Municipal Income Tax For Electric Light Companies

The Ohio municipal income tax for electric light companies and local exchange telephone companies (Ohio Revised Code Chapter 5745) was enacted in 2000 by Substitute House Bill 483, 123rd General Assembly and took effect on January 1, 2002. 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 local exchange 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.

The tax generated $15.4 million in revenue in calendar year 2003. (Revenue for calendar year 2002, the first year in which the tax was collected, amounted to $12.3 million.) Tax returns for calendar year 2004 are reported in April 2005.

A local exchange telephone company is first subject to taxation under Chapter 5745 for its taxable year that begins on or after January 1, 2004. A local exchange 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 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 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 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 (see R.C. 5745.03(E)).

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
- **Local exchange telephone companies** for taxable years beginning afterJanuary 1, 2004.

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 municipal income 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 municipal income taxpayer's taxable year for Chapter 5745 municipal income tax purposes is the same as the municipal income 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 municipal income 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 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 difference (R.C. 5745.01(G)(3)).**
   Add or subtract the net book-tax difference on "qualifying assets" — defined by R.C. 5733.05.10(3) as any asset on the taxpayer's books as of December 31, 2000 — sold or disposed of in taxable transactions during the taxable year. If the net book-tax difference 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 parentheses and deduct it from federal taxable income. If the net book-tax difference 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. **Book-tax difference adjustment (R.C. 5745.01(G)(5)).** Beginning in the taxable year ending in 2009, local exchange telephone companies will be eligible for a tax year book-tax difference adjustment. This adjustment equals one-tenth of the book-tax difference which is the difference, if any, between a qualifying telephone company asset's net book value shown on the qualifying telephone company taxpayer's books and records on December 31, 2003, in accordance with generally accepted accounting principles (GAAP), and such asset's adjusted basis on December 31, 2003. The book-tax difference may be a negative number. R.C. 5733.0511(A) defines "qualifying telephone company" and "qualifying telephone company asset."
5. **Proration factor.** Electric companies are not subject to the proration factor for a taxable year that begins in 2003. A local exchange 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 corporation 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 Chapter 5745 municipal income taxpayer's payroll, sales, and property are generally sitused consistent with the franchise tax situsing provisions. However, for purposes of the municipal payroll factor, compensation is sitused 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 are thus sitused to the municipality where the electricity is used.

Rates (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 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 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 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 an Ohio 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.

Filing and Payment Dates (R.C. 5745.02-.04, 5745.041):

Remittances are payable to the Ohio Treasurer of State.

Estimated payment requirements for taxable years beginning in 2003 and each taxable year thereafter:

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 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 a taxpayer 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 municipal income tax return by the 15th day of the fourth month following the end of their taxable year, the taxpayer 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 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 Ohio 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.

Administration (R.C. 5745):

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 have enacted a municipal income tax.

Ohio Revised Code Citations:

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

Recent Legislation:

Amended Sub. H.B. 95, 125th General Assembly (effective June 26, 2003). R.C. 5745.01:
Subjected local exchange 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:
Codified a uniform application for refund procedure applicable to municipal income tax and various other taxes.

R.C. 5703.60:
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 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.