

Changes to Business Income Deduction (BID) in HB166

Talking Points

Singling Out Attorneys Is Not Right, It's Not Fair and Raises Constitutional Concerns

- HB166 establishes a separate tax scheme for only two professions – lawyers and lobbyists – taking away their ability to claim the state's Business Income Deduction or BID.
- Since 2013, the BID has allowed all who derive income from pass-through entities (LLCs, LLPs, etc.) to pay no tax on the first \$250,000 of income and to pay a flat 3% tax rate on any income above that threshold. Removing the deduction will lead to a significant tax increase for Ohio lawyers come Tax Year 2020.
- Many lawyers in private practice – especially young lawyers who graduated from law school since the BID has been in place – have started small businesses and built their practices based on the ability to take this deduction. Removing the deduction could have a devastating impact on many of these business owners.
- The amendment creates an unlevel playing field. The hallmark of a quality tax system is to balance simplicity, equity, neutrality and competitiveness. This provision unfairly targets and burdens the legal profession, placing them at a distinct competitive disadvantage and hindering their ability to serve their clients.
- When it comes to Ohio's Tax Code, Ohio lawyers should be treated the same as any other similarly-situated businesses that will continue to benefit from the deduction, including accountants, doctors, realtors and other professional service providers.

Lawyers Contribute Significantly to Ohio's Economy

- Ohio's BID was established in Tax Year 2013 for all Ohio businesses organized as pass-through entities and was designed to spur economic development and job creation.
- Lawyers and law firms are employers and small businesses, generating a combined \$3.5 billion annually in earned wages and more than 80,000 jobs for Ohio's economy.¹
- In addition, lawyers are essential partners to small and large businesses of all kinds, providing the professional advice and services entrepreneurs need to both start-up and thrive in Ohio.

- Lawyers also give back to their communities. According to the Supreme Court of Ohio and the Ohio Legal Assistance Foundation, in 2018 Ohio lawyers contributed more than 118,000 hours in pro bono legal services – a value of \$23.6 million.

Amendment the Product of a Flawed Legislative Process

- The BID amendment was inserted at the last minute during a harried budget process, without public debate, testimony or data to support the change. Even now, the legislature cannot provide a good estimate as to what the reversal of this deduction will mean for the state treasury.
- There are significant flaws in the drafting that will lead to many unintended consequences if allowed to stand.
 - Though it seems to target attorneys and lobbyists, tax experts who have reviewed the language believe that companies that employ lawyers and lobbyists will also be restricted from taking the deduction.
 - Because it is drafted to exclude only lawyers who are licensed with the Supreme Court of Ohio, it follows that lawyers registered in other states, but who pay taxes for work done in Ohio, would still be able to claim the Ohio deduction though Ohio-based lawyers would not, putting Ohio lawyers at a competitive disadvantage especially in border communities.
- Tax policy should not be made in haste and without full and thorough discussion of the cost, benefits and consequences.

ⁱ Source: *The Economic Profile and Impacts of Ohio's Legal Services Industry: Private Ohio Law Firms and Their Employees,* prepared for the Ohio State Bar Association by the Economic Center of the University of Cincinnati, March 2014