

BEFORE THE SENATE
Way and Means and Economic Development Committee

Opponent Testimony re: SB 172

By: Joe Maskovyak
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Good Morning Chairman Schaffer, Vice Chair Beagle and Ranking Minority Member Tavares. My Name is Joe Maskovyak and I am an attorney with the Ohio Poverty Law Center. The Ohio Poverty Law Center is a nonprofit LLC that serves as Ohio's statewide legal Services Program. It works with all of its sister legal aid programs throughout the state to advocate on behalf of low income Ohioans in order to maintain and protect their rights and interest. I have been a legal services advocate for the entirety of my professional legal career spanning 26 years, most of them with the Legal Aid Society of Columbus where I represented thousands of tenants in a variety of cases, especially defending tenants in eviction cases and claims for money.

As you have heard or will hear from a variety of tenant advocates today, we uniformly believe SB 172 is bad public policy. There are many reasons we believe this to be the case. Let me illustrate a few.

The Practice of Other States Regarding Tax Intercept

When this bill was introduced, I commissioned a law clerk to review other states to determine whether or how many other states had comparable statutes. We believe there may be one – Michigan, but their scheme does not make landlords a favored creditor and it uses a vastly

different process to do so. We found 40 plus states that do provide for tax intercepts, but it is for very different purposes than to collect debts for private creditors. Here are the common entities designated as eligible to intercept tax returns:

1. **The State itself** – unpaid income tax debts or monies owed to any state agency
2. **Other State Government Entities** – counties, cities, townships, etc
3. **Courts** – unpaid fines, etc.
4. **Child Support** – from defaulting obligors

As one can see, all of these public purposes are markedly different from private landlords. Child support payments are the closest example to a private debt among those listed above, but, of course, intercepting the tax return of an obligor who defaults on their obligation to support their children is has ample public policy reasons to defend such action. The state has an interest in ensuring that children are properly provided for. In fact, in Ohio, where intercepts are permitted for child support defaults, done in cooperation with the Ohio Department of Job and Family Services (ODJFS), there is also a financial incentive for the state to intercept. For those who depend on child support as a primary source of monthly income, but who do not actually receive their support, they often turn to ODJFS to receive Ohio Works First (OWF) to financially maintain their households. For every dollar they actually receive in child support there is a dollar for dollar reduction in what the state would otherwise pay through OWF. Both the state and the obligee benefit from this policy. Even for those households who do not primarily rely on child support as their sole or primary source of income, studies have been done that demonstrate that such households benefit because the extra income helps lift them out of poverty. No such benefit will accrue to the State of Ohio if you intercept tenant tax returns in order to give them to

landlords. Nor will anyone be lifted out of poverty. In fact, the most likely outcome is that tenants will be further mired in financial difficulty and unexpectedly.

The Inherent Unfairness of the Court Process for Tenants

As one who represented many tenants, I saw numerous inflated, unsupportable claims for money. Of course, in the cases where I appeared, my client had the benefit of an attorney to be shielded from exaggerated and/or baseless monetary claims. But I represented only a small slice of tenants facing such claims. The overwhelming number of tenants who find themselves in court do not have an attorney to represent them. Most judgments are taken by default (whether appropriate or not under the Civil Rules) where the attorney for the creditor/landlord prepares the judgment entry and hands it to the judge for signature, who signs it at that time. There are many problems with such an approach, but for judges with large dockets, overworked staff, and are under the gun to report cases as closed to the Supreme Court, they are grateful for the attorney who does the work necessary in order to get the case completed. I understand that, but it also means that many tenants are then subjected to unfair amounts that can be collected from them. A tax intercept will only reinforce landlords' attempts to collect as much as a court will permit when they know that such judgments may not be subject to close scrutiny. And there is likely a secondary effect. Many landlords do not pursue money judgments today, perceiving it to be a bad investment decision, paying more money to obtain judgment with little hope of collection. SB 172 may encourage landlords to file and pursue more monetary claims, seeing this as a possible golden goose, thus further burdening our already busy municipal courts. I believe this is a likely unintended consequence. Speaking from my experience in working extensively in

Franklin County Municipal Courts, I can assure they do not need more cases and more work, unless this legislation is prepared to give them more resources.

The Floodgates Effect

As explained earlier, landlords are identifiably different than other entities currently entitled to intercept state tax returns. Landlords stand in the same position as any other private unpaid creditor: department stores, grocery stores, banks, credit card lenders, hospitals, doctors, lawyers... I am sure you can think of others. As I mentioned earlier, it even makes financial sense for the state to intercept the tax returns of child support obligors, whereas here neither the same incentive nor rationale exists here. That same rationale of supporting child support obliges does not apply to landlords who are businessmen. Dealing with unpaid bills is a cost of doing business that all businesses endure and incur. There are already state approved means to collect such debts: garnishing wages, attaching bank accounts to name a couple. All creditors have these collection remedies. If SB 172 passes, the message from the state will be clear: the state believes landlords are a creditor preferred above all others, since Ohio is giving landlords a collection advantage enjoyed by no other private creditor. Others will be asking you if they can get on board the train, too.

To demonstrate the likelihood of that possibility, let me be the first to ask to get on that train. Before I do, however, let me be clear: allowing landlords or any private creditor to intercept tax returns is bad public policy and no amount of tinkering can cure that problem. But, if it is the will of this legislature to go forward, then I ask: why not tenants, too? Why are the judgments secured against tenants more valued than the judgments tenants obtain against landlords,

typically for violating their statutory duties? I believe tenants should be entitled to the same opportunity if we must venture down this path.

For these reasons, as well as the reasons expressed by the others today, I urge you to not pass SB 172.

Thank you for this opportunity to testify and I will try to answer any questions you may have.

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