



Municipal Income Tax for Electric Light Companies and Local Exchange Telephone Companies

The municipal income tax for electric light companies and local exchange telephone companies, set forth in Chapter 5745 of the Ohio Revised Code, was enacted by the Ohio General Assembly in 2000. This tax is sometimes referred to as the “Chapter 5745 municipal income tax” to distinguish it from the conventional municipal income tax, which may be levied and administered by various Ohio cities and villages pursuant to Chapter 718 of the Revised Code. The Chapter 5745 municipal income tax applies only to electric light companies and local exchange telephone companies. It is administered by the Ohio Department of Taxation.

“Electric light companies” – meaning, electric companies and certain marketers and brokers of electricity – were first subject to the Chapter 5745 tax for their taxable year that included Jan. 1, 2002. The tax began to apply to local exchange telephone companies two years later, starting with the taxable year that included Jan. 1, 2004.

Before the enactment of Chapter 5745, only certain marketers and brokers of electricity – defined by the Revised Code as “an electric light company that is not an electric company” – were subject to traditional municipal income taxes. Such marketers and brokers of electricity may elect to be subject to the state-administered tax (Chapter 5745). Otherwise, they remain subject to any conventional municipal income tax levied by a municipality to which the entity has taxable nexus (Chapter 718). For details, see Special Provisions.

The municipal income tax for electric light companies and local exchange telephone companies generated \$8.8 million in revenue in fiscal year 2014 on returns filed for taxable year 2012, the last year for which such information is available. During calendar year 2013, the Ohio Department of Taxation distributed approximately \$8.9 million to municipalities.

Taxpayer

(Ohio Revised Code 5745.01)

Chapter 5745 taxpayers include:

- Electric companies engaged in the business of generating, transmitting, or distributing electricity within Ohio for use by others. This definition does not include rural electric companies (R.C. 5727.01(D)(3));
- Combined companies engaged in the activity of an electric company or rural electric company, and in the

activity of a heating company or a natural gas company, or any combination thereof (R.C. 5727.01(L));

- Certain marketers or brokers of electricity that meet the requirements and make the election set out in R.C. 5745.031; and
- Local exchange telephone companies primarily engaged in the business of providing local exchange telephone service, excluding cellular radio service, in Ohio (R.C. 5727.01(D) (2)).

Tax Base

(R.C. 5745.01 and 5745.02)

The “starting point” for Chapter 5745 municipal income taxpayers is federal taxable income. After making certain adjustments to federal taxable income (described below), the taxpayer computes Ohio net income by multiplying the taxpayer’s adjusted federal taxable income by the taxpayer’s Ohio apportionment ratio. Then, municipal income is computed for each municipality that has enacted an income tax and to which the company has taxable nexus by multiplying Ohio net income by the taxpayer’s apportionment ratio for that municipality. Finally, municipal income tax liability is determined by multiplying the income apportioned to each municipality by the municipality’s income tax rate.

Ohio Apportionment Ratio (R.C. 5745.02)

The Chapter 5745 Ohio apportionment ratio is calculated in a manner similar to how the Ohio corporation franchise tax apportionment ratio was calculated. However, unlike the franchise tax property, payroll and sales factors, the Chapter 5745 factors are equally weighted.

Municipal Apportionment Ratio (R.C. 5745.02)

For purposes of determining the taxpayer’s apportionment ratio for each municipality, the taxpayer’s property, payroll and sales are generally situated consistent with the franchise tax siting provisions. However, for purposes of the municipal payroll factor, compensation is situated based upon the amount of compensation that is earned in the municipality for services performed for the taxpayer by the taxpayer’s employees and that is subject to income tax withholding by the municipality.

Taxable Year (R.C. 5745.01)

A taxpayer’s taxable year is the same as the taxpayer’s taxable year for federal income tax purposes, regardless of when during the taxable year the taxpayer first entered

Ohio as a taxpayer and regardless of when during the taxable year the municipal income taxpayer first became subject to the Chapter 5745 tax in a particular municipality.

Adjustments to Federal Taxable Income (R.C. 5745.01)

Net intangible income (R.C. 5745.01(G)(1) and (G)(2)) – Taxpayers may deduct intangible income as defined in R.C. 718.01, adding back expenses incurred in the production of such intangible income. Intangible income is generally not part of the municipal income tax base under R.C. 718.01(H)(3).

Book-tax difference – Both electric companies and telephone companies must compute a book-tax difference adjustment which is either added to or subtracted from federal taxable income. For details, see the Ohio Municipal Income Tax Instructions for Electric Light Companies and Local Exchange Telephone Companies on the department's Web site, www.tax.ohio.gov.

Tax Rates

(R.C. 5745.03)

Tax rates are the rates levied locally by each city or village that imposes a municipal income tax. The rate that applies is the rate that was in effect as of Jan. 1 of the taxable year. If a taxpayer's taxable year is for a period of less than 12 months and does not include Jan. 1, then the rate that applies is the rate that was in effect on Jan. 1 of the preceding taxable year.

Credits

(R.C. 5745.06)

If the taxpayer has an interest in a pass-through entity that is also subject to and has paid the Chapter 5745 municipal income tax, then the taxpayer may claim a credit against its own Chapter 5745 liability. The credit equals the taxpayer's proportionate share of the tax due from, or paid by, the qualifying pass-through entity, whichever is less.

Special Provisions

(R.C. 5745.01, 5745.031, and 5745.02)

Taxpayer elections – An "electric light company that is not an electric company" may elect to be a taxpayer under Chapter 5745 if, during the company's most recently concluded taxable year, at least 50 percent of the company's total sales in Ohio, as determined under R.C. 5733.059, consist of sales of electricity and other energy commodities. The election is effective for five consecutive taxable years and, once made, is irrevocable for those five years. An "electric light company that is not an electric company" that does not make this election remains subject to the conventional municipal income tax as enacted by the municipalities with which the entity has taxable nexus (Chapter 718).

Qualified subchapter S subsidiaries – If an electric com-

pany or a telephone company is a qualified subchapter S subsidiary as defined in Internal Revenue Code (I.R.C.) section 1361 or a disregarded entity, the company's parent S corporation or owner is the taxpayer for the purposes of the municipal income tax.

Combined companies (R.C. 1701.18(F)(6)) – If the taxpayer is a "combined company," it must adjust the numerator of its municipal property, payroll, and sales factors (but not the numerator of its Ohio property, payroll, and sales factors) to include only the company's activity as an electric company. This is so because only a combined company's income from its activity as an electric company is subject to taxation by a municipal corporation.

Alternative apportionment methods – If the standard provisions for apportioning adjusted federal taxable income to Ohio or for apportioning Ohio net income to an Ohio municipality do not fairly represent the extent of a taxpayer's business activity in Ohio or Ohio's municipalities, the taxpayer may request, or the Tax Commissioner may require, that the taxpayer's adjusted federal taxable income or Ohio net income be determined by an alternative method, including any of the alternative methods set out in R.C. 5733.05(B)(2)(d).

Municipality cannot require tax return (R.C. 5745.03(E), R.C. 718.02) – A municipality that has enacted a Chapter 718 municipal income tax cannot require a Chapter 5745 municipal income taxpayer to file a Chapter 718 municipal income tax return for that municipality. The Chapter 718 municipal income tax does not apply to taxpayers that are required to file Chapter 5745 municipal income tax. However, to the extent necessary for a municipality to compute a taxpayer's property, payroll, and sales factors for that municipality, the municipality may require the taxpayer to report to the municipality the value of the taxpayer's real and tangible personal property situated in the municipality, the taxpayer's compensation paid to its employees in the municipality, and the taxpayer's sales made in the municipality.

Filing and Payment Dates

(R.C. 5745.03 and 5745.04)

Estimated payment requirements

For each taxable year, each taxpayer must file a declaration of estimated tax report and make payment as follows:

- Not later than the 15th day of the fourth month after the end of the preceding taxable year, the taxpayer must pay at least 25 percent of the combined tax liability for the preceding taxable year, or 20 percent of the combined tax liability for the current taxable year.
- Not later than the 15th day of the sixth month after the end of the preceding taxable year, the taxpayer must pay at least 50 percent of the combined tax liability for the preceding taxable year, or 40 percent of the combined tax liability for the current taxable year.
- Not later than the 15th day of the ninth month after the

end of the preceding taxable year, the taxpayer must pay at least 75 percent of the combined tax liability for the preceding taxable year, or 60 percent of the combined tax liability for the current taxable year.

- Not later than the 15th day of the 12th month after the end of the preceding taxable year, the taxpayer must pay at least 100 percent of the combined tax liability for the preceding taxable year, or 80 percent of the combined tax liability for the current taxable year. The term “combined tax liability” means the total of the taxpayer’s income tax liabilities to all Ohio municipalities for a taxable year.

Returns and extensions

(R.C. 5745.03)

Returns are due by the 15th day of the fourth month following the end of the taxpayer’s taxable year. An extension will be granted if, by that date, the taxpayer filed with the Tax Commissioner a copy of the taxpayer’s federal extension. The granting of an extension does not extend the last day for paying taxes without penalty unless the Tax Commissioner extends the payment date.

Payment by electronic funds transfer

(R.C. 5745.041)

If any remittance of estimated Chapter 5745 municipal income tax is for \$1,000 or more, or the amount payable with the report exceeds \$1,000, the taxpayer must make the remittance by electronic funds transfer (EFT).

Disposition of Revenue

(R.C. 5745.05)

Revenue from the Municipal Income Tax Fund is distributed to municipal corporations quarterly, by the first day of March, June, September, and December. The Department of Taxation certifies the amount distributed to each municipality and, to defray the costs of administering the tax, receives 1.5% of collections.

Administration

(R.C. 5745.15)

The municipal income tax for electric light companies and local exchange telephone companies is administered and enforced by the Department of Taxation, rather than by the various Ohio municipalities that levy a municipal income tax.

Ohio Revised Code Citations

Chapters 5745, 113, 718, 4928, 5703, 5727, and 5733.

Recent Legislation

House Bill 59, 130th General Assembly, Interest on Assessments

H.B. 59 changed the calculation of interest on assess-

ments in R.C. 5745.12(C).

House Bill 58, 129th General Assembly, (Internal Revenue Code (I.R.C.) conformity)

The bill amended the definition of “Internal Revenue Code as amended” found in R.C. 5701.11, thereby adopting the I.R.C. amendments enacted by Congress from December 15, 2010 (the effective date of H.B. 495’s amendment to R.C. 11) through March 7, 2011 (the effective date of H.B. 58’s amendment of R.C. 5701.11).

Senate Bill 28, 130th General Assembly, (Internal Revenue Code (I.R.C.) conformity)

The bill amended the definition of “Internal Revenue Code as amended” found in R.C. 5701.11, thereby adopting the I.R.C. amendments enacted by Congress from Dec. 20, 2012 (the effective date of H.B. 472’s amendment to R.C. 5701.11) through March 22, 2013 (the effective date of S.B. 28’s amendment of R.C. 5701.11). The bill incorporated into Ohio’s tax laws all Internal Revenue Code changes made between Dec. 20, 2012 and March 22, 2013.

History of Major Changes

2000	House Bill 483 creates a uniform municipal income tax for electric light companies in Chapter 5745 effective Jan. 1, 2002. Later that year, Senate Bill 287 clarifies uniform procedures for computing and apportioning municipal taxable income.
2003	House Bill 95 places local exchange telephone companies in the Chapter 5745 municipal income tax for taxable years beginning on or after Jan. 1, 2004.
2007	Ohio Revised Code section 5745.13 is amended to clarify that the Department of Taxation is required to notify a municipality of the department’s adjustment to a particular taxpayer’s tax for that municipality only if the adjustment increases or decreases the taxpayer’s tax for that municipality for the taxable year by more than \$500.

Comparisons with Other States

(as of July 1, 2014)

No comparison state levies a similar tax.

Table 1

Revenue from Municipal Income Tax for Electric Light & Telephone Companies for Fiscal Years 2010 - 2014 (figures in millions)			
Fiscal Year	Municipal Income Tax	Municipal Income Tax Administration Fund	Total
2010	\$19.0	\$0.3	\$19.3
2011	23.9	0.3	24.2
2012	10.7	0.1	10.8
2013	9.9	<0.1	9.9
2014	8.7	0.1	8.8

Source: Office of Budget and Management & OAKS Financial Reports

Table 2

Distributions to Local Governments of Municipal Income Tax for Electric Light & Telephone Companies for Calendar Years 2009 - 2013 (figures in millions)	
Calendar Year	Total Distributions
2009	\$24.4
2010	19.3
2011	22.0
2012	10.1
2013	8.9

Source: Ohio Department of Taxation