LINE # - LSC 130 1581-2	ISSUE	CONCERNS	IMPACT
276-280	**OFFSETS** Allows offsets of pass through entity losses against net profit income of the resident. The Omnibus amendment allows any net operating loss of a resident as a deduction against the distributive share of any net profit attributable to ownership interest in a pass through entity generated during the same year. The Omnibus also provides that the offset does not apply to any net profit or NOL attributable to ownership interest in an S Corporation unless the shareholders' distributive shares of the net profits from the S Corp are subject to the municipal tax in the municipal corporation.	1. Individuals will be able to take losses more than once. For example, a Columbus resident with a reportable gain from a PTE in a township and a loss from a Westerville partnership will be able to take the Westerville partnership loss (already reported in Westerville and carried forward in Westerville) against the gain reporable to Columbus. 2. Municipal corporations that currently do not allow the offsetting of gains and losses will be forced to do so. 3. Municipal corporations that only allow unapportioned losses and gains to offset will now be forced to allow apportioned and unapportioned gains and losse to offset. 4. Municipal corporations that tax S Corps at the individual level (took to ballot in 2003 / 2004) that have not allowed other losses to offset S Corp gains, or who have not allowed S Corp losses to offset other gains will now be forced to do so.	**REVENUE LOSS**
311	**SERP / NONQUALIFIED DEFERRED COMP ISSUE** Previous language that would have exempted SERPS and Nonqualified Deferred Comp ("pension payments and benefits") language has been changed to now only show "pensions" as being taxable.	Language was added that exempts from qualifying wages "any amount that is exempt income", requiring additional review on whether or not this will impact this issue.	**IMPACT UNCLEAR**

409 - 442 and Section 718.011	**OCCASIONAL ENTRANT RULE** Provides language that increases 12 day rule to 20 day rule, eliminates the retroactive component for taxing employees back to day one, provides opt-in or out language for employers to withhold, gives exemption to employers who have gross receipts under $500,000 in previous taxable year. Gives employee an exemption from taxation on wages that are currently taxed by municipal corporations.	1. Sub HB 5 does not require withholding back to day one, when an employee exceeds the 20 day rule. The employer is required to withhold for the principal place of work location of the employer, and can opt to withhold for the place where work was performed. If the employer is located in a township or non-taxing jurisdiction, the employee working in a municipal corporation could pay nothing for the first 20 days. The wages are also EXEMPT from municipal taxation, except for the employee's place of residence. This means that the actual work location cannot tax those first 20 days. Under current 12 day law, the employer must withhold back to day one when the 12 days is exceeded. 2. An employer is only required to withhold for principal place of work if the employer's gross receipts were under $500,000 in the previous taxable year. An employer located in a township or non-taxing jurisdiction would withhold zero for employees working in municipal corporations. An employee could work within the same municipal corporation for an entire year, and not be subject to that municipal corporation's tax. The municipal corporation where work is performed is prohibited from taxing these earnings, as they are exempt. 3. The Omibus amendment specifically exempts Board of Directors fees, providing a carve-out for what are typically highly compensated individuals. 4. An employee with tax withheld for the first 20 days due to principal place of work location who neither works or lives in that municipal corporation will be able to obtain a refund of the tax withheld and paid to the principal place of work. The employee will still have a W-2 showing the tax withheld, and could use this credit on their city of residence return, even though the tax was refunded back to the employee. The municipality of residence will not know when the credits shown on the W-2's are legitimate or not.	**REVENUE LOSS**

500 - 566	**NET OPERATING LOSS CARRYFORWARD** Sub HB 5 mandates a five year NOL carryforward for all municipal corporations, with a five year phase in period beginning in 2017. An NOL Study Committee is formed to study the effects of the NOL on revenue.	1. Approximately 170 cities have no current Net Operating Loss carryforward, and approximately 60 have less than a five year NOL, resulting in a significant loss of revenue for these municipal corporations. 2. The NOL Study Committee will serve no true purpose, as it has already been determined by the legislature that regardless of the revenue impact, the five year NOL is hereby mandated. 3. With the combination of offsets and the NOL, even those municipalities who currently have a five year NOL could experience significant revenue loss due to the mandated combination of both. 4. The five year phase in allows only 50% NOL for all, so businesses in a municipal corporation that currently has an NOL will experience a tax increase during the phase in period. 5. JEDD and JEDZ follow the municipal corporation tax ordinance, so JEDD and JEDZ that currently do not have an NOL or that have less than five year NOL will experience a significant revenue loss. 6. JEDD and JEDZ, with the combination of offsets and the NOL, even those with a current five year NOL could experience significant revenue loss due to the mandated combination of both.	**REVENUE LOSS**
819 - 836	**WRITTEN DETERMINATION** Omnibus amendment removed "written finding of tax administrator" language, but issues still exist in current version.	1. A refund submitted on an amended tax return filing would trigger the "written determination" procedure, prompting certified mail notification to taxpayer of any change to the refund request (again, on an amended return only). 2. Language does not clarifiy that a "written determination" is not an audit or assessment, or a correction to a tax return submitted.	**ADMINISTRATIVE BURDEN, INCREASED COSTS**

1001 - 1007	**DOMICILE** Language has been removed from Municipal Coalition draft that clarified language.	1. Removed Municipal Coalition draft language showing that the taxpayer could rebut the conclusion of domicile if the tax administrator unreasonably concluded domicile, and instead requires only a preponderance of the evidence to determine domicile, when clearly some factors are weighted differently than others. 2. Removed key sentence "A taxpayer's intention to change a domicile will not effect such change unless the taxpayer ceases to reside in the domicile". "Intent" is a key component in determining domicile, and removal of this sentence may impact the ability to use "intent" as a weighted factor.	**POSSIBLE INCREASED COST OF LITIGATION**
1132 - 1142	**ALTERNATIVE APPORTIONMENT** Allows the taxpayer to notify the tax administrator prior to using an alternative apportionment. Current law requires tax administrator approval.	1. Current law requires the taxpayer to seek approval to use an alternative apportionment method, Sub HB 5 only requires that the taxpayer notifies the tax administrator prior to submitting the return. 2. Any ability to disallow the filing using an alternative apportionment formula appears to have been removed from the bill, removing the tax administrator's authority to deny the use of an alternative apportionment formula.	**REVENUE LOSS, LOSS OF AUTHORITY TO DETERMINE PROPER FILING METHOD**
1722 - 1726	**CREDIT FOR TAX PAID ON PTE INCOME** Sub HB 5 required that a municipal corporation may, by Ordinance or resolution, grant a credit to residents for all or a portion of taxes paid to other municipal corporations on PTE income.	1. A municipal corporation that allows NO CREDIT for tax paid to other municipal corporations would be prohibited from not allowing "all or a portion" of the taxes paid as a credit. 2. This provision provides inequitable treatment between taxpayers based on type of income, and disproportionate credits allowed for residents.	**REVENUE LOSS**
1843, 1893, etc	**DEMINIMUS THRESHOLD** Municipal Coalition draft language provided $5 deminimus for balances due and refunds, Sub HB 5 provides for $10 deminimus.	1. State of Ohio provides for a minimum amount due of $1, Municipal Coalition draft language raised this for municipal purposes to $5. There is no need to raise this to a minimum of $10. A return must still be filed. 2. While this will also reduced the number of refunds issued, it will decrease the amount of revenue collected and these two will not be offsetting.	**REVENUE LOSS**

2023 - 2029	**STATE TAX COMMISSIONER TO PROVIDE DOCUMENTS** This provision increases the amount of time (from 30 to 60 days) for the State Tax Commissioner to provide documentation to municipal corprations relative to municpal filings on deregulated electric and telephone companies collected by the State.	1. Refund requests for taxes overpaid on deregulated telephone and electric companies are forwarded to each municipal corporation to process and refund. NO documentation is provided by the State Tax Commissionoer to verify the refund amounts. This provision requires the State Tax Commissioner to provide documents in a timely manner. 2. The amount of time was increased from 30 days (in Municipal Coalition proposal) to 60 days. 3. By not tolling the statute of limitations (as requested) during this period, a municipal corporation would not have time to request the documents, wait for a response from the State Tax Commissioner, and then audit and review documents received prior to the 90-day statute for issuing the refund to the taxpayer.	**INCREASED COSTS (Interest paid on refunds not processed timely), ADMINISTRATIVE BURDEN**
2096 - 2150	**CONSOLIDATED RETURN LANGUAGE** Sub HB 5 provides new language, defining "affiliated group of corporations" and "Incumbent local exchange carriers", and excludes them from "Consolidated federal taxable income" definition.	1. New language provides special treatment at the request of AT&T, not provided to other taxpayers. 2. Langauge provides an opt-in opt-out every five years for municipal tax purposes from filing a consolidated municipal income tax return, even when consolidated federal income tax return is filed for that particular tax year. While it allows for tax administrator to approve opt-out request for good cause, denials will result in lengthy litigation process. Opt-out provides special interest treatment, different municipal treatment as opposed to federal treatment, and possible income shifting to avoid municipal tax.	**REVENUE LOSS, LOSS OF AUTHORITY TO DETERMINE PROPER FILING METHOD**
2185 - 2211	**CONSOLIDATED RETURN LANGUAGE - TREATMENT OF PASS THRU ENTITY** Sub HB 5 provides option to include or exclude PTE profit or loss from the consolidated federal taxable income of the affiliated group, contrary to current law.	1. Municipal Coalition language required that an affiliated group would deduct from the group's consolidated federal tax return the profits from a pass through entity that is included in the consolidated federal taxable income of the affiliated group, and add back any loss incurred by the pass through entity that is included in the consolidated federal taxable income of the affiliated group. 2. Sub HB 5 language provides an OPTION to include or not include the profit or loss, providing for cherry-picking the best scenario to avoid municipal income tax, contrary to current law or current practice.	**REVENUE LOSS**

2819 - 2875	**CERTIFIED MAIL PROCESS FOR WRITTEN DETERMINATION** Sub HB 5 provides cumbersome language for specifics in certified mailing process	1. Language is administratively burdensome, and is intended to be burdensome. IF LANGUAGE REGARDING AUDT AND ASSESSMENTS IS NOT CLARIFIED, THIS WOULD APPLY TO THOSE TYPES OF NOTICES AS WELL. 2. For taxpayers who move through the criminal or civil process, there are notification processes required by the Courts to ensure service notification, so this language is not necessary. 3. ANY TAXPAYER WHO HAS REQUESTED A WRITTEN DETERMINATION would have provided a good address for this notification and would have been in contact directly with the tax administrator, making this language not only burdensome but completely unnecessary.	**INCREASED COSTS, ADMINISTRATIVE BURDEN**
3365 - 3368	**AMENDED CONSOLIDATED RETURN LANGUAGE** Sub HB 5 provides language contrary to current law regarding the filing of an amended consolidated return.	1. New language that states that a taxpayer intending to file an amended consolidated municipal income tax return shall notify the tax administrator before filing the amended return. 2. Current law requires that, unless they are now filing an amended return as a consolidated return for the first time (original return was not a consolidated return), the taxpayer had to obtain permission to file the consolidated return. 3. This is a way to bypass the authority process of the tax administrator, and file an "amended" consolidated municipal return without the prior approval of the taxpayer.	**ADMINISTRATIVE BURDEN, POTENTIAL REVENUE LOSS**
4426 - 4431	**MUNICIPAL NOL STUDY COMMITTEE**	1. NOL STUDY COMMITTEE LANGUAGE should be included, but MANDATED 5 YEAR NOL SHOULD BE REMOVED UNTIL THE STUDY COMMITTEE HAS CONCLUDED IT'S WORK. 2. The scenarios are an attempt to hand-pick scenarios that will not truly reflect the NOL losses that will ABSOLUTELY be felt by muncipalities throughout the State. ANY CITY that would want to participate should be permitted to participate, and any "representative sample" should come from cities with no current NOL, or less than five year NOL, and should be a sampling based on region, size of community and those who can readily draw upon the information from existing records. As many municipalities that can participate should be permitted to participate. 3. AGAIN, leaving in the mandated 5 year NOL indicates a pre-determined result without benefit of the research, which the LSC fiscal analysis clearly shows will be negative and significant revenue loss.	**PROBLEMATIC LANGUAGE**