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Proponent Testimony on House Bill 292
Greg Saul on behalf of The Ohio Society of CPAs
Ohio Senate Ways & Means Committee
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Chairman Eklund, Vice Chair Terhar, Ranking Member Williams and members of the Senate Ways & Means Committee, I'm Greg Saul, director of tax policy for the Ohio Society of CPAs. Thank you for this opportunity to speak as a proponent for House Bill 292, which would re-establish a bright-line presumption of domicile test for determining an individual's state of residence for Ohio personal income tax purposes. I'd like to thank Rep. Scherer and the Ohio Department of Taxation (ODT) for leading several interested party meetings to help draft this legislation.

House Bill 292 is designed specifically to correct an issue in *Cunningham v. Testa*, an Ohio Supreme Court case decided in July 2015 that incorporated the common law of domicile into Ohio's bright-line residency statute (R.C. 5747.24), once again turning this process into a fact-searching expedition. To again establish a bright-line residency test, the legislature must amend the statute to limit the concept of domicile to the definition contained in R.C. 5747.24; thus clearly showing your intent to repeal a settled rule of the common law.

The court in *Cunningham* stated that under common law, "the issue of domicile is one of intent determined by the facts of the individual case," including "the acts and declarations of the person" and the totality of "accompanying circumstances." The majority then cited such "evidentiary factors" include "filing federal income tax returns, voting, automobile registration or location of spouse and children."

A current administrative rule (OAC sec. 5703-7-16) specifies 18 factors that ODT shall not consider in rebutting or confirming the presumption, including such things as the location of where a taxpayer has banks, medical providers, attorneys, accountants, lenders, relatives, and political contributors. However, the rule further states that ODT may consider "any other fact the tax commissioner deems relevant," except those 18 factors.

H.B. 292 would bring much needed clarity back into this area of the law. In addition to satisfying the 212 contact periods and having an abode outside Ohio for the entire taxable year, the legislation proposes to add the following four bright-line criteria. In order to satisfy the presumption of being a non-resident during the taxable year, an individual cannot:

1) Claim a federal depreciation deduction for a non-Ohio abode.
2) Hold a valid Ohio driver's license.
3) Claim the Ohio homestead real estate exemption; or
4) Receive a resident tuition discount at an Ohio institution of higher education.

The OSCPA also supports the provision of H.B. 292 that extends the deadline for filing the non-resident affidavit from the 15th day of the fourth month to the 15th day of the tenth month following the close of the taxable year. The statement, if truthful and filed before that date, establishes an "irrebuttable" presumption that the person is a non-resident.

However, the presumption becomes rebuttable if it contains a "false statement," and the individual is then presumed under R.C. 5747.24(C) to have been domiciled in Ohio. In September 2015, ODT issued Information Release IT 2015-02 (applies to post-2014 taxable years) and revised IT 2007-08 (post-2006) to clarify its position after *Cunningham*. The Information Releases now state "**Importantly**, the Tax Commissioner may challenge the truth of **any** statement contained on the affidavit of non-Ohio domicile including the taxpayer's "explicit claim under R.C. 5747.24(B)(1) to be domiciled outside of Ohio."

Even though it is outside the scope of this legislation, further consideration should be given to reducing the factors used for determining whether an individual is domiciled in a municipal corporation for all or part of a taxable year, which currently stands at 25 different factors. See R.C. 718.012.

Thank you again for this opportunity to offer proponent testimony on House Bill 292. I'm available to answer any of your questions.