

CITY OF BROOK PARK, OHIO

P/C Finance 9-3-19
CA Price 10-1-19
1st R 10-1-19
2nd R _____
3rd R _____
B/C _____

RESOLUTION NO. 32-2019

INTRODUCED BY: MAYOR GAMMELLA

**A RESOLUTION
SUPPORTING THE OHIO MUNICIPAL LEAGUE (OML) ON H.B. 49 AND H.B. 5
(CENTRALIZED TAX COLLECTION) AND ASKING THE OML TO INCLUDE BROOK
PARK AS A MUNICIPALITY SUPPORTING THE OML AMICUS BRIEF BEFORE
THE OHIO SUPREME COURT, AND DECLARING AN EMERGENCY**

WHEREAS, On June 28, 2017, the State passed Am. Sub. H.B. No. 49, the omnibus budget for 2018-2019 biennium. H.B. 49 created a system imposing centralized collection of municipal net profits taxes; and

WHEREAS, This process means municipalities experience up to a 60-day delay before recovering one penny of revenue and 90 days before municipalities are told who paid and who did not. H.B. 49's centralized collection provisions followed the General Assembly's passage, with 2015 Sub. H. B. No. 5, of a prescriptive municipal income tax code. H.B. 5 amended R.C. 715.013 to prohibit municipalities from collecting an income tax unless the municipalities do so in accordance with the State-prescribed code in Chapter 718 of the Revised Code. The drafters of H.B. 49 built upon this tactic with uncodified Section 803.100 of H.B. 49, which purports to require municipalities to enact the provisions of R.C. 718.80 through 718.95 to implement the centralized collection program; and

WHEREAS, On November 16, 2017, over 160 cities and villages from throughout Ohio filed an action in the Franklin County Court of Common Pleas seeking declaratory and injunctive relief against the enforcement of the centralized collection provisions of H.B. 49 and the prescriptive income tax code of H.B. 5. The action alleged that the provisions of H.B. 49 and H.B. 5 are unconstitutional under the Home Rule Amendment and that the centralized collection provisions of H.B. 49 are unconstitutional because they violate Ohio Constitution Article II, Section 15(D), the One-Subject Rule. The municipalities also alleged that the centralized collection provisions of H.B. 49 violate the Ohio Constitution because they violate municipal property rights (e.g., by converting municipal tax revenues). The municipalities moved for preliminary injunction to prevent implementation of the centralized collection provisions, on which the trial court held a two-day hearing. Prior to the hearing, the trial court assumed jurisdiction over a similar challenge by 27 municipalities that the Lorain County Court of Common Pleas had transferred to Franklin

County. Following the preliminary injunction hearing, the trial court issued a decision on the merits of all claims, including those of the Lorain County plaintiffs. The trial court made no findings of fact and determined, as a matter of law, that H.B. 5 and the centralized collection provisions of H.B. 49 did not violate the Ohio Constitution. The 163 municipalities appealed; and

WHEREAS, The Tenth District Court of Appeals consolidated the 163-municipalities' case and the Lorain County plaintiffs' case for argument and decision. The Tenth District issued its Decision affirming the trial court on January 29, 2019. The coalition of 163 municipalities timely filed an application for reconsideration of February 8, 2019, as did the Lorain County plaintiffs. The Tenth District denied those applications for reconsideration on April 4, 2019; and

WHEREAS, the Ohio Supreme Court has accepted jurisdiction over this appeal on the following question of law:

PROPOSITION OF LAW NO. 1: The Home Rule Amendment grants municipal corporations a general power of municipal taxation, and where a State law engulfs municipal corporations' general power of taxation, that State law is unconstitutional.

WHEREAS, the Ohio Supreme Court also accepted the similar proposition from the Elyria plaintiffs' group:

PROPOSITION OF LAW NO. 1: A State-administered, centralized system for reporting and collection municipal net profits taxes, paid for by a tax on municipalities violates the Home Rule Amendment of the Ohio Constitution.

WHEREAS, the Ohio Municipal League is filing an Amicus Brief in this case supporting the Municipal coalition and

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: That the City of Brook Park supports the Ohio Municipal League in filing an amicus brief in the Ohio Supreme Court on the issue of whether "The Home Rule Amendment grants municipal corporations a general power of municipal taxation, and where a State law engulfs municipal corporations' general power of taxation, that State law is unconstitutional." And whether "A State-administered, centralized system for reporting and collecting municipal net profits taxes, paid for by a tax on municipalities, violates the Home Rule Amendment of the Ohio Constitution."

SECTION 2: That the City of Brook Park requests the Ohio Municipal League so indicate its support in its Amicus Brief.

SECTION 3: That the Clerk of Council is directed to mail a copy of this Resolution to Garry E. Hunter, OML Legal Counsel, 175 S. Third Street, Suite 510, Columbus, Ohio 43215 and to email a copy to ghunter@omaaohio.org.

SECTION 4: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 5: This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety of said City, and for the further reason that Council deems it necessary to support the Ohio Municipal League in their Amicus Brief before the Ohio Supreme Court.

PASSED: October 1, 2019

M. P. Kerubis
PRESIDENT OF COUNCIL

ATTEST: Michelle Blazak
CLERK OF COUNCIL

APPROVED: [Signature]
MAYOR
10/1/19
DATE

I HEREBY APPROVE THE WITHIN INSTRUMENT AS TO LEGAL FORM AND CORRECTNESS

[Signature]
DIRECTOR OF LAW

Michelle Blazak, Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinances/resolutions was made by posting true copies at six of the most public places in said municipality as determined by Ordinance No. 4838-1975; location City Hall, 6161 Engle Road, Police Station 17401 Holland Road, #1 Fire Station 5590 Smith Road, #2 Fire Station 22530 Ruple Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library 6165 Engle Road, for a period of fifteen days, commencing October 2, 2019
Michelle Blazak
MICHELLE BLAZAK
Clerk of Council

CERTIFICATE

Michelle Blazak, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance/Resolution No. 32-2019

passed on the 1st day of October 2019 by said council.

Michelle Blazak
Clerk of Council

	Yes	Nay
Stemm	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mencini	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Orcutt	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Burgio	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Poindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Salvatore	<input checked="" type="checkbox"/>	<input type="checkbox"/>