Ohio Municipal Income Tax Instructions for Electric Light Companies and Local Exchange Telephone Companies for the Taxable Year Beginning in 2016 Ohio Revised Code Chapter 5745

Legislation Enacted in 2015 Affecting the Chapter 5745 Municipal Income Tax

During calendar year 2015 the Ohio General Assembly enacted no significant legislation affecting the municipal income tax.

General Instructions

Unless otherwise stated, all references are to the Ohio Revised Code (R.C.).

By the authority granted the tax commissioner in R.C 5745.03(D), **the tax commissioner requires that Chapter 5745 municipal income taxpayers file their tax returns in electronic format.** To download the municipal tax form and instructions and to register on-line to electronically file your municipal tax return, go to tax.ohio.gov. At the top under the "Business" link, click on "Ohio Taxes" and scroll down to the "Business Taxes" section. Select "Income - Municipal Income Tax for Electric Light Companies and Telephone Companies." Please read the electronic forms instructions and complete the identification sheet in its entirety.

If any payment of tax or estimated tax is expected to equal or exceed $1,000, the taxpayer must pay by electronic funds transfer (EFT). Taxpayers must register for electronic funds transfer (EFT) with the Ohio Treasurer of State by calling toll free 1-877-EFT-Ohio (338-6446). Please direct your questions regarding the EFT payment program to the Ohio Treasurer of State's office at 30 East Broad Street, 9th floor, Columbus, Ohio 43266-0421 or telephone that office toll-free at 1-877-338-6446. Please direct questions regarding your Chapter 5745 municipal income tax filing requirements to the Ohio Department of Taxation by calling 1-888-405-4039.

These Chapter 5745 municipal income tax instructions and the accompanying municipal income tax return and estimated payment forms apply to the taxpayer's taxable year that begins in 2016. Throughout these instructions we have assumed that all Chapter 5745 taxpayers have a calendar year end. If the taxpayer's federal taxable year is other than a calendar year, please notify the Ohio Department of Taxation by calling 1-888-405-4039.

Tax administration and fee. The Chapter 5745 municipal income tax is administered and enforced by the Ohio Department of Taxation rather than by the various Ohio municipalities that have enacted an income tax. To defray the tax commissioner's expense of administering this tax, the Ohio Department of Taxation receives a fee equal to 1.5% of the tax remitted. R.C. 5745.03(A).

Entities subject to the tax. The Chapter 5745 municipal income tax applies only to the following taxpayer companies:

- **electric light companies and**
- **local exchange telephone companies.**

Taxpayer. An electric light company or a telephone company is a "taxpayer" within the meaning of Chapter 5745 if pursuant to Chapter 5745 the electric light company or telephone company is subject to taxation by any Ohio municipality for the taxable year. An electric light company or a telephone company is subject to the Chapter 5745 municipal income tax in each Ohio municipality that has enacted an income tax and in which the company has property, payroll or sales during the taxable year. An "electric light company that is not an electric company" is a taxpayer within the meaning of Chapter 5745 only if the company has taxable nexus and elects to be a Chapter 5745 taxpayer (see below).

Companies other than electric light companies and local exchange telephone companies having taxable nexus with an Ohio municipality that has enacted an income tax must file and pay municipal income tax in accordance with R.C. Chapter 718 and the ordinances and regulations of each such municipality with which the company has nexus.

Electric light company. The term "electric light company" as used in these instructions includes "electric companies," "combined companies," and certain electing marketers and brokers of electricity (the statute refers to a marketer or broker of electricity as "an electric light company that is not an electric company").

- **Electric company.** A person is an "electric company" when engaged in the business of generating, transmitting or distributing electricity within Ohio for use by others, but excludes a rural electric company. "Rural electric company" means any nonprofit corporation, organization, association, or cooperative engaged in the business of supplying electricity to its members or persons owning an interest therein in an area the major portion of which is rural. R.C. 5727.01(C) and (D)(3).
- **Combined company.** The term "combined company" means any person engaged in the activity of an electric company or rural electric company that is also engaged in the activity of a heating company or a natural gas company, or any combination thereof. R.C. 5727.01(L). The term "combined company" is not to be confused with a member of a "combined return" (see page 3 of these instructions).
- **Electric light company that is not an electric company.** A marketer or broker of electricity that meets certain requirements can elect to be a Chapter 5745 taxpayer. See below.

Taxpayer election for an "electric light company that is not an electric company." A marketer or broker of electricity can elect to be a Chapter 5745 taxpayer if during the company's most recently concluded taxable year at least 50% 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 company must make the election in writing to the tax commissioner before the first day of the first taxable year to which the election applies. The

election is effective for five consecutive taxable years and, once made, is irrevocable for those five taxable years.

The first taxable year for which the election applied was the company's taxable year that included Dec. 31, 2002 (see section 7 of Senate Bill 287, 123rd General Assembly). Unlike an "electric company," an "electric light company that is not an electric company" was not exempt from municipal income tax for taxable years prior to the taxable year that includes Dec. 31, 2002.

An "electric light company that is not an electric company" that does not meet the requirements to make the election or that meets the requirements but does not make a timely election is subject to the filing and payment requirements of each municipality that has enacted an income tax and in which the company has taxable nexus. See R.C. 5745.031 and section 7 of Senate Bill 287, 123rd General Assembly.

Electric companies were first subject to the Chapter 5745 municipal income tax reporting and payment requirements for the taxable year that includes Jan. 1, 2002. For taxable years prior to the taxable year that includes Jan. 1, 2002, electric companies were exempt from municipal income tax.

Adjustments for a combined company. If the taxpayer is a combined company (that is, the taxpayer is engaged in the activity of an electric company or rural electric company and also engaged in the activity of a heating company or a natural gas company or any combination thereof), the taxpayer must adjust the numerator of its municipal property, payroll and sales factors (but not the numerator of its Chapter 5745 Ohio property, payroll and sales factors) to include only the company's activity as an electric company. See "Schedule 3 - Municipal Apportionment Ratio" on page 9 of these instructions. This adjustment is appropriate because only the income from the company's activity as an electric company is subject to taxation by a municipal corporation. The term "combined company" is not to be confused with a member of a "combined return." See page 3 of these instructions.

Telephone company. The term "telephone company," as defined in R.C. 5727.01 and used throughout these instructions, means any person "primarily engaged in the business of providing local exchange telephone service, excluding cellular radio service, in this state."

Telephone companies were first subject to the Chapter 5745 municipal income tax reporting and payment requirements for the taxable year that begins on or after Jan. 1, 2004. For taxable years beginning before Jan. 1, 2004, telephone companies were exempt from municipal income tax.

A municipality that has enacted an income tax may not require a Chapter 5745 municipal income taxpayer to file a municipal income tax return with that municipality. However, to the extent necessary for a municipality to compute a Chapter 5745 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. R.C. 5745.03(E).

Taxable year. A taxpayer's taxable year for Chapter 5745 municipal income tax purposes is the same as the taxpayer's taxable year for federal income tax purposes regardless of when during the taxable year the taxpayer first enters Ohio as a taxpayer and regardless of when during the taxable year the taxpayer first becomes subject to the Chapter 5745 municipal income tax in a particular municipality. Unlike the Ohio franchise tax concept and definition of taxable year, a taxpayer's Chapter 5745 taxable year for a particular municipality does not begin on the date that the taxpayer establishes taxable nexus with the municipality. So, if an electric light company or telephone company enters Ohio as a taxpayer for the first time after the beginning of its federal taxable year, the taxpayer's Chapter 5745 taxable year is nevertheless the taxpayer's entire federal taxable year. Similarly, if a taxpayer already subject to the Chapter 5745 municipal income tax in some Ohio municipalities first becomes subject to the municipal income tax in another Ohio municipality sometime after the beginning of its federal taxable year, the taxpayer's taxable year with respect to the other municipality is nevertheless the taxpayer's entire federal taxable year.

Qualified subchapter S subsidiaries and disregarded entities. If an electric light company or telephone company is a disregarded entity or a qualified subchapter S subsidiary as defined in section 1361 of the Internal Revenue Code, the company's parent S corporation or owner is the taxpayer for the purposes of the Chapter 5745 municipal income tax. R.C. 5745.01(C).

Tax payment by electronic funds transfer (EFT). If any remittance of estimated Chapter 5745 municipal income tax is $1,000 or more, or if the amount payable with the return is $1,000 or more, the taxpayer must pay by EFT. See R.C. 5745.03(E), 5745.04(E) and 5745.041. Please direct questions regarding the EFT payment program to the Ohio Treasurer of State's office at 30 East Broad Street, 9th floor, Columbus, Ohio 43266-0421 or telephone that office toll-free at 1-877-EFT-Ohio (338-6446).

Tax payment not by EFT. If the taxpayer is not required to pay by EFT, please make the remittance payable to "Ohio Treasurer State" and send to:

Ohio Department of Taxation
Business Tax Division
Municipal Income Tax Section
P.O. Box 182857
Columbus, OH 43218-2857

Tax rate. The tax rate used in computing the tax for each municipality is the tax rate in effect for that municipality on the first day of January of the taxable year. If the taxpayer's taxable year is for a period less than 12 months and that taxable year does not include the first day of January, the tax rate used in determining the tax payable to each municipality is the tax rate in effect for each municipality on

the first day of January in the preceding taxable year. R.C. 5745.03(F).

Municipality must certify the tax rate to the tax commissioner. On or before the 31st day of January each year, each municipality imposing a tax on income must certify to the tax commissioner the income tax rate in effect on the first day of January of that year. If a municipality fails to certify its tax rate, the director of budget and management will withhold from each payment made to the municipality 50% of the amount of the payment otherwise due as computed on the basis of the tax rate most recently certified. The director must withhold such payment until the municipality certifies the tax rate in effect on the first day of January of that year. R.C. 5745.03(F).

Estimated payment requirements for the taxable year beginning in 2016. As used below, the term "combined tax liability" means the total of the taxpayer's income tax liabilities to all Ohio municipalities for a taxable year.

Each Chapter 5745 taxpayer must file a declaration of estimated tax return with, and must send estimated taxes to, the tax commissioner made payable to the Ohio Treasurer of State for the current taxable year as follows:

1. 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% of the combined tax liability for the preceding taxable year or 20% of the combined tax liability for the current taxable year.
2. 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% of the combined tax liability for the preceding taxable year or 40% of the combined tax liability for the current taxable year.
3. 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% of the combined tax liability for the preceding taxable year or 60% of the combined tax liability for the current taxable year.
4. 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% of the combined tax liability for the preceding taxable year or 80% of the combined tax liability for the current taxable year.

For the first taxable year a taxpayer is subject to Chapter 5745 municipal income tax the taxpayer's required estimated tax remittances are based solely on the current taxable year and not on the liability for the preceding taxable year. R.C. 5745.04(B).

On Ohio form Muni-ES please insert an "X" in the cell indicating the quarter for which the taxpayer is making the estimated payment. As noted earlier, if the taxpayer requested an extension for filing its federal income tax return and by the 15th day of the fourth month following the end of the taxable year the taxpayer submitted a copy of the federal extension to the tax commissioner, then the due date of the municipal income tax return is extended to the 15th day of the month following the due date of the taxpayer's federal income tax return. Nevertheless, **an extension to file the final return is not an extension for payment.** So, if after having made the four estimated tax payments the taxpayer has not paid all of the municipal income tax required and the taxpayer will not file its annual municipal income tax return by the 15th day of the fourth month following the end of the taxable year, then **by the 15th day of the fourth month following the end of the taxable year the taxpayer must pay the remaining amount** with the Ohio form Muni-ES "extension" and submit a copy of the taxpayer's federal extension.

The taxpayer must indicate on each estimated return (Ohio form Muni-ES) the portion of the remittance that is payable to each municipality based on the taxpayer's estimated Ohio net income apportioned to each municipality and the municipality's tax rate. As noted earlier, if any payment of estimated taxes (that is, the combined total of the taxpayer's remittance to all municipal corporations) is $1,000 or more, the taxpayer must make the payment by EFT as prescribed by R.C. 5745.04.

In computing your 2016 estimated municipal income tax liability and estimated payments please follow the line instructions beginning on page 7. In addition, note the following:

- A taxpayer may not deduct municipal NOLs carried forward from taxable years in which the taxpayer was not subject to Chapter 5745 municipal income tax.
- For each Ohio municipality for which the taxpayer's Chapter 5745 municipal income tax for the taxable year that began in 2015 was less than the taxpayer's 2015 payments the taxpayer may reduce its 2016 estimated payment otherwise due by the overpayment carried forward from 2015 (to the extent that the 2015 overpayment was not refunded). **Note: The overpayment for a particular municipality shown on the taxpayer's Chapter 5745 originally filed return will generally not be refunded.** For additional information, see "Overpayment shown on original return" on page 5 of these instructions.

Combined returns. The tax commissioner may adopt rules providing for combining the adjusted federal taxable incomes of taxpayers satisfying the ownership or control requirements of R.C. 5733.052 if the tax commissioner finds that such combinations are necessary to properly reflect adjusted federal taxable income, Ohio net income, or the portion of Ohio net income taxable by municipalities. However, taxpayers satisfying the ownership or control requirements of R.C. 5733.052 may not combine their adjusted federal taxable incomes for the purposes of the Chapter 5745 municipal income tax unless the tax commissioner adopts such rules[1] or the tax commissioner finds that such a combination is necessary to properly reflect the taxpayers' adjusted federal taxable income, Ohio net income, or the portion of Ohio net income subject to taxation within a municipality. R.C. 5745.02(F).

[1] To date, the tax commissioner has not adopted any such rules.

Due date of return with/without extension. Without an extension, a taxpayer's annual Chapter 5745 municipal income tax return is due by the 15th day of the fourth month following the end of the taxpayer's taxable year. The due date of the annual municipal income tax return is extended to the 15th day of the month following the due date of the taxpayer's federal income tax return if by the 15th day of the fourth month following the end of its taxable year the taxpayer filed with the tax commissioner a copy of the taxpayer's federal extension. So, if a Chapter 5745 taxpayer has a calendar year end, its 2016 Chapter 5745 municipal income tax return without extension is due by April 17, 2017, and if by April 17, 2017 the taxpayer filed with the tax commissioner a copy of its federal extension, the due date of the annual municipal return is extended to Oct. 15, 2017.

Taxpayers requesting an extension to file their Chapter 5745 municipal income tax return must send a copy of their federal extension to the following address:

Ohio Department of Taxation
Business Tax Division
Municipal Income Tax Section
P.O. Box 182857
Columbus, OH 43218-2857

If the taxpayer requested an extension for filing its federal income tax return and by April 17, 2017 the taxpayer filed a copy of that extension with the tax commissioner, please insert an "X" in the cell at the top of the form labeled "extension" and file the return by the extended due date.

The granting of an extension does not extend the last day for paying taxes without penalty unless the tax commissioner extends the payment date. So, if the taxpayer does not file its Chapter 5745 municipal income tax return by the 15th day of the fourth month following the end of its taxable year, it must nevertheless pay any remaining tax due by that date. Please complete the electronic form titled "Payment Submitted with the Extension of Time to File." R.C. 5745.03(B).

Interest on underpayments and refunds. If the Chapter 5745 tax or any portion of that tax is not paid on or before the date prescribed for its payment, interest will be assessed, collected and paid in the same manner as the tax upon such unpaid amount at the rate per annum prescribed by R.C. 5703.47 from the date prescribed for its payment until it is paid or until the day an assessment is issued under R.C. 5745.12, whichever occurs first. The interest rate on underpayments is the same as the interest rate on amounts refunded. **During calendar year 2016 interest on both underpayments and refunds accrues at the rate of 3% per annum** (based on the rounded federal short term rate of 0% plus the additional 3% prescribed by R.C. 5703.47(B)).

Penalties for late payment, failure to file, or late filing.

- Penalty may be imposed for failure to <u>timely pay</u> the tax (including estimated tax). The penalty imposed may not exceed twice the interest charged.
- Penalty may be imposed for failure to file or <u>timely file</u> a return. The penalty imposed may not exceed the greater of (i) $50 per month up to $500 or (ii) 5% per month of the tax due shown on the return up to 50% of the tax required to be shown on the return.
- Additional penalties may be imposed for filing a frivolous or fraudulent return and for filing a fraudulent refund claim. R.C. 5745.08.

Reporting federal changes. If amendments or adjustments to the taxpayer's federal income tax return by the taxpayer or by the Internal Revenue Service affect the taxpayer's Chapter 5745 municipal income tax liability, the taxpayer must report such change to the Ohio Department of Taxation in the form of an amended municipal income tax return by the earliest of the following dates:

- One year after final determination of the adjustment for federal income tax purposes;
- One year after the taxpayer paid the additional federal income tax as a result of the adjustment (whether or not the adjustment was agreed to); or
- One year after the taxpayer received a federal income tax refund as a result of the adjustment.

This provision applies even if the three-year statute of limitations has passed and applies to amended returns that reflect overpayments as well as to amended returns that reflect underpayments. If the amended return reflects an underpayment, the amended return must be accompanied by payment of any additional tax and interest. If the amended return reflects an overpayment, the amended return must be accompanied by a statement that sets forth the full and complete reason for the overpayment. See *Abitibi-Price Corporation and Subsidiaries v. Tracy*, BTA No. 98-N-401 (3-12-01).

Note: When filing an <u>amended</u> municipal income tax return please insert an "X" in the amended return cell on line 5 of the annual return and show as a <u>fourth quarter</u> estimated payment for each municipality the sum of (1) the fourth quarter estimated payment actually made for the municipality and (2) any payment submitted with the original return for that municipality.

Disclosure of tax information to municipalities. Administrative rule 5703-27-01 – "Providing Municipal Income Tax Information" governs tax return information that the tax commissioner can share with the municipalities in which the taxpayer is subject to tax and the terms and conditions under which the tax commissioner can share that information. The rule prohibits disclosure of taxpayer returns or information to any person other than a properly authorized officer, employee or agent of a municipality. Furthermore, the only taxpayer information that the tax commissioner can share with a municipality is that information necessary for the properly authorized officers, employees or agents of the municipality to ascertain the municipality's share of a taxpayer's net income to be apportioned to that municipality.

Net operating loss carryforward. For each taxable year in which the taxpayer has negative Ohio net income the tax-

payer's net operating loss (NOL) for each municipality is determined in the same manner as positive Ohio net income would have been apportioned to the municipality. The NOL for each municipality may be carried forward and applied to subsequent net income in that municipality to reduce that income to zero or until the NOL has been fully used as a deduction. The NOL apportioned to a municipality in any taxable year may be applied against the income apportioned to that municipality for five taxable years following the loss year after which time the unused portion of any remaining NOL expires. R.C. 5745.02(C).

Note: Chapter 5745 taxpayers are subject to the NOL provisions of Chapter 5745. Chapter 5745 taxpayers are not subject to the NOL ordinances enacted by the municipalities in which the taxpayer has taxable nexus. So, the Chapter 5745 net operating loss carryforward provisions apply to Chapter 5745 taxpayers even if the municipal income tax ordinances of a particular municipality bar net operating loss carryforwards for general taxpayers.

A taxpayer may carry forward its Chapter 5745 municipal NOLs to a later year only if the taxpayer was subject to the Chapter 5745 municipal income tax for the year in which the loss was generated. As such, the following municipal NOL carryforward limitations apply:

- If the taxpayer is an electric company, its NOLs generated in taxable years ending before Jan. 1, 2002 may not be carried forward and deducted because electric companies were not subject to Chapter 5745 municipal income tax for taxable years ending before 2002.
- If the taxpayer is an electric light company that is not an electric company, its NOLs generated in taxable years before the taxable year that includes Dec. 31, 2002 and before the first taxable year to which the taxpayer's Chapter 5745 election applies may not be carried forward and deducted. The first taxable year for which an electric light company that is not an electric company can elect to be a Chapter 5745 taxpayer is the taxable year that includes Dec. 31, 2002 (see section 7 of Senate Bill 287, 123rd General Assembly).
- If the taxpayer is a telephone company, it may not carry forward and deduct NOLs generated in taxable years beginning before Jan. 1, 2004 because telephone companies were not subject to Chapter 5745 municipal income tax for taxable years ending before 2004. Furthermore, in determining its NOL carried forward from the taxable year ending in 2004 a telephone company must multiply the loss by 50%. R.C. 5745.01(C)(2).
- If a municipality had not enacted an income tax for the year in which the taxpayer sustained the loss, then upon the municipality's subsequent enactment of an income tax the taxpayer cannot deduct the loss sustained during the earlier year in that municipality.

Overpayment shown on original return. An overpayment to a particular municipality shown on the taxpayer's originally filed return will generally not be refunded. Instead, for each municipality for which the originally filed municipal income tax return reflects an overpayment, the taxpayer may claim an overpayment carryforward for that municipality on the taxpayer's municipal income tax return for the following year.

However, if, upon written request of the taxpayer, the tax commissioner determines that the taxpayer's overpayment to a municipality is likely to exceed the taxpayer's estimated taxes payable to that municipality during the ensuing 12 months, the tax commissioner will notify the municipality that the municipality must refund the overpayment within ninety days after receiving such notice.

If the tax commissioner finds that a refund is appropriate, then included in the amount that the municipality must refund the taxpayer is the Department of Taxation's 1.5% administrative fee relating to the overpayment. (As noted on page 1 of these instructions, to defray the expenses of administering this tax the tax commissioner receives a fee equal to 1.5% of the tax remitted.) The department will reimburse the municipality for the department's administrative fee that the municipality refunded the taxpayer not later than the first day of March, June, September or December immediately following the Department of Taxation's issuance of the notice to the municipality. The department will make the reimbursement through the Director of Budget and Management.

Interest accrues on the overpayment and is payable at the rate per annum prescribed by R.C. 5703.47 from the 91st day after the municipality receives the notice until the day the municipality refunds the overpayment. See R.C. 5745.05.

Refund applications. A taxpayer requesting a refund of an overpayment not shown on the originally filed municipal income tax return must file an amended return accompanied by the full and complete reason for the refund claim within three years after the date of the illegal, erroneous or excessive payment of the tax. See *Abitibi-Price Corporation and Subsidiaries v. Tracy*, BTA No. 98-N-401 (3-12-01). For purposes of this three-year period, estimated payments made before the due date or extended due date for filing the return to which the payment relates are deemed to have been made on the due date or extended due date of the return. However, if by written agreement the tax commissioner and the taxpayer have extended the three-year assessment statute of limitations, then the refund statute of limitations is extended to the same date.

Note: When filing an amended municipal income tax return please insert an "X" in the amended return cell on line 5 of the annual return and show as a fourth quarter estimated payment for each municipality the sum of (1) the fourth quarter estimated payment actually made for the municipality and (2) any payment submitted with the original return for that municipality.

Upon receipt of a taxpayer's amended return reflecting an overpayment, the tax commissioner will determine the taxpayer's refund for each municipality. The commissioner will then certify the refund amount to each municipality for which the taxpayer is overpaid. Within 90 days after receiv-

ing such notice, the municipality is to refund to the taxpayer the taxpayer's entire overpayment with respect to that municipality.

Included in the amount that the municipality must refund the taxpayer is the Department of Taxation's 1.5% administrative fee relating to the overpayment. (As noted on page 1 of these instructions, to defray the expenses of administering this tax the tax commissioner receives a fee of 1.5% of the tax remitted.) The department is to reimburse the municipality for the department's administrative fee that the municipality refunded the taxpayer not later than the first day of March, June, September or December immediately following the Department of Taxation's issuance of the notice to the municipality. The department will make the reimbursement through the Director of Budget and Management.

Any portion of the refund not issued by the municipality within 90 days after the municipality receives the tax commissioner's notice bears interest at the rate per annum prescribed by R.C. 5703.47 from the 91st day after the municipality receives the notice until the day the municipality pays or credits the refund. Interest on an illegal or erroneous assessment is paid at the rate per annum prescribed by R.C. 5703.47 from the date the taxpayer pays the illegal or erroneous assessment until the day the municipality refunds the overpayment.

Upon the taxpayer's written request, the department will credit the amount of the refund against the taxpayer's estimated tax payments to the municipality for an ensuing taxable year.

Uniform application for refund procedure. R.C. 5703.70 establishes a uniform application for refund procedure applicable to Chapter 5745 municipal income tax and various other taxes that the tax commissioner administers. If a taxpayer properly files an application for refund (that is, an amended return showing an overpayment along with a complete explanation of the amendment) and the commissioner determines that the amount of the refund to which the applicant is entitled is less than the amount claimed, then the tax commissioner and the taxpayer must proceed as follows:

1. The commissioner must notify the applicant in writing by ordinary mail of the disallowed portion of the claimed refund.
2. The applicant has 60 days from the date the commissioner mails the notification to provide additional information to the commissioner and/or to request a hearing.
3. If the applicant neither requests a hearing nor provides additional information within the 60-day period described in #2, then (a) the commissioner will take no further action, (b) the refund denial becomes final and (c) the taxpayer may not appeal to the Board of Tax Appeals the tax commissioner's decision to deny all or a portion of the claimed overpayment.
4. If the applicant requests a hearing within the 60-day period described in #2, the commissioner must assign a time and place for a hearing. After the hearing, the commissioner may make such adjustments to the refund as the commissioner finds proper and must issue a final determination. The taxpayer may appeal the commissioner's final determination to the Board of Tax Appeals pursuant to R.C. 5717.02.
5. If the applicant does not request a hearing within the 60-day period described in #2 but does provide additional information within that period, then the commissioner (a) must review the information, (b) may make such adjustments to the refund as the commissioner finds proper and (c) must issue a final determination. The taxpayer may appeal the commissioner's final determination to the Board of Tax Appeals pursuant to R.C. 5717.02.

Assessment. The tax commissioner may issue an assessment against the taxpayer for any deficiency within three years after the later of the following dates:

- The final date the return subject to assessment was required to be filed, or
- The date the return was filed.

However, both the assessment statute of limitations and the refund statute of limitations may be extended for an agreed upon period if both the taxpayer and the tax commissioner consent in writing to the extension.

An amended Chapter 5745 municipal income tax return filed as a result of an adjustment to the taxpayer's federal income tax return is deemed a return subject to assessment. (See "Reporting federal changes" on page 4 of these instructions.) However, the amended return does not reopen those facts, figures, computations or attachments from a previously filed return no longer subject to assessment or refund that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return. Furthermore, once the three-year refund statute of limitations period has passed, the taxpayer may not offset the additional municipal income tax resulting from IRS audit adjustments against municipal income tax that the taxpayer erroneously overpaid due to errors or mistakes unrelated to the federal adjustments. See *Gen. Motors Corp. v. Limbach* (1993), 67 Ohio St. 3d 90.

The statute of limitations does not prohibit either the tax commissioner or the taxpayer from adjusting the NOL carried forward from a year closed to assessment or refund to a year still open to assessment or refund. See *Consumer Direct v. Limbach* (1991), 62 Ohio St. 3d 180.

If the taxpayer does not pay the assessment within sixty days of receipt of the assessment, interest accrues on the assessment at the rate prescribed in R.C. 5703.47 from the date the tax commissioner issued the assessment until the taxpayer pays the assessment.

Petition for reassessment. If the taxpayer disagrees with an assessment, the taxpayer may object to the assessment by filing a petition for reassessment. A taxpayer must file its petition within 60 days of receipt of the assessment. If the taxpayer sends the petition by certified mail or regular mail, the date of postmark is considered the date filed.

The petition must specify the items of the assessment objected to and the reasons for those objections. However, a taxpayer who has timely filed a petition for reassessment may raise additional written objections to the assessment at any time prior to the date of the tax commissioner's final determination. If a taxpayer fails to file the petition for reassessment within the 60-day period described above, the tax commissioner will dismiss the petition because the tax commissioner has no jurisdiction to consider a late-filed petition.

Uniform petition for reassessment procedure. R.C. 5703.60 establishes a uniform petition for reassessment procedure applicable to Chapter 5745 municipal income tax and various other taxes that the tax commissioner administers. If the taxpayer has properly filed a petition for reassessment, this law permits the tax commissioner, upon receipt of additional information from the taxpayer, to correct an assessment without issuing a final determination and without a hearing. In addition, the law permits the commissioner to correct an assessment even if the taxpayer did not properly file a petition for reassessment or did not file a petition for reassessment.

Municipalities may object to the tax commissioner's adjustments to municipal income. If the tax commissioner adjusts the taxpayer's income apportioned to a municipality, the tax commissioner must notify the taxpayer, and if the adjustment increases or decreases the taxpayer's tax to a particular municipality by more than $500, the commissioner must also notify the affected municipality. By filing a petition with the tax commissioner within 60 days after the tax commissioner issues the notice, any municipality so notified may request a review and redetermination of the taxpayer's federal taxable income, Ohio net income or Ohio net income apportioned to the municipality. The municipality must file the petition either personally or by certified mail and must indicate the municipality's objections to the adjustments.

Upon receipt of such a petition and if a municipality requests a hearing, the tax commissioner will assign a time and place for the hearing and notify the petitioner of the time and place by ordinary mail. The tax commissioner may (i) make any correction to the taxpayer's federal taxable income, Ohio net income or apportionment of Ohio net income that the commissioner finds proper and (ii) issue notice of any correction to the petitioner, to other municipalities affected by the correction and to the taxpayer. The tax commissioner's decision on the matter is final and is not subject to further appeal. R.C. 5745.13.

Retention and inspection of records. Each taxpayer is required to retain its records and documents related to its Chapter 5745 municipal income tax for a period of three years after the date the return was required to be filed or actually was filed, whichever is later. Each taxpayer must make its records, documents, returns and reports open to inspection by the tax commissioner during normal business hours. R.C. 5745.15.

Line Instructions

Schedule 1 – Ohio Net Income

Line 1 – Federal taxable income before NOL deduction and special deductions. Enter the taxpayer's federal taxable income before NOL deduction and special deductions as reported on the taxpayer's federal income tax return.

Note: If the taxpayer is a member of a consolidated federal income tax return, please compute the taxpayer's federal taxable income as if the taxpayer filed a separate federal return. The Department of Taxation maintains that the federal consolidation rules do not apply in determining federal taxable income for purposes of the Chapter 5745 municipal income tax.

Line 2 – Adjustment for amendments to the IRC. The purpose of this adjustment is to reverse the effects of Internal Revenue Code (IRC) amendments that the Ohio General Assembly has <u>not</u> yet adopted. IRC amendments do not automatically apply for Ohio tax purposes. Rather, each time the Ohio General Assembly amends R.C. 5701.11 the General Assembly adopts the version of the IRC existing on the effective date of that amendment, and that version of the IRC applies for Ohio tax purposes until the General Assembly subsequently adopts a more current version by amending R.C. 5701.11 once more. If Ohio were to automatically apply the federal amendments without adopting those changes (by amending R.C 5701.11), the Ohio General Assembly would unconstitutionally delegate its legislative authority to the U.S. Congress.

The adjustment can increase or decrease federal taxable income. That is, the adjustment can be either positive or negative. If negative, please show the number preceded by a minus sign. Please do not show a negative number in parenthesis as the program does not recognize parenthesis.

Because of a recent amendment to R.C. 5701.11 definition of "Internal Revenue Code as amended" there are no miscellaneous federal adjustments required to line 28 federal taxable income on this return. See Substitute Senate Bill 2, 131st General Assembly.

Line 4 – Net intangible income. Enter the taxpayer's intangible income as defined in R.C. 718.01 less expenses incurred in generating that income to the extent that the income and expenses are used in computing federal taxable income. R.C. 5745.01(G)(1) and (G)(2) and R.C. 718.01.

Line 6 – Book-tax difference.
Note: Because the Chapter 5745 municipal income tax (unlike the franchise tax) makes no distinction between business income and nonbusiness income, Chapter 5745 municipal income taxpayers must apportion the book-tax difference adjustment regardless of whether the assets to which the adjustment relates are nonbusiness assets. The book-tax difference, explained below, can be either a positive number or a negative number.

Book-tax difference for electric companies. The term "book-tax difference", as applied to the Chapter 5745 mu-

nicipal income tax for electric companies means the difference, if any, between (i) an asset's net book value shown on the taxpayer's books and records on Dec. 31, 2000, in accordance with generally accepted accounting principles, and (ii) such asset's adjusted basis on Dec. 31, 2000. See R.C. 5733.0510(A)(5).

By following the definitions and concepts set out in R.C. 5733.0510, determine the book-tax difference for each asset that the electric company (i) showed on its books on Dec. 31, 2000 and (ii) sold or otherwise disposed of in a taxable transaction during the taxable year beginning in 2016. If the net book-tax difference from all assets sold or disposed of in taxable transactions during the taxable year beginning in 2016 is a positive amount (that is, the assets' net book value on Dec. 31, 2000 is greater than the assets' adjusted basis), enter the book-tax difference on line 6 as a negative amount.

On the other hand, if the net book-tax difference from all assets sold or disposed of in taxable transactions during the taxable year beginning in 2016 is a negative amount (that is, the assets' net book value on Dec. 31, 2000 is less than the assets' adjusted basis), enter the book-tax difference on line 6 as a positive amount.

If the taxpayer is an "electric light company that is not an electric company," the book-tax difference adjustment does not apply.

Book-tax difference for telephone companies. The book tax difference adjustment for telephone companies is computed differently from the book-tax difference adjustment for electric companies. While the book-tax adjustment for electric companies is made only on the sale of qualifying assets, the telephone company adjustment is made regardless of whether or not the telephone company disposes of its assets. **The book-tax difference adjustment for telephone companies first applied to the company's taxable year ending in 2009.**

The term "book-tax difference," as applied to the Chapter 5745 municipal income tax for telephone companies, means the difference between (i) the net book value of all assets shown on a qualifying telephone company's books and records on Dec. 31, 2003, in accordance with generally accepted accounting principles, and (ii) the adjusted basis for all such assets on Dec. 31, 2003.

The R.C. 5745.01(G)(5) book-tax difference adjustment for telephone companies applies only if (i) the telephone company was subject to R.C. 5727.30 public utility tax for gross receipts received during the period from July 1, 2003 to June 30, 2004 and (ii) for tax years 2003 through 2006 the telephone company's property subject to taxation under Chapter 5727 of the Revised Code was assessed using the true value percentages provided for in R.C. 5727.111(B). (The term "tax year" as used here means the year for which property or gross receipts are subject to assessment under Chapter 5727. See R.C. 5733.0511(A)(5) and R.C. 5727.01(K).)

If the net book-tax difference is a positive amount (that is, the net book value of all the telephone company's assets as of Dec. 31, 2003 exceeded the federal adjusted basis of all the telephone company's assets on that date), then in each of the ten taxable years beginning with the taxable year ending in 2009 and ending with the taxable year ending in 2018 the telephone company must reduce net income by 1/10 of the book-tax difference. If the net book-tax difference is positive, enter on line 6 as a negative amount 1/10 of the book-tax difference.

On the other hand, if the book-tax difference is a negative amount (that is, the net book value of all the telephone company's assets as of Dec. 31, 2003 was less than the federal adjusted basis of all the telephone company's assets on that date), then in each of the ten taxable years beginning with the taxable year ending in 2009 and ending with the taxable year ending in 2018 the telephone company must increase net income by 1/10 of the book-tax difference. If the book-tax difference is negative, enter on line 6 as a positive amount 1/10 of the book-tax difference.

Schedule 2 – Ohio Apportionment Ratio
R.C. 5745.02(B)

The Chapter 5745 Ohio apportionment ratio and the Chapter 5745 municipal apportionment ratio are similar to the Chapter 5733 Ohio franchise tax apportionment ratio with the following exceptions.

- Unlike the franchise tax Ohio property, payroll and sales factors, the Chapter 5745 municipal income tax Ohio property, payroll and sales factors are equally weighted. In addition, if the denominator (total everywhere amount) of any factor is zero, the computer program for the Chapter 5745 municipal income tax return will compute the Ohio ratio by dividing the sum of the remaining factors by the lesser number of factors whose denominator is not zero.
- The numerator and denominator of the Chapter 5745 municipal income tax Ohio property factor include the following amounts whether or not such amounts are included (or would have been included were it not for the franchise tax phase-out) in the franchise tax property factor:
  - The original cost of property within Ohio with respect to which the State of Ohio has issued an Air Pollution, Noise Pollution or an Industrial Water Pollution Control Certificate.
  - The original cost of property with respect to which the state of Ohio has issued an exemption certificate for a coal gasification facility, coal conversion demonstration facility, energy conversion facility, solid waste energy conversion facility or thermal efficiency improvement facility.
  - The original cost of real property and tangible property (or in the case of property that the taxpayer is renting from others, eight times its net annual rental rate) within Ohio that is used exclusively during the taxable year for qualified research.

- The original cost of rental property owned by the taxpayer and leased to others.
- The original cost of qualifying improvements to land or tangible personal property in an enterprise zone for which the taxpayer holds a Tax Incentive Qualification Certificate issued by the Ohio Development Services Agency.

- Unlike the franchise tax Ohio payroll factor, the numerator and denominator of the Chapter 5745 municipal income tax Ohio payroll factor include compensation paid in Ohio to employees who are primarily engaged in qualified research and compensation paid in Ohio to employees at a certified coal gasification or coal conversion demonstration facility.
- Unlike the franchise tax Ohio payroll factor, the numerator of the Chapter 5745 municipal income tax Ohio payroll factor includes compensation paid in Ohio to certain specified new employees at an urban job and enterprise zone facility for which the taxpayer has received a Tax Incentive Qualification Certificate issued by the Ohio Development Services Agency.
- The numerator and denominator of the Chapter 5745 municipal income tax Ohio sales factor includes gross rents, royalties and technical assistance fees whether or not such amounts are excluded (or would have been excluded were it not for the franchise tax phase-out) from the Ohio franchise tax sales factor.
- Sales, other than sales of electricity and tangible personal property, are sitused based on the "cost of performance" standard. Unlike the franchise tax sales factor (after the sales factor was amended by House Bill 127, 125th Ohio General Assembly), the physical location where the purchaser ultimately uses or receives the benefit of that which was purchased is irrelevant for purposes of Chapter 5745.

Schedule 3 – Municipal Apportionment Ratio
R.C. 5745.02(C)

For each Ohio municipality that imposes a municipal income tax and in which the taxpayer has payroll, sales, or property (owned or rented), enter the taxpayer's payroll, sales and property applicable to that municipality. Payroll, sales and property are generally sitused to a particular municipality consistent with the exceptions noted in Schedule 2 above and the franchise tax situsing provisions. However, **for purposes of the municipal payroll factor, compensation is sitused based upon the amount of compensation that is (i) earned during the taxable year in the municipality by the taxpayer's employees for services performed for the taxpayer and (ii) subject to income tax withholding by the municipality.** In addition, for purposes of the municipal income tax sales factor, **sales of electricity directly to the consumer are considered sales of tangible personal property and thus sitused to the ultimate destination of the user.**

If the taxpayer is a "combined company," then adjust the numerator of each applicable municipal property, payroll and sales factor (but not the numerator of its Chapter 5745 Ohio property, payroll and sales factors) to include only the taxpayer's property, payroll and sales attributed to the company's activity as an electric company within that municipality. R.C. 5745.02(D). A "combined company" is defined as "any person engaged in the activity of an electric company or rural electric company that is also engaged in the activity of a heating company or a natural gas company, or any combination thereof. See page 1 of these instructions and R.C. 5727.01(L).

For each municipality the computer program will then compute the following:

- The taxpayer's property factor by dividing the taxpayer's property in that municipality by the taxpayer's Ohio property from Schedule 2, column (a), line 1(c);
- The taxpayer's payroll factor by dividing the taxpayer's payroll in that municipality by the taxpayer's Ohio payroll from Schedule 2, column (a), line 2;
- The taxpayer's sales factor by dividing the taxpayer's sales in that municipality by the taxpayer's Ohio sales from Schedule 2, column (a), line 3;
- The sum of the taxpayer's property, payroll and sales factors; and
- The taxpayer's apportionment ratio by dividing the sum of each municipality's property, payroll and sales factors by three. However, if the taxpayer's Ohio property, payroll or sales is zero, the program will compute the apportionment ratio for each municipality by dividing the sum by the lesser number of factors whose denominator is not zero. For example, if the taxpayer has no Ohio payroll, but does have Ohio property and Ohio sales, then the apportionment ratio for each municipality is determined by dividing the sum of the taxpayer's sales and property factors for that municipality by two (that is, the number of factors whose denominator is not zero).

The program will enter the apportionment ratio for each municipality on Schedule 3, column (l) and on Schedule 4, column (c).

Alternative apportionment methods. If the statutory provisions for apportioning adjusted federal taxable income to Ohio or for apportioning Ohio net income to an Ohio municipality, as set out above, do not fairly represent business activity in Ohio or in a municipality, **the tax commissioner may adopt rules for apportioning such income by an alternative method** that does fairly represents business activity in Ohio or among Ohio's municipalities. R.C. 5745.02(G).

In addition, if the statutory 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 among Ohio's municipalities, **the taxpayer may request, or the tax commissioner may require, that the taxpayer's Ohio net income or municipal income be determined by an alternative method**, including any of the alternative methods enumerated in R.C. 5733.05(B)(2)(d). A taxpayer requesting an alternative method must make the request in writing to the tax commissioner either with the annual re-

turn, a timely filed amended return, or a timely filed petition for reassessment. R.C. 5745.02(E).

Schedule 4 – Municipal Income Tax Computation

Municipal income before NOL deduction – column (d). For each municipality that has enacted a municipal income tax and in which the taxpayer has property, payroll or sales the program will compute the taxpayer's municipal income before NOL carryforward deduction by multiplying the taxpayer's Ohio net income from Schedule 1, line 11 by the taxpayer's municipal apportionment ratio for each municipality (Schedule 3, column (l)).

Municipal NOL carryforward deduction – column (e). Chapter 5745 net operating losses (NOLs) may be carried forward for five taxable years following the year in which the loss was generated after which time any unused portion of the NOL expires. If Ohio net income as reported on Schedule 1 of the 2011, 2012, 2013, 2014 and/or 2015 Chapter 5745 municipal income tax return was a loss and some portion of that loss as reported on schedule 4, column (d) – municipal income before NOL deduction remains unused, enter in column (e) for each municipality the sum of the following amounts: (i) the municipality's 2011 NOL not used on the 2012, 2013, 2014 and/or 2015 returns, (ii) the municipality's 2012 NOL not used on the 2013, 2014 and/or 2015 returns, (iii) the municipality's 2013 NOL not used on the 2014 and/or 2015 return, (iv) the municipality's 2014 NOL not used on the 2015 return, and (v) the municipality's 2015 NOL. Taxpayers may not deduct municipal NOLs generated in taxable years before becoming a Chapter 5745 taxpayer.

Note: Chapter 5745 taxpayers are subject to the NOL provisions of Chapter 5745. Chapter 5745 taxpayers are not subject to the NOL ordinances enacted by the municipalities in which the taxpayer has taxable nexus. So, the Chapter 5745 net operating loss carryforward provisions apply to Chapter 5745 taxpayers even if the municipal income tax ordinances of a particular municipality bar NOL carryforwards for general taxpayers. See page 5 of these instructions for additional information.

Municipal income – column (f). The program will compute municipal income by subtracting the municipal NOL carryforward deduction (column (e)) from municipal income before NOL deduction (column (d)).

Municipal income tax before credit – column (h). For each municipality in which the taxpayer has property, payroll or sales, the program will compute the taxpayer's tax before credits by multiplying the taxpayer's municipal income after the municipal NOL carryforward deduction (column (f)) by the municipality's income tax rate (column (g)).

Nonrefundable credit for taxpayer's share of Chapter 5745 municipal income tax paid by a pass-through entity – column (i). If the taxpayer has an interest in a pass-through entity that is also subject to and paid the Chapter 5745 municipal income tax, then the taxpayer may claim as a credit against the taxpayer's own Chapter 5745 municipal income tax for a particular municipality the taxpayer's proportionate share of the tax paid by the pass-through entity to that same municipality. The credit equals the qualifying taxpayer's proportionate share of the lesser of the Chapter 5745 tax due from, or paid by the qualifying pass-through entity to that municipality for the pass-through entity's taxable year ending in or with the taxpayer's taxable year. The taxpayer must claim the credit for the taxpayer's taxable year in which the pass-through entity's taxable year ends. Multiply the taxpayer's interest in the pass-through entity by the pass-through entity's Chapter 5745 municipal income tax for that municipality and enter the product in column (i). R.C. 5745.06.

Municipal income tax after credit – column (j). For each municipality in which the taxpayer has property, payroll or sales, the program will compute the taxpayer's municipal income tax after credit by subtracting column (i) from column (h).

Overpayment carryforward from taxable year beginning in 2015 – column (k). Enter the taxpayer's overpayment carryforward for each municipality as reflected in column (o) of the taxpayer's 2015 Chapter 5745 municipal income tax return unless the taxpayer actually received from the municipality the taxpayer's overpayment to the municipality.

Note: The taxpayer's overpayment for a particular municipality as shown on the originally filed return for the taxable year will not be refunded unless, upon the written request of the taxpayer, the tax commissioner determines that the taxpayer's overpayment to that municipality will likely exceed the amount of estimated taxes payable to that municipality during the ensuing 12 months. If the tax commissioner makes that determination, the tax commissioner will notify the municipality of the overpayment, and the municipality will refund the overpayment. For additional information see on page 5 of these instructions "Overpayment shown on original return."

Estimated payments – column (l). For each municipality for which the taxpayer made Chapter 5745 municipal income tax payments enter the sum of the estimated payments paid for the taxable year beginning in 2015.

Total payments – column (m). The program will compute the taxpayer's total payments for each municipality by adding the taxpayer's overpayment carryforward for the municipality (column (k)) plus the taxpayer's estimated payments for the municipality (column (l)).

Balance due – column (n) and overpayment column (o). The program will compute the taxpayer's balance due for each municipality for which the taxpayer's tax after credit (column (j)) exceeds the taxpayer's total payments (column (m)) and the program will compute the taxpayer's overpayment for each municipality for which the taxpayer's total payments (column (m)) exceeds the taxpayer's tax after credit (column (j)).

The program will then add the balance due amounts in column (n) and enter the sum of those amounts on Schedule A, line 1. **If the sum of the balance due amounts exceeds $1,000, the taxpayer must pay by EFT** as prescribed by the Ohio Treasurer of State. R.C. 5745.03.

Note: The taxpayer may not net the taxpayer's balance due for one municipality with the taxpayer's overpayment for another because the law does not provide for such netting. Instead, the taxpayer must pay the sum of the balance due amounts for those municipalities in which there is a balance due, and for each municipality in which the taxpayer is overpaid the taxpayer may claim an overpayment carryforward on the taxpayer's municipal income tax return for the following year.

However, as noted earlier, if upon the taxpayer's written request the tax commissioner determines that the taxpayer's overpayment with respect to a particular municipality is likely to exceed the taxpayer's estimated taxes payable to that municipality during the following year, the tax commissioner will notify the municipality and the municipality will refund the entire overpayment to the taxpayer.