

**Draft of Rule 5703-29-10 - Nonprofit organizations and contributions.**

(A) Division ~~(A)~~(E)(12) of section 5751.01 of the Revised Code defines “~~person~~” “excluded person” to include a “nonprofit organization” for purposes of the commercial activity tax. ~~The definition excludes nonprofit organizations.~~ This rule defines a “nonprofit organization.”

(B) Solely for purposes of the commercial activity tax, “nonprofit organization” means an entity that meets both of the following requirements:

(1) The entity is organized other than for the pecuniary gain or profit of, and the entity’s net earnings or any part of them are not distributable to, the entity’s members, directors, officers, or other private persons, unless otherwise permitted by law. The payment of reasonable compensation for services rendered and the distribution of assets on dissolution as permitted by the laws under which the entity is organized is not pecuniary gain or profit or distribution of net earnings. If all of the entity’s members are nonprofit organizations, distribution to its members does not deprive the entity of the status of a nonprofit organization.

(2) The entity is operating consistent with its organization.

(C) Nonprofit organizations include, by way of example, but are not limited to, those entities organized under the nonprofit provisions in Chapter 1702., 1707., 1711., 1713., 1715., 1716., 1717., 1719., 1721., 1724., 1725., 1727., ~~1729.~~, or 1733. of the Revised Code or similar nonprofit provisions of other jurisdictions.

(1) Rural electric companies and telephone cooperatives are deemed to be nonprofit organizations under Chapter 1702. or 1729. of the Revised Code for purposes of the commercial activity tax.

(2) Organizations formed for the purpose of funding political campaigns are deemed to be nonprofit organizations for purposes of the commercial activity tax. These organizations include those authorized under federal law, and certain entities receiving contributions that are defined in Chapter 3517. of the Revised Code or under comparable laws of other states. These entities would include a campaign committee, a continuing association, a political action committee, a legislative campaign fund, and a political committee.

(3) A charitable lead trust is deemed to be nonprofit organization during the lifetime of the grantor. Upon the death of the grantor, the charitable lead trust will no longer be deemed to be a nonprofit organization.

(4) A limited liability company (“LLC”) meeting the requirements of paragraph (B) of this rule is deemed to be a nonprofit organization. For purposes of the commercial activity tax, a single member LLC is separate and distinct from its owner. Therefore, in order for it to be considered a nonprofit organization, it must meet the requirements of

paragraph (B) of this rule separate and apart from its owner. For example, if a nonprofit organization is the owner of a single member LLC and that LLC does not meet the requirements of paragraph (B) of this rule, the LLC does not qualify as a nonprofit organization.

(5) A cooperative meeting the requirements of paragraph (B) of this rule is deemed to be a nonprofit organization if such cooperative is also organized as a nonprofit entity either under Ohio law or under the law of another jurisdiction. Therefore, a cooperative organized for-profit or under a general corporation law will not meet the definition of a “nonprofit organization.”

(D) Receipts of certain contributions and fees are excluded under divisions (F)(2)(f) and (F)(2)(j) of section 5751.01 of the Revised Code regardless of whether the person is a nonprofit organization. To exclude contributions under division (F)(2)(f) of section 5751.01 of the Revised Code, the contributions must be received by persons described in section 501(c), 501(d), or 401(a) of the “Internal Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C.A. 1, as amended. For example, certain pension plans may not qualify as nonprofit organizations. While the contributions and fees made to those pension plans would be exempt from the commercial activity tax, gross receipts from the business operations of those pension plans may be taxable gross receipts.