



## OML Points of Opposition to the Elimination of the “Throwback” Rule

The “throwback” rule is one part of a three-factor formula for determining sales. The current rule provides that when tangible personal property is sold and delivered to a place where the seller is not, through the use of its own employees, regularly engaged in the solicitation or promotion of sales, the sale is “thrown back” or allocated to the location from which the product was shipped.

Municipalities currently apply their local tax to businesses that have income generated through off-site, such as catalog distribution facility that processes online purchases and warehouse fulfillment centers. It also includes intellectual property generated through the work of accountants, attorneys, contractors and other professional organizations.

The Ohio House has included in their substitute version of the budget bill a provision that essentially eliminated the application of the throwback provision. The language says:

- (1) *Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation only, if regardless of where title passes, the property meets either of the following criteria:*
    - (a) *The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation.*
    - (b) *The property is delivered within the municipal corporation from a location outside the municipal corporation, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion.*
- The new language will create a "nexus to nowhere" so the tax will not be applied on the sale of tangible personal property unless there is an employee where the product is shipped or if the sale and shipment is within the same municipality.
  - The language effectively repeals the “throwback” provision, denying municipalities of the revenue to continue to invest in the infrastructure challenges large warehouse and fulfillment facilities brings to a community who host this type of commerce in municipalities across the state. These large fulfillment centers are the primarily source of business activity where the “throwback” provision is applied.
  - The repeal of the “throwback” provision will have no impact on state revenues but will exclusively reduce revenues of already financially challenged cities and villages across the state.

Generally, the removal of the “throwback” provision will:

- Eliminating these sales from the current sales factor would result in no taxation of these sales by municipalities in Ohio, creating yet another loophole for businesses created by the special interest groups involved in this legislation.
- Warehouse and distribution centers create a special service cost to municipalities, including the need for protection from theft, increased risk of fire, and wear on street and road infrastructure. The “throwback” rule generates the revenue that pays for these increased costs for services.
- Impact statements provided in testimony during HB 5 discussions showed substantial losses from just a small sampling of these types of businesses in Columbus. For example:
  - In April, 2012, Melinda J. Frank, Tax Administrator, testified that a sampling of just 12 businesses for tax year 2011 on non-local sales would have resulted in a projected loss of municipal tax revenue of \$560,000. The projected loss from these same businesses in 2013 was \$429,745. As she stated, “please keep in mind that this number is from a sampling of businesses and there are many other manufacturers and distributors whose resulting reduction in tax will only increase the negative impact to Columbus.”
  - The city of Athens estimates that from only the top five businesses with the provision applied to sales would cause a \$77,000 hole in their municipal budget.
- Municipalities currently provide uniform treatment of “throwback” sales.
- Any change would result in a loss of revenue, and for some municipalities this loss of revenue would be crippling.