

## Ohio: Municipalities claim that budget bill harms local control over taxation



David M. Kall | Thursday, December 21, 2017

Close to 140 municipalities in Ohio are plaintiffs in a lawsuit against Joseph Testa and Mike DeWine, the state's tax commissioner and attorney general, respectively. Josh Mandel, Ohio's treasurer, was dismissed as a defendant two weeks ago, and defendant Timothy Keen, the director of the office of budget and management, was dismissed last week.

The 11 count [complaint](#), filed on Nov. 16, 2017, alleges that the so-called municipal income tax provisions contained in the 3,384 page budget that Gov. John Kasich signed into law over the summer, [H.B. 49](#), as well as certain enforcement provisions contained in [H.B. 5](#), which became law in 2015, are legally impermissible. The plaintiffs allege that the bills unconstitutionally infringe upon local control over taxation, and ultimately deprive them of a portion of their own tax revenues.

The complaint contains a litany of assertions pertaining to the particular deprivations that HB 49 put into play, many of which flow from provisions allowing municipal non-individual net-profits tax filers to elect to file returns and remit payments with the Ohio Department of Taxation instead of the localities, resulting in a monthly "rationing" of net tax profits; and designating the tax commissioner as the administrator of all municipal net profits taxes for taxpayers making this election.

More specifically, the complaint alleges that HB 49 and HB 5:

## Ohio Municipalities claim that budget bill harms I

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- Violate the Ohio Constitution’s Home Rule Amendment and the single subject rule.
- Impair contractual relationships and obligations.
- Constitute a “wrongful exercise of dominion over property to the exclusion of the rights of the owner.”
- Constitute a governmental taking of tax revenues without just compensation.
- Deprive the plaintiffs of property “through confiscation and loss of tax revenue.”

At its core, the complaint contends is that HB 49 “funds the State’s takeover of municipal net profits tax administration by skimming from the top of municipal net profits tax proceeds, and only appropriates additional funds to administer these taxes if the amount taken from municipalities’ net profit tax revenues is insufficient to cover the State’s administrative expenses.”

Similarly, HB 5, among other things, “dictates the composition, powers, and procedures of local boards of tax review,” and establishes the interest rates and penalties for unpaid taxes.

As of now, the trial is set for Dec. 3, 2018.



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