

SUB. HB 157: OPPOSITION TALKING POINTS

Sub. HB 157 would be detrimental for cities throughout Ohio for the following reasons:

- The bill now removes the language in Sec. 29 of HB 197 that treated wages earned by employees temporarily working from home during the Governor's declaration emergency as taxable to the principal place of work. However, the original Legislative Service Commission (LSC) analysis for HB 197 states on page 6, "*For municipal income tax purposes, treats income earned by an employee required to work at a temporary worksite because of the emergency as being earned at the employee's principal place of work, potentially affecting the municipal income tax withholding and liability of the employee and the employer.*"
 - The analysis was clear that the intent of the bill was for employer withholding and liability for the employee to be taxable for the city where the principle place of work is located.
 - Per the Ohio Attorney General's and City of Columbus Auditor's legal briefs in the Buckeye Institute lawsuit, Sec. 29 and HB 197 considered those wages taxable to the principle place of work.
 - The change in this substitute bill could cause cities to issue a substantial amount of refunds to employees working from home during the emergency. Issuing refunds for a closed tax year could be devastating to municipalities, who were protected by the language in Sec 29 of HB 197.
- A handful of lawsuits have been filed on the issue of refunds. The League strongly believes that the courts will decide this issue regarding refunds and that the legislature should not up-end the original intent of the legislation.
- Businesses will suffer the additional administrative burden of having to certify each employee requesting a refund for the duration of the time they worked from home by tracking when and where every employee worked for both 2020 and 2021.
- Cities would also face the added financial burden of taxpayers receiving money they have already taken as credit against their resident tax liability. Taxes for 2020 have already been filed and residents have already taken credits for taxes they paid to the principle place of work. This bill will allow those same taxpayers to go back and file for refunds against municipalities where their principle place of work is located.
 - Ohio's largest municipalities could face so many of these filings for returns that they will be unable to notify the resident municipality of the taxpayer.
- This substitute bill allows the employer to determine the principle place of work for each employee during the declaration of emergency. Changing the principle place of work

would now be at the discretion of the employer and not by definition under O.R.C. 718.011 and may cause a further reduction in tax revenues.

- The substitute bill does not allow the wages earned at the employee's home from creating a filing requirement to file a municipal net profit return.
 - The bill wants to treat wages as taxable to the residential taxing jurisdiction for withholding purposes, but not as taxable or as creating a municipal return filing requirement in the resident employee's taxing jurisdiction.
 - This means the employee performing work for the business in a location other than the principle place of work is generating net profit for the business, would now be reportable and taxable to a location where the work was not performed.
- Tax, penalties and interest may not be assessed by resident city taxing jurisdiction for failure to properly withhold to their jurisdiction during the emergency. This provision has a negative impact on cities to enforce their tax ordinances.