



## Corporation Franchise Tax

### Taxpayer

The tax is paid by any domestic or foreign corporation doing business in Ohio, owning capital or property in Ohio, holding a charter or certificate of compliance authorizing the corporation to do business in Ohio, or otherwise having nexus with Ohio during the calendar year (unless specifically exempt).

This tax is being phased out over tax years 2006 through 2010 for most taxpayers. For details, see **Franchise Tax Phase-Out**, in the **Rates** section of this chapter.

### Tax Base

The corporation franchise tax is an excise tax levied on the value of a corporation's issued and outstanding shares of stock.

There are two bases for determining the value of a corporation's issued and outstanding shares: the net income base and the net worth base. A taxpayer pays tax on that base, described below, that produces the greater tax.

**Ohio net worth base (taxable value):** Taxable net worth is calculated by first subtracting the net book value of exempted assets from the net worth as reflected on the corporation's books. Any "qualifying amount" as reflected on the corporation's books is added to net worth. This yields the net value of stock. This amount is then multiplied by the Ohio apportionment ratio to yield taxable net worth.

**Ohio net income base (taxable income):** The computation begins with federal taxable income, plus or minus any Ohio adjustments. From this tax base, business income is apportioned to Ohio by the Ohio apportionment ratio, and nonbusiness income is allocated within and without Ohio based upon certain situsing provisions.

The Ohio apportionment ratio is the sum of the property factor (the ratio of property in Ohio to property everywhere, times 20 percent), the payroll factor (the ratio of payroll in Ohio to payroll everywhere, times 20 percent), and the sales factor (the ratio of sales in Ohio to sales everywhere, times 60 percent).

### Rates

#### General Rates (excluding financial institutions):

The general net worth rate is 4 mills on Ohio taxable value. The maximum net worth tax is \$150,000 per taxpayer.

The general net income rate is 5.1 percent on the first \$50,000 of Ohio net income plus 8.5 percent on Ohio net income in excess of \$50,000. Corporations that meet ownership requirements to file a combined report must

share the tax bracket to which the 5.1 percent rate applies, regardless of whether or not the corporations actually filed a combined report.

The minimum tax is \$1,000 if either:

- the sum of the taxpayer's gross receipts from its activities in and outside Ohio during the year equals or exceeds \$5 million, or
- the total number of its employees in and outside Ohio at any time during the year equals or exceeds 300.

For all other taxpayers the minimum tax is \$50.

In addition, corporations are subject to a litter tax. Each corporation is subject to the Tier I litter tax, and "litter stream" corporations are also subject to the Tier II litter tax. Litter taxes do not apply to financial institutions or family farm corporations.

#### **Financial Institutions Rate:**

The rate for financial institutions is 13 mills on net worth. The \$150,000 net worth tax limit does not apply. Financial institutions are not subject to tax on the net income base.

#### **Franchise Tax Phase-Out:**

For most taxpayers, the corporation franchise tax is gradually being phased out as the Ohio commercial activity tax (CAT) is being phased in.

The franchise tax is being phased out in 20 percent increments, after the application of most nonrefundable tax credits, according to the following schedule:

<b>Franchise tax report year</b>	<b>Tax</b>
2005	Normal liability
2006	80% × liability
2007	60% × liability
2008	40% × liability
2009	20% × liability
2010	No liability

A minimum tax of either \$50 or \$1,000, depending on corporation size, still applies until the phase-out is complete.

The franchise tax phase-out and CAT phase-in do not apply to financial institutions, which continue to pay the 13 mill net worth tax. It also does not apply to:

- certain affiliates of financial institutions when such affiliates are engaged in financial institution-type activities;
- certain affiliates of insurance companies when such affiliates are engaged in insurance-type activities; and

- securitization companies.

These latter entities will continue to pay according to net worth or net income, whichever is greater.

## Major Exemptions

The corporation franchise tax does not apply to:

- Nonprofit corporations.
- Dealers in intangibles, such as stockbrokers and mortgage companies, etc.
- Insurance companies, HMOs, and other corporations required to file annual reports with the director of the Ohio Department of Insurance.
- Public utilities subject to the public utility excise tax.
- Credit unions.
- "S" corporations and qualified subchapter S subsidiaries ("QSSS").
- Real estate investment trusts (REITs), regulated investment companies (RICs), and real estate mortgage investment conduits (REMICs).
- Corporations in Chapter 7 bankruptcy proceedings.
- Corporations exempt under federal law.

Also, qualifying holding companies are exempt from the net worth base.

## Revenue (In Millions)

Fiscal Year	General Rev. Fund	Local Gov't. Funds	Other <sup>1</sup>	Total
2004	\$809.1	\$47.5	\$14.0	\$870.6
2005	1,051.6	47.5	12.5	1,111.6
2006	1,054.9	47.5	3.5	1,105.9
2007	1,076.5	47.5	1.7	1,125.7
2008	753.5	(0.4) <sup>2</sup>	1.5	754.6

## Disposition of Revenue

After making any required deposits in the Attorney General Claims Fund, the remaining revenue is deposited in the General Revenue Fund.

For many years, libraries and local governments received a share of corporation franchise tax receipts according to a formula spelled out in statute. This changed for fiscal years 2002 and 2003, when a local government fund "freeze" capped this revenue sharing at either the

<sup>1</sup> "Other" revenue includes distributions to litter funds and the Attorney General Claims Fund.

<sup>2</sup> Transfers to local government funds from corporation franchise tax were negative in fiscal year 2008 due to some negative deposits in fiscal year 2001, the base year of the freeze, being carried forward; there will be no local government fund deposits after fiscal year 2008.

same amount as in fiscal year 2001 or the amount provided by the old formula, whichever was less. Similar freezes were enacted for fiscal years 2004 through 2007.

The 2008-09 budget continued the freeze throughout calendar year 2007 and established a new system of revenue sharing with local government funds. Beginning in January 2008, the two local government funds were consolidated into a single Local Government Fund that receives 3.68 percent of all General Revenue Fund tax revenues. In addition, the Public Library Fund receives 2.22 percent of all General Revenue Fund tax revenues.

## Payment Dates

- Jan. 31: One third of tax liability but not less than the minimum fee.
- March 31: Two thirds of tax liability less previous payment.
- May 31: Full balance of tax liability due.

## Special Provisions/Credits

### Credits

The Ohio Revised Code contains a large number of credits that may be claimed against corporation franchise tax liability, but only some are relevant to the financial institutions that will continue to pay the franchise tax after 2009. Among the credits:

#### **Dealers in intangibles tax credit:**

A financial institution that is a member of a "qualifying control group," that also includes a dealer in intangibles may, subject to limitations, claim a credit for the dealers in intangibles tax paid by the dealer.

#### **Savings and loan association fees credit:**

A nonrefundable credit is available to state-chartered savings and loan institutions for the annual assessment paid to the state Division of Savings and Loans, less supervisory fees paid to the Federal Savings and Loan Insurance Corporation.

#### **Job training credit:**

This nonrefundable credit is equal to one-half of the average annual costs for an eligible job training program, subject to a maximum of \$1,000 per trained employee and a \$100,000 maximum per taxpayer. This credit expired with the 2008 report year, but carry forwards are permitted for three additional years.

#### **Ethanol plant investment credit:**

This nonrefundable credit equals 50 percent of the amount invested in a certified ethanol plant, up to \$5,000 per taxpayer per plant.

#### **Credit for taxes paid by a qualifying pass-through entity:**

This nonrefundable credit is equal to the taxpayer's proportionate share of the tax paid by a pass-through

entity in which the taxpayer is directly or indirectly a qualifying investor.

This list of credits is not exhaustive. For a complete listing, consult the 2009 corporation franchise tax report instruction booklet or the Ohio Revised Code.

### Special Provisions

A corporation still subject to the franchise tax that dissolves or surrenders its license to conduct business prior to Jan. 1 of the tax year, while not subject to the franchise tax, may be subject to an "exit tax" on its unreported Ohio net income – meaning, income not previously included in a franchise tax report. Under certain conditions, a corporation's unreported income is taxable in the hands of a transferee.

## Sections of Ohio Revised Code

Chapter 5733.

## Responsibility for Administration

Tax Commissioner.

## History of Major Changes

- 1902** General Assembly enacts "Willis law," which imposes a 1 mill tax on the value of corporations' capital stock located in Ohio and a \$10 minimum fee. The tax is administered by the Ohio Secretary of State.
- 1910** Legislature increases rate to 1.5 mills. Responsibility for administering the tax shifts to the Ohio Tax Commission.
- 1925** Legislature lowers rate to 0.83 mills and sets the minimum tax at \$15.
- 1927** Rate is hiked to 1.25 mills for 1927, then permanently set at 1 mill for 1928 and thereafter. Minimum tax is set at \$25.
- 1959** Rate is increased to 3 mills.
- 1967** Rate is increased to 4 mills.
- 1969** Rate is increased to 5 mills.
- 1971** Income base is added with a rate of 4 percent on the first \$25,000 of net income and 8 percent on income in excess of \$25,000.
- 1980** A 15 percent surtax is imposed for the 1981 tax year. Also, litter tax rates are enacted for tax years 1981 through 1986.
- 1981** Legislature increases regular corporate rates to 5.5 mills on net worth and to 4.6 percent and 8.7 percent on net income. Minimum tax increased to \$150. The exemption for financial institutions is repealed; financial institutions became taxed at a 6.5-mill rate on net worth for tax years 1982 and 1983. Additionally, a 5.75 percent surtax is imposed for tax year 1982.

- 1982** General Assembly enacts 5.75 percent surtax for tax year 1983.
- 1983** Regular corporate rates are increased to 5.82 mills on net worth and to 5.1 percent and 9.2 percent on net income. Additionally, lawmakers impose a 5.4 percent surtax while lowering minimum tax to \$50. Also, financial institution rates are increased to 15 mills on net worth plus an additional tax of 6.47 mills on savings and loans and 1.54 mills on other financial institutions for tax years 1984 and 1985.
- 1985** Legislature reduces surtax on net income to 2.7 percent in 1987 and eliminates it for 1988. Also, the litter tax is extended through 1991 and "S" corporations are made exempt beginning in 1987.
- 1986** Lawmakers decrease top rate on net income to 8.9 percent in 1988 and, effective 1989, double the size of the lower bracket to the first \$50,000 of net income.
- 1987** Tax is extended to long-distance telephone companies starting in 1988; litter tax rates are extended through 1993.
- 1989** Corporations undergoing "F" reorganizations made subject to tax.
- 1991** Income transferred to passive investment corporations made subject to tax.
- 1992** Railroads made explicitly subject to tax starting in 1993; litter tax is extended to 1995.
- 1994** Litter tax rates made permanent.
- 1997** General Assembly lowers rates. Effective for the 1999 tax year, general net worth rate is lowered to 4 mills with a maximum liability of \$150,000. Top net income tax rate is lowered to 8.5 percent. Financial institutions will pay 14 mills in tax year 1999 and 13 mills beginning with the 2000 tax year.
- 1999** Legislature enacts job training tax credit effective from 2001-04. Electric utilities made subject to corporation franchise tax effective in 2002.
- 2001** Job training tax credit is delayed until tax year 2004 and extended through tax year 2006. Also, effective tax year 2003, credit is enacted for investments made by a financial institution in a dealer in intangibles.
- 2002** General Assembly enacts credit for investments in certified ethanol plants.
- 2003** Minimum tax is increased to \$1,000 for certain large corporations, effective for taxable years ending on or after June 26, 2003.
- 2004** Tax is extended to local exchange telephone companies starting with tax year 2005.
- 2005** House Bill 66 launches a gradual phase-out of the corporation franchise tax. The last payments will be due in 2009 for the vast majority of corporations.

**2007** The job training credit is extended through report year 2008.

## Comparisons with Other States (As of 12/08)

### California

Corporations pay 8.84 percent of net income. Banks and financial corporations, excepting financial S-corporations, are subject to a 10.84 percent tax rate. A 3.5 percent tax rate applies to financial S-corporations, and a 1.5 percent rate applies to all other S-corporations. A 6.65 percent alternative minimum tax is imposed.

### Florida

Corporations pay 5.5 percent of net income. Corporations subject to federal alternative minimum tax pay the greater of the regular 5.5 percent net income tax or 3.3 percent alternative minimum tax.

### Illinois

Corporations pay 4.8 percent of net income. Taxpayers are also subject to 2.5 percent personal property replacement tax on net income for corporations other than S-corporations, and 1.5 percent for S-corporations, partnerships, and trusts.

### Indiana

Corporations pay 8.5 percent of adjusted gross income; 5 percent of adjusted gross income derived from sources within a qualified area that contains an inactive or closed military base.

### Kentucky

Corporations pay the greater of the taxable net income calculation, the limited liability entity tax calculation, or the minimum tax of \$175. Tax on net income is imposed at the following rates:

Taxable Net Income	Rate
Up to – \$50,000	4.00%
\$50,001 – 100,000	5.00
Over – 100,000	6.00

The limited liability entity tax is either 9.5 cents per \$100 of gross receipts, or 75 cents per \$100 of Kentucky gross profits, whichever is less.

### Massachusetts

Corporations pay a tax based in part on each of the following:

- 0.26 percent on taxable tangible property that is not subject to local taxation, or on allocated net worth; and

- 9.5 percent of taxable net income; or
- a minimum tax of \$456.

### Michigan

The Michigan Business Tax (MBT) includes a defined business income tax and a modified gross receipts tax:

- The defined business income tax component levies a 4.95 percent tax on a defined business income tax base.
- The modified gross receipts tax is imposed at a rate of 0.8 percent. For taxpayers other than financial institutions, there is a surcharge of 21.99 percent of the MBT liability before credits; the surcharge is capped at \$6 million per year.

### New Jersey

Corporations pay the greater of the following:

- a minimum tax of \$500 to \$2,000, depending on the amount of gross receipts; or
- a tax of 9 percent on adjusted net income if the corporation's entire net income exceeds \$100,000, 7.5 percent if the corporation's entire net income is \$50,001 to \$100,000, or 6.5 percent if the corporation's entire net income is \$50,000 or below; or
- an alternative minimum assessment based on either gross receipts or gross profits, with the tax due capped at \$5 million.

Additionally, all taxpayers must pay a surtax of 4 percent on business corporation tax liability remaining after certain credits.

### New York

Corporations pay the greater of the following:

- 7.1 percent of allocated entire net income (6.5 percent for qualified in-state manufacturers); or
- 0.15 percent of allocated business and investment capital (not to exceed \$350,000 for manufacturers or \$10 million for all other taxpayers); or
- 1.5 percent of minimum taxable income; or
- a fixed dollar minimum of \$25 to \$5,000, depending on gross payroll.

Additionally, all taxpayers must pay 0.9 percent of allocated subsidiary capital.

Taxpayers that qualify as a small business pay a tax of 6.5 percent on an entire net income base of \$290,000 or less; a tax of \$18,850 plus 7.1 percent of the entire net income base over \$290,000 but not more than \$390,000; and an additional tax of 4.35 percent of entire net income over \$350,000.

All small business taxpayers must also pay 0.9 percent of allocated subsidiary capital.

### Ohio

(As described in the **Rates** section in this chapter.)

### Pennsylvania

Corporations pay 9.99 percent of net income plus 0.189 percent of taxable value of capital stock.

### Texas

A “margin tax” is imposed on entities with more than \$300,000 in total revenues. An entity’s margin is the lesser of:

- 70 percent of total revenue; or
- total revenue less compensation paid to active duty military and costs of goods sold; or
- total revenue less compensation paid.

This taxable margin is multiplied by the apportionment factor, then by the tax rate. The rate is 1 percent for most taxpayers, 0.5 percent for taxpayers primarily engaged in retail or wholesale trades, or 0.575 percent for taxpayers with \$10 million or less in total revenue that choose to use an E-Z filing option. Small business discounts provide for 20 to 80 percent reductions in taxes depending on revenue levels for entities with total revenue less than \$900,000.

### West Virginia

Corporations pay 8.5 percent of net income plus an additional franchise tax equal to \$50 or 0.41 percent of the taxable value of capital stock, whichever is greater.