

BEFORE THE SENATE  
Way and Means and Economic Development Committee

Opponent Testimony re: SB No. 172

By: Paul G. Wilkins  
Student Legal Services, Inc.

February 2, 2012

S.B. No. 172 requires the tax commissioner of the State of Ohio to assist in the collection of private debts for a very limited set of private citizens. I oppose S.B. No. 172 for two reasons: 1. With the exception of Michigan, no state, including Ohio, allows private debts to be collected by the state; and 2. S.B. No. 172 is fundamentally unfair to tenants. S.B. No. 172 should not be enacted into law.

Michigan is the only state that puts the onus on the government to collect the debts of private parties. All other states, including Ohio, allow garnishment of tax refunds in very limited circumstances where money is either owed to the state or the state has some sort of continuing interest in the money. An example of the former is where there was an overpayment of workers compensation and an example of the latter is child support, spousal support, and medical support.

It may seem that garnishing tax refunds to collect child support is allowing a private individual to collect a debt through the garnishment of tax refunds. However, it is fundamentally different. Where there is a child support order from a court, the State directly collects child support, spousal support and medical support. Such support payments are a continuing and renewing obligation for which the court and the state have ongoing oversight.

Judgment debts are very different. The court exercises its judgment about a past debt but not continuing and renewing obligation. It does not impose an obligation that must be carried out in the future. Furthermore, child support, spousal support and medical support are designed to ensure that children in single-family households do not live in poverty.<sup>1</sup> The state has a stake in collecting child support and preventing such children from becoming wards of the state. *Id.* Thus, child support and judgment debts are fundamentally different. Because the state has no stake in collecting privately held debts, S.B. No. 172 should not go further.

The bill is also fundamentally unfair to tenants. The Ohio Landlords and Tenants Act enacted in 1974 was an attempt to balance the competing interests of landlords and tenants.<sup>2</sup> Prior to 1974, the landlord traditionally had greater power than tenants.<sup>3</sup> For instance, tenants were not relieved of the duty to pay rent if the property were destroyed through no fault of the

---

<sup>1</sup> See generally Child Support 101, An Introductory Course for Legislators, National Conference of State Legislatures, <http://www.ncsl.org/Portals/1/documents/cyf/cs101-1.pdf>

<sup>2</sup> *Shroades v. Rental Homes, Inc.*, (1981) 68 Ohio St. 2d 20, 25

<sup>3</sup> *Pool v. Insignia Residential Group*, 136 Ohio App. 3d 266.

tenant. Landlords were not even required to repair buildings they leased and were not liable for injury sustained by the tenant as a result of the landlord's negligence.

The Landlords and Tenants Act was a result of the recognition that the nature of tenancies had changed. The buildings, rather than the land, had become the most important part of the tenancy. The tenants did not have the means or skills to repair the buildings and often there were multiple leaseholders in a single building.

In response, the Landlords and Tenants Act changed the relationship between landlords and tenants to balance the rights and responsibilities. For nearly every right, responsibility or power of the tenants, you will find a corresponding responsibility, right, or remedy of the tenant. Both landlords and tenants are required to comply with the requirements of all applicable housing, health and safety codes.<sup>4</sup> Landlords are permitted to enter the leased premises with 24 hour notice and tenants are permitted to refuse entry if the landlord fails to give such notice (although the tenant may not unreasonably refuse the landlords right to entry).<sup>5</sup> Landlords may terminate the lease tenants who breach their duties and tenants may terminate or escrow their rent if the landlords who breach their duty.<sup>6</sup> Thus, a balance of responsibilities, rights and remedies of landlords and tenants exists.

The balance between landlords and tenants would be destroyed by S.B. No. 172. Landlords would be given a power that tenants do not have and this imbalance could not be easily remedied. Tenants are likely to receive tax refunds that could be garnished by landlords. Landlords, on the other hand, will almost certainly not receive income tax refunds.

Individual rental properties are frequently owned by shell corporations. These shell corporations are created for the sole purpose of owning the rental property and have no assets other than the rental property. The management corporations created to manage rental properties seldom have any cash or income on which to pay taxes. As soon as cash is received, it is used to pay for debt or repairs on the rental properties, or is passed on to the investors who control the shell corporations and the management corporation. Having little to no income means that such corporations rarely receive a tax refund. Thus, giving tenants a corresponding right to garnish the tax refund of landlords would not restore the balance of responsibilities, rights and remedies landlords and tenants.

The vast majority of states agree with current Ohio law that the state should not collect the debts of private citizens. S.B. No. 172 is unfair to tenants because it gives more power to landlords and this imbalance in power cannot easily be remedied. For these reasons S.B. No. 172 should not be enacted into law.

---

<sup>4</sup> R.C. 5321.04(A)(1) and R.C. 5321.05(A)(5)

<sup>5</sup> R.C. 5321.04(A)(8) and R.C. 5321.05(B)

<sup>6</sup> R.C. 5321.11 and R.C. 5321.07