

Municipal Income Tax For Electric Light Companies

The Ohio municipal income tax for electric light companies and telephone companies (R.C. Chapter 5745) is administered and enforced by the Department of Taxation, rather than by the various Ohio municipalities that have enacted a municipal income tax. The term “electric light company” includes “electric 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 light companies and telephone companies are subject to the Chapter 5745 municipal income tax for any Ohio municipality which has enacted a municipal income tax and in which the company has property, payroll or sales during the taxable year.

An electric company was first subject to the Chapter 5745 municipal income tax reporting and payment requirements for the electric company’s taxable year that included January 1, 2002. For taxable years prior to the taxable year that included January 1, 2002, electric companies were exempt from municipal income tax.

A telephone company is first subject to taxation under Chapter 5745 for its taxable year that begins on or after January 1, 2004. A telephone company with a taxable year ending in 2004 shall compute the tax imposed under this chapter, or shall compute its net operating loss carried forward for that taxable year, by multiplying the tax owed, or the loss for the taxable year, by 50 percent.

An “electric light company that is not an electric company” could elect to be a Chapter 5745 taxpayer for its taxable year that included December 31, 2002 (see Section 7 of S.B. 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 included December 31, 2002.

A municipality that has enacted an income tax may not require a Chapter 5745 municipal income taxpayer to file a municipal income tax return for 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 Chapter 5745 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 (see R.C. 5745.03(E)).

TAX BASE (R.C. 5745):

The starting point for Chapter 5745 municipal income taxpayers is federal taxable income after certain adjustments (see next section). In determining the Chapter 5745 municipal income tax, the taxpayer’s

adjusted federal taxable income is first multiplied by the taxpayer’s Ohio apportionment ratio to determine Ohio income. Then, Ohio income is multiplied by the taxpayer’s municipal apportionment ratio and tax rate for each Ohio municipality which has enacted a municipal income tax, and in which the taxpayer has taxable nexus. 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 entered Ohio and regardless of when during the taxable year the taxpayer first became subject to the Chapter 5745 tax in a particular municipality.

ADJUSTMENTS TO FEDERAL TAXABLE INCOME:

1. Internal Revenue Code (I.R.C.) section 168(k) and “new” I.R.C. section 179 bonus depreciation adjustment.

Compute federal depreciation expense as it would have been computed without enactment of I.R.C. section 168(k), and amended I.R.C. section 179, and add to federal taxable income the difference between the depreciation actually deducted on the federal income tax return and the depreciation as it would have been computed prior to the enactment of I.R.C. section 168(k) and amended I.R.C. section 179.

2. Net intangible income (R.C. 5745.01 (G) (1) and (G) (2)).

Deduct the taxpayer’s intangible income as defined in R.C. 718.01, less expenses incurred in the production of such intangible income to the extent that the income and expenses are used in determining federal taxable income.

3. Book-tax differential (R.C. 5745.01 (G) (3)).

Add or subtract the net book-tax differential on “qualifying assets” sold or disposed of in taxable transactions during the taxable year. If the net book-tax differential is a positive amount (that is, the assets’ net book value on December 31, 2000 is greater than the assets’ adjusted basis on that date), enter it in parenthesis and deduct it from federal taxable income. If the net book-tax differential is a negative amount (that is, the assets’ net book value on December 31, 2000 is less than the assets’ adjusted basis on that date), enter it as a positive amount and add it to federal taxable income.

4. Proration factor.

Electric companies are not subject to the proration factor for a taxable year that begins in 2003. A telephone company subject to taxation by a municipal corporation in Ohio for a taxable year ending in 2004 must compute the tax imposed under this chapter, or must compute its net operating loss carried forward for that taxable year, by multiplying the tax owed, or the loss for the taxable year, by 50 percent.

Ohio Apportionment Ratio (R.C. 5745.02):

The Chapter 5745 municipal income tax Ohio apportionment ratio is similar to the Chapter 5733 Ohio franchise tax apportionment ratio.

Municipal Apportionment Ratio (R.C. 5745.02(C)):

For purposes of determining the taxpayer's apportionment ratio for each municipality, the taxpayer's payroll, sales and property 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 during the taxable year in the municipality by the taxpayer's employees for services performed for the taxpayer, and that is 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 situated to the municipality where the electricity is used.

TAX RATE (R.C. 5745.03(F)):

In determining the tax payable to each municipality for the taxpayer's taxable year, the taxpayer must use the certified tax rate in effect for that municipality on the first day of January of the taxpayer's taxable year. If a taxpayer's taxable year is for a period of less than 12 months and that taxable year does not include the first day of January, the tax rate used is the tax rate in effect in a municipality on the first day of January 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 paid the Chapter 5745 municipal income tax for Chapter 5745 taxpayers, 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 the Chapter 5745 tax paid, by the qualifying pass-through entity to that municipality for the pass-through entity's taxable year ending in 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.

SPECIAL PROVISIONS (R.C. 5745.031, 5745.01(C), 5745.02(F)):

1. An "electric light company that is not an electric company" can elect to be a taxpayer under Chapter 5745 if during the company's most recently concluded taxable year, not less than 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 company must make the election in writing to the Tax Commissioner before the first day of the first taxable year to which the election is to apply. The election is effective for five consecutive taxable years and, once made, is irrevocable for those five years. An electric light company that does not meet the requirements to make the election, or meets the requirements but does not make a timely election, is subject to the filing and payment requirements of each municipality which has enacted an income tax and in which the company has taxable nexus.
2. If a Chapter 5745 taxpayer is a qualified subchapter S subsidiary as defined in 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 Chapter 5745 municipal income tax.
3. 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 Chapter 5745 Ohio property, payroll and sales factors) to include only the company's activity as an electric company, because "for a combined company, only the income attributed from the activity of an electric company shall be subject to taxation by a municipal corporation" (see R.C. 1701.18(F)(6)).

4. Alternative apportionment methods may also be available to Chapter 5745 taxpayers (see R.C. 5745.02(E)). If the above provisions for apportioning adjusted federal taxable income to Ohio or for apportioning Ohio net income to an Ohio municipality 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 represent business activity in Ohio or Ohio's municipalities. In addition, if any of the above 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 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 report, a timely filed amended report, or a timely filed petition for reassessment.

TAXPAYER (R.C. 5745):

The term "taxpayer" means an entity that is subject to the Chapter 5745 municipal income tax. Taxpayers include:

- **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; a rural electric company is excluded (see R.C. 5727.01(D)(3));
- **Combined company.** A person is a combined company when engaged in the activity of an electric company or rural electric company, and is also engaged in the activity of a heating company or a natural gas company, or any combination thereof (see 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
- **Telephone companies** for taxable years beginning after January 1, 2004.

FILING AND PAYMENT DATES (R.C. 5745.02, 5745.03, 5745.04, 5745.041):

Remittances are payable to the Treasurer of State.

Estimated payment requirements for the taxable year beginning in 2003:

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. For its taxable year beginning in 2003 and each taxable year thereafter, each Chapter 5745 taxpayer must file a declaration of estimated tax report and make payment 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 percent of

- the combined tax liability for the preceding taxable year, or 20 percent 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 percent of the combined tax liability for the preceding taxable year, or 40 percent 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 percent of the combined tax liability for the preceding taxable year, or 60 percent 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 percent of the combined tax liability for the preceding taxable year, or 80 percent of the combined tax liability for the current taxable year.

Extension to file return:

Without an extension, the annual Chapter 5745 municipal income tax return for an electric light company or telephone company 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 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. 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 their Chapter 5745 municipal income tax return by the 15th day of the fourth month following the end of their taxable year, they must nevertheless pay any remaining tax due by that date.

Tax payment by Electronic Funds Transfer (R.C. 5745.03(E), 5745.04(E) and 5745.041):

If any remittance of estimated Chapter 5745 municipal income tax is for \$1,000 or more, or if 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):

Prior to the first day of March, June, September, and December, the Tax Commissioner must certify to the Director of Budget and Management the amount to be paid to each municipal corporation, as indicated on the

declaration of estimated tax reports and annual reports received, less any amounts previously distributed and the net of any audit adjustments made by the Tax Commissioner. Not later than the first day of March, June, September, and December, the Director of Budget and Management must provide for payment of the amount certified to each municipal corporation from the Municipal Income Tax Fund, plus a pro rata share of any investment earnings accruing to the fund since the previous payment.

OHIO REVISED CODE CITATIONS:

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

ADMINISTRATION (R.C. 5745):

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

RECENT LEGISLATION:

Am. Sub. H.B. 95, 125th General Assembly (effective June 26, 2003).

R.C. 5745.01 –

Subjects telephone companies to Chapter 5745 municipal income tax for taxable years beginning on or after January 1, 2004.

Sub. S.B. 200 (Taxpayer Services II), 124th General Assembly (effective September 6, 2002).

R.C. 5703.70 –

This law codified a uniform application for refund procedure applicable to municipal income tax and various other taxes.

R.C. 5703.60 –

This law established a uniform petition for reassessment procedure and a uniform assessment correction procedure applicable to municipal income tax and various other taxes. If the taxpayer properly filed a franchise tax 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, this law permits the Commissioner to correct an assessment, even if the taxpayer has not filed a petition for reassessment or has not filed a proper petition for reassessment.