of complying with the law to exceed the tax liability — particularly when you add in the cost of penalties and/or interest for misinterpreting one or more city's laws or procedures. Keeping up and complying with the myriad of differing definitions, rules, and regulations costs existing employers important resources that could be redirected to growing their businesses and creating more jobs, and puts Ohio at an economic disadvantage for attracting new employers.

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consisted of member appointed by the Governor, Senate President and Speaker of the House, and hired research staff and consultants to assist in its comprehensive review of Ohio's state and local tax structure.

<sup>2</sup> Based on a 2012 Conference call between House leaders and international site selectors in New York and Chicago.

**The Coalition:** Formed in 2012, the Municipal Tax Reform Coalition is a group of 28 state and local trade and professional associations and state and regional Chambers of Commerce. They stand united behind one important goal—driving reform of Ohio’s municipal income tax system. Collectively, Coalition members represent thousands of Ohio business and individual taxpayers who are the lifeblood of Ohio’s economy and are impacted most by the current structure.

Working with interested parties and stakeholders, the Coalition is seeking legislative change that would establish a more uniform municipal tax code that all municipalities assessing a tax on businesses or individuals would follow, including a uniform definition of income, uniform audit and appeal procedures, and uniform penalty and interest provisions. The bill does not impact the tax rate charged by each municipal corporation or the credit each municipality grants for taxes paid to other municipal jurisdictions. **Importantly, the coalition is NOT calling for a centralized collection system, nor is it looking to reduce the amount of tax that individuals and businesses must pay.** In fact, a simplified and uniform tax system is easier for taxpayer to understand and follow, and should lead to increased compliance with the local tax laws.

It is important to note that the businesses making up these coalition members are representing not only themselves, but their employees as well. Right now, likely thousands and thousands of rank-and-file workers — electricians, plumbers, delivery personnel, home healthcare aides, cable installers, handymen, lawn care workers, construction workers, and the list goes on and on — personally have to file multiple tax returns as well.

**Home Rule:** The provisions contained in House Bill 5 also **do not** unconstitutionally infringe on a term often used by opponents who are resistant to change: “home rule.” It is certainly true that Article XVIII, Sections 3 and 7 of the Ohio Constitution do provide that Ohio

municipalities have the right to exercise all powers of local self-government. But, what is often overlooked by many, and equally true, is that the Constitution does not simply stop there. Article XIII, Section 6, and XVIII, Section 13, also provide that the General Assembly may enact laws to restrict (13.06) and to limit (18.13) the power of municipalities to levy taxes.

**The Process:** Over the past two years, Coalition members represented by The Ohio Society of CPAs, the Ohio Chapter of the National Federation of Independent Business (“NFIB”), and the Ohio Chamber of Commerce have worked with Reps. Cheryl Grossman and Mike Henne, with representatives of the Ohio Municipal League, with city representatives from Dublin, Upper Arlington, Columbus, Akron, and Bay Village, and with the Regional Income Tax Authority (“RITA”), which collects taxes for over 200 Ohio municipalities. We approached negotiations with substantial revenue neutrality — in the aggregate — in mind (i.e. considering the overall revenue impact of all issues in the legislation, for both municipalities and taxpayers). Because there are so many existing variances from jurisdiction to jurisdiction, some municipalities could gain revenue, while some could lose. Likewise, some taxpayers could pay more taxes, while some taxpayers could pay less. There is no getting around that fact if we are to achieve greater municipal tax uniformity. While there are a number of competing proposals by municipal officials that claim to be revenue neutral, I would caution you to be sure that their proposals are not simply limited to changes that have no impact on revenue or create revenue **gains** for municipalities. The Coalition did not approach this issue through the lens of mitigating individual and business tax liability.

As with most legislative negotiations, concessions by the Coalition on some items contained in HB 5 — areas which would require some businesses to pay more — were made in anticipation of fairly negotiating other areas that could cause some cities to receive less. That is

a key point to consider as you review some of the major provisions of what is now House Bill 5. These lengthy negotiations culminated in the introduction last October, 2012, of House Bill 601. Parties involved in the negotiations understood that HB 601 would not move before session ended later that year, but recognized that by introducing the bill, a broader constituency would have the opportunity to review and comment on their work. We all knew that House Bill 601 was a work in progress and that changes would continue to be negotiated and that the bill would be improved. That process culminated in House Bill 5. Please permit me to state the result of that process clearly: House Bill 5 is NOT the same as House Bill 601.

**More Compromises:** House Bill 5 reflects additional compromises made by the Coalition to address many of the concerns voiced by cities and villages across Ohio with regard to House Bill 601. Some of these compromises or improvements include:

- To address a potentially significant one-time revenue loss for some municipalities, the fourth quarter estimated payment due date for a given calendar year was accelerated to December 15<sup>th</sup> of the calendar year, rather than the following January 15<sup>th</sup>.
- House Bill 601 called for situsing services to the location where the benefit of the service is received by the consumer, similar to how services are sitused under the Commercial Activity Tax and most other state tax systems. To again address revenue issues asserted by some municipalities, House Bill 5 instead retains the current law method of situsing services to the location where the services are performed.
- House Bill 5 clarifies that only actual tax assessments that trigger a taxpayer's sixty-day appeal period need to be sent by certified mail. Many municipal officials were concerned that any type of correspondence with taxpayers, such as requests for further information or delinquency notices/bills, would need to be sent by certified mail.

- The bill improved the “twenty-day rule” in several ways to limit unintended consequences. For example, employers will not be able to rotate out employees in an effort to inappropriately avoid withholding obligations, such as at construction sites. Furthermore, the twenty-day rule will not create twenty tax-free days; rather it permits businesses and individuals to pay tax to the principal place of business for a longer duration of time in order to ease compliance.

Like House Bill 601, House Bill 5 provides enforcement and compliance tools that municipal officials never had in the past, including administrative subpoena powers and the ability to issue statutory liens. This will decrease the cost to administer and enforce municipal income tax laws.

**Mischaracterizations:** I would like to address two mischaracterizations of what is in House Bill 5. First, I would like to discuss the roles of the municipal tax policy board. One role for this board is to create uniform municipal tax returns that will be used by all municipal taxpayers throughout the state. Much of the effort behind House Bill 5 will be for naught if local taxpayers do not have one form they can use to comply with every municipality’s tax law – a form where the only variances they need to consider are the tax rate and reciprocity rate. Municipalities will also benefit from having only one format on which taxpayers report and comply with the tax law. Current law requires municipalities to accept any type of form, so long as it includes the information (somewhere on the form) that the particular municipality requires — this increases the government’s cost of administering its own taxes. In addition, the board has two other roles. The board is permitted, at its sole discretion, to render guidance to taxpayers (i.e., give “opinions”) and to propose statewide rules (i.e., Ohio administrative code provisions).

Giving municipalities the ability to render taxpayer guidance or propose rules that have statewide applicability will enhance uniformity and improve compliance with Ohio's municipal tax system. The municipal tax policy board is not a "state" bureaucracy controlling Ohio's municipal income tax system — the board has only municipal officials on it and no state employees or taxpayer representatives are on the board.

Second, I would like to draw your attention to a quote on a Web site created to oppose House Bill 5 that was funded by taxpayer dollars of a northeast Ohio city:

*“By including unfunded mandates and calling for the needless application of complicated bureaucratic red tape, the bill would serve to cripple the ability of municipalities to provide basic services to both residents and resident businesses alike. There are also several instances within the bill where Ohio's municipal “home rule” provisions are either threatened or rendered invalid.” - Ohio Municipal Advocates<sup>3</sup>*

I seriously doubt that the parties who have been at the negotiating table from day one—which include many city officials — and who have been negotiating in good faith at those meetings to reach genuine compromise, have spent their valuable time, knowledge and effort toward a bill that would “cripple the ability of municipalities to provide basic services to both resident and resident businesses alike.” That statement does not pass the common sense test.

**Conclusion:** In closing, the provisions in House Bill 5 will benefit taxpayers, Ohio municipalities, and the state of Ohio. Taxpayers will enjoy greater consistency across all taxing municipalities, easing their compliance costs. Municipalities will enjoy the benefits of improved taxpayer compliance because the system will be simpler and municipal tax officials will have new tools to ensure taxpayer compliance. The state of Ohio will enjoy a more competitive tax

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<sup>3</sup> <http://ohmuniadvocates.com/background/>

system, allowing it to better compete for the jobs our state needs to grow and thrive. On behalf of the Ohio Municipal Tax Reform Coalition thank you for the opportunity to testify in support of House Bill 5. Mr. Chairman, I look forward to continued dialogue on the legislation and would be happy to answer any questions you or others on the committee may have.