

Ways & Means Minutes

Ways & Means Committee Minutes
Honorable Council
City of Newark, Ohio
October 10, 2016

The Ways and Means Committee met Monday October 9, 2017 in Council Chambers following the Service Committee with these members in attendance:

Dee Hall, Chair
Doug Marmie
Ryan Bubb

We wish to report:

1. **Resolution No. 17-75** a resolution to authorize the mayor of the city of Newark, Ohio, to join a coalition of municipalities retaining special counsel for purposes of initiating litigation to challenge the constitutionality of amendments to Chapter 718 of the Ohio Revised Code relating to municipal income tax, and declaring an emergency.

Tax Administrator Barb Jobs- this resolution was not taken lightly. Treasurer Mercer and I spoke for quite a while as to whether or not to bring this resolution forward. For you to understand it you need to understand the complications and restrictions that are being placed on the city by House Bill 49. That is what I will speak to tonight. House Bill 49 was the State's biannual budget. To give you history the last time I was here it was about House Bill 5 and we all know the impact that has had on city taxes. It was a complete rewrite of Chapter 718 of the Ohio Revised Code and took away this Councils' power and authority to administer the Income Tax Ordinances. House Bill 49 goes even further than what House Bill 5 did. It is going to impact us tremendously. This gives the State the power to collect municipal net profit taxes. Businesses can opt to file with the State rather than through our office. Should that happen the State Tax Commissioner becomes the Tax Administrator for the Newark Tax Code not me. This is just business net profits. It further limits your powers because you will no longer be able to control the Tax Administrator for the city because the State will be doing that. The logic behind House Bill 49 was that if businesses paid less municipal tax they could hire more employees. Looking back in the history of our taxes I can show you year after year when business taxes were low withholding was even lower so there is some fallacy behind their logic in this. I looked at three areas; loss of revenue, the disruption of the city's tax code flow and the administrative burdens and costs we stand to lose \$53,701.00 in tax collections just from these 5 businesses. To make it worse these 5 businesses have paid

estimated tax that they now have on the books. In this chart the current estimated tax is what these 5 businesses have as credits on their account. What the new required estimated tax shows you is how much potential tax they could owe under the new system and the potential refunds are in the last column because why would they leave money on the books when they know they are going to pay less tax. The total potential refund is \$181,649.00 just from these five businesses. You add that to \$53,701.00 of lost revenue you are almost at a quarter of a million dollars from these businesses that will decrease Newark income tax collections. This is 5 businesses; we currently have 2087 active business accounts in the city. Nearly half of those will be affected by throwback provision. Last year business net profit taxes were 1.8 million of the 22 million we collected. Another loss of revenue is the State centralizing the collection of municipal tax through the Ohio Department of Taxation. The cities will only receive 99.5% of the taxes collected by the State the State will keep .5% as an administrative fee. Ironically the State Tax Commissioner can't collect municipal taxes. The only way the State Tax Commissioner can collect them is for this Council to vote to give him the power to do it. Under the State's system the cities can't verify if the collections we receive are correct, whatever the State sends us is what we get. We can't verify the validity of refunds. Right now if someone files for a refund for us I have a specific clerk who investigates it and if she doesn't believe it she asks them for more information. We will not be able to do that. Whatever the State says we owe back we pay. The cities can do no compliance work. We are currently sending past dues to people who have not filed for 2016. Under the new State law I won't know until May or November who has filed income taxes for the City of Newark and even the if I have a business that has not filed I can't contact them because I'm not their Tax Administrator the State is. I can tell the State Tax Commissioner that this business hasn't filed and the way the ordinance is worded is he may investigate information provided by the cities. It is up to his determination whether our information is valid. The city will never see income tax returns or any information provided to the State except name, address and employment identification number. We will get the percentage that was allocated, that is it, that is all we will know from the business returns. This is a real life example from what we had in our office; every year when we get net profit tax returns from businesses we look at the wages that the business says are earned in the City of Newark. This particular company said there were 1,665,004.00 wages earned in the City of Newark. We take that amount and multiple it by a tax rate; this business should have sent us a withholding of \$29,138.00. When we looked at their withholding account they had only sent us \$15,256.00. Upon investigation of it we found with the help of the employer one division of their company was miscoded and they didn't withhold Newark tax but because we had access to their net profit return we could collect the additional \$13,882.00. Under the new State system we will have to accept the \$15,256.00 and we would be out the \$13,882.00. This is all on top of the 5 year net operating loss carry forward that was passed in 2004 by House Bill 5 and goes in effect 2018. The City of Newark is unique in that at one time we allowed a 7 year net operating loss carry forward but we did away with that in 1993. Within the first three years we no longer had a 7 year net operating loss carry forward this city's collection of net profit taxes went up by about 500%. They have also redefined

how the 50% loss can be used. When House Bill 5 originally passed they said the business could use 50% of their loss and that was it. They have redefined that. If a business has a \$10,000.00 loss in 2017 in 2018 they can use \$5,000.00 of that loss and the remaining \$5,000.00 gets carry forwarded to 2020 and it is the same way throughout the 5 year period. By the end of the 5 year period the businesses will have been able to take 95% of their loss rather than the 50% the State said they would. The exact dollar impact on this I can't tell you. With my experience, I have been with the department for 27 years what we saw ending the 7 year operating loss carry forward every five years they are going to have a net operating loss that they can carry forward 5 more years. We saw it time and again. It is also going to disrupt our cash flow. Currently any tax collections that are received by our office are available for the city's use tomorrow. The State distribution timeline creates a 90 day delay in the availability of funds. Let's look at the April 15th tax collections and this is the distribution timeline. The taxes are collected on April 15th; the State Tax Commissioner has until May 31st to certify the amount that was collected for the City of Newark. By June 5th the Director of Budget and Management for the State must provide for payment to the cities. They do not define what the provide for payment means. We don't know if that means we will get the money on the 5th or sometime after that. The State Tax Commissioner has until July 5th to tell us whose money we received. So this money we get if we get it on June 5th is going to be in limbo until I get the Tax Commissioner's report that tells me how to distribute those funds. It is 90 days and remember if we collect it you can have the money on April 16th. We will get monthly distributions; I took small number here because they are easier to wrap your head around. If our collections are in a month actually \$10,000.00 you need to hire a new Tax Administrator. Let's say the city collected \$10,000.00 the next month our distribution will be \$10,000.00 less the \$5,000.00 in refunds less the state administrative fee of \$7.50, of the \$10,000.00 the city will receive \$4,992.50. If there is an over distribution or refund this is also going to be a problem. Let's say our collections were \$500.00 some of those businesses carrying large credits ask for their money back \$204,000.00 and \$400.00 the over distribution of \$154,400.00 is more than 25% of our collections; that is not an absurd idea it can happen. The State Tax Commissioner has the right to spread that overpayment, repayment back to the State over 36 months. They would take the \$154,400.00 divide it by 36 and subtract \$4,288.89 from future distributions. If we go back to our previous example we have the \$10,000.00, the \$5,000.00 in refunds the \$7.50 in administrative fee we then have the reduction from the prior period of \$4,288.89 now of the \$10,000.00 collected the city gets \$703.61. There are also administrative costs and burdens. This Council will no longer control net profit taxes at all. You would only have control of those that file with us but you really don't have control of those because in House Bill 5 they revised ORC 718 to say that you have to adopt anything the State puts in the State Code. Every year I am asked to do a projection of future revenues and refunds, I spend a lot of time crunching numbers, doing statistical analyst from the data I have. If I see a company that all the sudden is paying less I will pull those returns and see if there is a trend, if something happened, was there a capital expenditure, I will investigate why those funds went down and why. I no longer have those records. I will

only know we will get whatever the State tells us we get and we'll refund whatever the State tells us we have to refund. The centralized collection will not decrease the size of our staff. Business tax returns make up only 10% of the net profit returns filed with our office. If you put in the amount of withholding payments and things that we process then your business net profit tax returns make up less than 3% of the work that my staff does so you have to keep the same staff even though you are getting less money. Looking to the future there is a push in Columbus that we will only be allowed to tax residents. Nonresidents working in the City of Newark would no longer pay income tax where they work so put numbers with that? When we receive employers W-2's every year we enter them into the tax software and we designate whether the employee is a resident or a nonresident so I pulled the reports for Owen's Corning, Newark City Schools, City of Newark, Licking County and LMH. Those 5 businesses alone if we don't tax nonresidents the revenue loss is 6 million dollars and that's just 5 of our employers. We all know that there are more jobs in this city than there people of working age that are residents. What is the litigation about? The coalition forming this litigation are planning to challenging the State of Ohio on the home rule amendment which is Title 17 of the Ohio Constitution. It clearly states municipalities have the authority to exercise all powers of local self-government. The home rule is the municipalities' equivalent to State Rights guaranteed in the Constitution. I have told this Council before no government in my opinion is more effective than the one closest to the people. If someone is upset with something going on in Washington or Columbus they will most likely not call. If they are upset about something in the city you are going to hear from them. We have to ask two questions' did the State overreach their powers by the passage of House Bill 5 and now House Bill 49 and are their actions unconstitutional based on the Home Rule provisions guaranteed by the Ohio Constitution? Treasurer Mercer and I both firmly believe they answered to both of these with resounding yes. The challenge to Home Rules is not a new concept. In the court case of Cincinnati Bell Telephone Company versus Cincinnati the Supreme Court wrote it is well established that the taxing power is one of the powers of local self-government expressly delegated by the people of the State to the people of the municipalities. Taking litigation against the State is not anything to be taken lightly I understand that but it is also one that we can't ignore. The municipalities throughout the State felt the only way we could really challenge this is to form a coalition. The idea began in Dublin. You have here a list of cities that have already passed resolutions similar to what I gave you tonight. Heath, Lancaster, Reynoldsburg, Dublin, Grandview Heights, Athens and more cities are going daily. Why does it have the emergency clause? The provisions of House Bill 49 are effective as of January 1, 2018. The State has already started preparing for the collection and has already sent information to all tax offices throughout the State of their plans. If House Bill 49 is not adopted by Council by January 1, 2018 the city will be stripped of its' authority to tax and we will not be able to collect any income tax until we adopt this ordinance. I also have the emergency clause because the people who are doing the litigation need some kind of verbal commitment from the city by October 15th. All I need to tell them is that this resolution has gone to full Council, I don't have to have Council's vote. They just need an idea of how many cities are going to be a part of this litigation.

If this resolution passes the outside counsel will be Eugene Hollands of Frost, Brown & Todd. He plans to file with the Courts in November. He will either be filing a writ of mandamus in the Ohio Supreme Court or an injunction with the Common Pleas Court requesting the permanent interim relief suspending the January 1, 2018 deadline. It is not only asking for the repeal of House Bill 49 but also House Bill 5. So when we look at the past House Bill 5, we look at the present House Bill 49 and we look to the future legislation of not being able to tax residents the only question left is can we afford not to join the coalition? I will be honest with you there is a cost, you can't file for free but in light of all of the dollar amounts I showed you tonight the cost is based on the population of your city to make it affordable for all of the villages and cities throughout the State. A city our size the total cost is \$6,000.00. If you decide to pass this resolution and spend the \$6,000.00 it will be the wisest investment this Council has ever made into the residents of the City of Newark.

Motion by Mr. Marmie to send to full Council, second by Mr. Bubb

Mr. Marmie- I really appreciate all of the information and the work that you have done to make sure that we are well educated on this subject. All the information you provided it is incredible the negative impact that it could create for our revenue sources. In lieu of what has already happened to the local municipalities and the loss of income as far as what the State was providing towards local municipalities this would be an additional devastating blow. They are going to take the 5% off the top and if we have to give additional money back they don't give that money back to us. They are going to take their 5% off the top and they are going to hope that people will overpay and we have to refund and they are going to get 5% off the total. I think that we really owe it to our citizens to fight this battle. I appreciate both of you and what you have done here.

Ms. Hall- what is the timeline on this? How long would it take to fight this?

Barb Jobes- the timeline would be the November deadline. What we hope for is that we can file it in November and it would stop House Bill 49 from becoming effective in January. If we don't have enough backing for this coalition then I will be back with the new ordinances which will take our now 84 page income tax ordinance to 97 pages because they added 10 new sections. There are others within the bill we need to adopt but we can't adopt part of House Bill 49 without adopting all of it. If we adopt all of it then we are saying you're right and we are giving them more fuel for their fire that this is a constitutional move.

Ms. Hall- I want to thank you to for all of this information.

Tim Mercer, City Treasurer- Barb does a wonderful job with what she comes up with, sometimes you get tired of being slapped and when she texted me this at 11:30 at night usually when I get a text that time at night something is not good in our office. When she said can you come in tomorrow we need to talk about something and when I came in and she explained what was going on my first reaction was let's go and put our name right at the top of the line. We are going after this it is not right; it is not fair at all. You guys do a great job here and the Mayor does too and this is a wonderful city and they keep taking bits and pieces and make their pockets look good over there and I am tired of it so that is why we came up with what we did.

Barb Jobes- the next step according to our sources, I am on the Ohio Municipal League Tax Committee we heard the next step will be taking over the collection of all employers withholding. That is 80-85% of our collections annually. Can you imagine if we have a 90 day delay in collecting and getting used to that money?

Mr. Blake- I saw your list of cities that are part of the coalition, where are the big cities at? The cities that you listed are all comparable to us.

Barb Jobes- most of the cities are keeping this close to their chest. There is a thought that cities are afraid that the State will take it out on the city if they get on board with this. From what I have heard from the Tax Administrators in Columbus and Cincinnati they play on passing resolutions also. We are trying to get a coalition that represents everything from the small village up through the big 3 C. What the State is trying to accomplish is a cookie cutter everything in all the cities are the same. My best example for you is with House Bill 5 estimated tax required to be paid for \$200.00 or more. For us that wasn't a problem our estimated tax was \$250.00 for a village like West Lafayette their estimated tax was zero. If you owed tax you paid it. Now their cash flow is horrible because now they can't money until somebody owes \$200.00 or more. One solution doesn't work for every city in the state.

Law Director Sassen- this is following a similar pattern to the Christmas tree bill from last year where the telecommunications right- a-way law was tacked on and it was challenged on the same home rule constitutionality grounds. Your bigger cities of Cleveland and Cincinnati filed actions themselves. There was another coalition of smaller and medium sized cities that filed an action in Common Pleas Court in Franklin County where they joined their resources together because none of them individually had the resources to pursue that action. It was the coalition of the smaller cities that was granted the relief they wanted, they got the injunction and that provision of the bill set aside. That is the kind of model that is trying to be followed here. Will Cleveland and Cincinnati file actions of their own? That I don't know.

Motion passed by a vote of 3-0.

Dee Hall, Chair