



Mid-Ohio Regional Planning Commission

November 5, 2013

The Honorable Peter Beck  
Chairman, Ways and Means Committee  
Ohio House of Representatives  
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Columbus, Ohio 43215

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Re: Opposition to Sub. H.B.5

Dear Chairman Beck:

We would like to communicate the changed position of the Mid-Ohio Regional Planning Commission (MORPC) towards House Bill 5 (HB5) now that a substitute version of the bill has been offered. Due to many troubling changes to the legislation created through the substitute bill, we must now oppose HB5.

As a voluntary association of 41 local governments (including 32 municipalities and villages) representing more than 1.6 million residents in the 12-county Central Ohio region, a large number of MORPC's members have expressed concerns with certain portions of HB5 in its new form. MORPC Board representatives include elected government officials as well as key community and business leaders.

The provisions of concern are:

- The mandatory 5-year net operating loss carry forward (NOL);
- The mandatory pass-through entity loss offset of other income;
- The increase in the number of days that casual entrants can work in a municipality without incurring tax liability therein from 12 to 20 days; and,
- The prohibition from taxation of supplemental executive retirement plan (SERP) income.

The bill's publicly-stated purpose is revenue neutral uniformity. However, inclusion of the above provisions without corresponding revenue for local governments cannot result in revenue neutral uniformity.

First, as previously stated in MORPC's March 7, 2013 letter, allowing businesses to deduct NOL for 5 years would impose too much of an unpredictable hardship for our

**Marilyn Brown**  
Chair

**Eric S. Phillips**  
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**Matt Greeson**  
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region's municipalities even if the full brunt of the new law is fully-operational within a few years. MORPC can support a proposal in which each municipality that chooses to permit NOL carry-forward selects one of several options that are uniformly applied – for example, a choice of either 1-year, 3-year or 5-year option. But these must be decisions made by the individual municipality.

Second, the substitute version of HB5 creates a previously unheard-of new loophole for special interest groups by authorizing a resident to use losses incurred by a pass-through entity attributable to the individual's ownership to offset "any other" net profit regardless of the loss' nexus to the taxing community. There are scenarios where a filer can become entitled to a refund of taxes even where it has not actually paid an income tax to the municipality. This is an unacceptable change to the bill and, on its own, merits opposition.

Third, MORPC maintains the concerns raised in our March 7th letter to the bill sponsor regarding an increase from 12 to 20 days that a nonresident may work in a municipal corporation without incurring tax liability, and without the individual's employer being required to withhold tax for that municipal corporation. This provision will increase the number of individual taxpayers who will be free from municipal income taxation in spite of the fact that they will continue to receive the same level of services and benefits from municipalities. This provision does not improve uniformity, but instead changes an existing uniform law.

Fourth, exempting potentially "gold-plated" supplemental executive retirement plans (SERPs) from municipal income taxation is a new and unacceptable concept. SERPs are nonqualified deferred compensation retirement plans that do not receive the favorable federal tax treatment that qualified plans receive, which depends on, among other things, not discriminating in favor of highly paid employees. Again, uniformity does not require creating an exemption for these plans.

MORPC appreciates the numerous discussions, meetings and negotiations that have taken place between you, representatives of local government, other legislators, and representatives of the business community towards finalizing a balanced bill to create uniformity in taxation without increasing the burdens on local government to provide vital services its citizens. However, MORPC finds the substitute version of HB5 more imbalanced in favor of selected taxpayers than the introduced version of the bill. As a result, MORPC must oppose HB5.

MORPC acknowledges there is some progress in removing the elimination of the "throwback" provision, codifying the most commonly-used factors within the state as

a method for determining residency for municipal income taxation and removing the provision in the bill creating the Municipal Tax Policy Board. But there is still more work to do.

We look forward to the opportunity to improve this legislation. Please feel free to contact me at (614) 233-4101 or [wmurdock@morpc.org](mailto:wmurdock@morpc.org).

Sincerely,



William Murdock, AICP  
Executive Director

cc: Rep. Cheryl Grossman  
Rep. Michael Henne  
Rep. Terry Boose, Vice Chairman of Ohio House Ways and Means Committee  
Rep. Tom Letson, Ranking Minority Member  
Rep. Ron Amstutz  
Rep. Nan A. Baker  
Rep. John Barnes, Jr.  
Rep. John Becker  
Rep. Terry Blair  
Rep. Mike Foley  
Rep. Doug Green  
Rep. Jeff McClain  
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Rep. Gary Scherer  
Rep. Kirk Schuring  
Rep. Stephen Slesnick  
Rep. Robert Sprague  
Rep. Louis Terhar  
Rep. Roland Winburn  
Members of Ohio House Delegation Representing MORPC Regional Members