

STATEMENT OF THE OHIO STATE BAR ASSOCIATION
IN OPPOSITION TO THE SALES TAX EXPANSION
INCLUDED IN HOUSE BILL 59

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Jeffrey McClain, Chair
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The Ohio State Bar Association opposes the sales tax exemption contained in House Bill 59 as it applies to legal services because we believe it is inappropriate tax policy that will unnecessarily burden Ohio consumers of such services and impede access to the legal system.

Let me be clear on at least one important point – our opposition is to the sales tax expansion to legal services. We have no position on the balance of the other tax proposals contained in the bill. Further, we want to emphasize that the proposed expansion of the sale tax on legal services will be paid by the consumer of such services.

I also wish to note at this point that following my testimony, you will hear from Don Mottley, a former chair of the Ohio State Bar Association Taxation Committee, who will address a number of administrative and technical issues, many of which you have raised in your questions to other witnesses and in general comments. Your probing questions illuminate the complexity of the administration of the tax and its difficulty of interpretation. More on that in a few moments.

The subject of expansion of the sales tax to legal services is not new to Ohio. It was debated in 1983 and again in 1997. In 1997, then Ohio State Bar Association president Thomas Taggart, in testimony before the Senate Finance and Financial Institutions Committee, noted that in most, if not all, cases hiring an attorney is not a discretionary use of funds and should not be treated the same as other purchases that are subject to the sales tax He explained that the proposal to expand the sales tax to legal services ignores the fact that people generally don't have a choice when deciding to hire a lawyer. If they need one, they need one now!

We think it can be safely said that most people do not awake in the morning and think about hiring a lawyer. More often than not, legal services are required as a result of a mishap or hardship and thus a sales tax on that service would amount to what we call a “misery tax,” a tax on misfortune and unforeseen circumstances.

Ohioans deserve access to competent legal counsel without the added burden of paying a sales tax on essential legal services when, for instance, families tackle the complexities of an adoption or divorce, when widows and children deal with the estate of a loved one, when home buyers face what may be the most significant investment they will make, and when businesses of all sizes confront a dispute over a contract or consider growth and expansion.

There is without question the conclusion that the expansion of the sales tax to legal services will increase the cost of doing business in Ohio compared to other states, especially states on our borders, as business in Ohio will be placed at a competitive disadvantage and would compel Ohio clients to consider moving their legal business to a state without similar tax burdens. To cite a common refrain, “It’s nothing personal, it’s only business.”

Let’s talk for a moment on the impact of the proposed expansion of the sales tax on everyday Ohioans, our consumers of legal services.

We think about the young people who receive a call from the adoption agency and the lawyer they have been working with. The call they have been waiting for finally comes and they whisk off to the hospital maternity ward to be with their son or daughter. The joy for the new family is a moment to cherish. Adoption is complex, it was designed to be so to protect and serve the best interests of all the parties involved. It is also an expensive process. Is it appropriate to add on any additional cost for this essential service. We think not!

The death of a loved one is an emotional and traumatic experience. Many Ohioans hire a lawyer to provide estate planning services and then assist with the administration of the estate. Is

it appropriate tax policy to tax these essential legal services for the benefit of the family. We think not! Particularly not when funeral services are exempt.

There are many circumstances where the appointment of a guardian is necessary. Should legal services to assist with this oftentimes complex process be taxed. We think not!

Legal services for obtaining child support and other family matters, including separation, dissolution, divorce, civil protection orders, and parental visitation would be subject to the expansion of the sales tax. Our citizens do not plan for this. They do not really have a choice but to hire competent counsel to protect and preserve their rights. This is but another example where expansion of the sales tax to essential legal services would be inappropriate tax policy.

It is not uncommon for our senior citizens and those under disability to receive a notice from the Social Security Administration or other federal or state agency advising them that certain benefits are being adjusted. These can be very complicated matters. This is but another example when counsel is both important and essential.

And, let us not forget the imposition of a sales tax on legal services for a person accused of a crime. This could well constitute an unconstitutional burden on the right to counsel as set forth in the United States Constitution and the Ohio Constitution.

Our medium and small business that account for a substantial part of Ohio's commerce and employment will have a disproportionate tax burden if legal services are taxed. Most of these businesses do not have the luxury or good fortune of having in-house lawyers and other professionals whose services would not be subject to the sales tax as proposed in House Bill 59. Thus, if these businesses cannot afford to employ lawyers in-house, they will be subject to the tax when contracting for such services.

There are issues impacting attorney-client privilege that are unintended consequences of the proposal that could place the sacred privilege in jeopardy. Mr. Motley may well address this

when he discusses the multitude of issues arising from the administration of the tax, many of which have been raised by you.

Permit me to conclude by saying that we believe legal services to be essential to Ohio consumers in both their personal and business life. Whether it is the adoption of a child, administering an estate, forming or expanding a business, arranging financing, negotiating a contract, or basic compliance with law and regulations, legal services are essential to an orderly society governed by the Rule of Law. The Founding Fathers in the Preamble to the United State Constitution spoke in terms of establishing justice as the foundation of this great republic. Access to justice is essential to a free society and access to competent legal counsel is essential to protecting and preserving our rights.

It is for the reasons we present to you today that we believe that the sales tax expansion to legal services as included in House Bill 59 is inappropriate tax policy for the citizens of Ohio and we recommend its removal from the legislation.

We are pleased to answer any questions, and as always appreciate the courtesy extended to us in appearing before you.