Municipal Income Tax for Electric Light Companies and Local Exchange Telephone Companies

The municipal income tax for electric light companies and local exchange telephone companies, set out in Chapter 5745 of the Ohio Revised Code, was enacted by the Ohio General Assembly in 2000. This tax is sometimes referred to as the "Chapter 5745 municipal income tax" to distinguish it from the conventional municipal income tax, which is enacted and administered by various Ohio cities and villages per Chapter 718 of the Revised Code. The Chapter 5745 municipal income tax applies only to electric light companies and local exchange telephone companies. It is administered by the Ohio Department of Taxation.

"Electric light companies" – meaning, electric companies and certain marketers and brokers of electricity – were first subject to the Chapter 5745 tax for their taxable year that included Jan. 1, 2002. The tax began to apply to local exchange telephone companies two years later, starting with the taxable year that included Jan.1, 2004.

Before the enactment of Chapter 5745, only certain marketers and brokers of electricity – defined by the Revised Code as "an electric light company that is not an electric company" – were subject to traditional municipal income taxes. Such marketers and brokers of electricity may elect to be subject to the state-administered tax (Chapter 5745). Otherwise, they remain subject to the conventional municipal income tax enacted by each municipality in which the entity has taxable nexus (Chapter 718). For details, see **Special Provisions**.

The municipal income tax for electric light companies and local exchange telephone companies generated $22.8 million in revenue in calendar year 2009 on returns filed for taxable year 2008, the last year for which such information is available.

Taxpayer

(Ohio Revised Code 5745.01)

Chapter 5745 taxpayers include:

- Electric companies. A person is an electric company when engaged in the business of generating, transmitting, or distributing electricity within Ohio for use by others. This definition does not include rural electric companies (R.C. 5727.01(D)(3));
- Combined companies. A person is a combined company when engaged in the activity of an electric company or rural electric company, and in the activity of a heating company or a natural gas company, or any combination thereof (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. A person is a "telephone company" when primarily engaged in the business of providing local exchange telephone service, excluding cellular radio service, in Ohio (R.C. 5727.01(D)(2)).

Tax Base

The "starting point" for Chapter 5745 municipal income taxpayers is federal taxable income. After making certain adjustments to federal taxable income (described below), the taxpayer computes Ohio income by multiplying the taxpayer's adjusted federal taxable income by the taxpayer's Ohio apportionment ratio. Then, municipal income is computed for each municipality that has enacted an income tax and in which the company has taxable nexus by multiplying Ohio income by the taxpayer's apportionment ratio for that municipality. Finally, municipal income tax liability is determined by multiplying the income apportioned to each municipality by the municipality's income tax rate.

Ohio apportionment ratio

The Chapter 5745 Ohio apportionment ratio is computed in a manner similar to the Ohio corporation franchise tax apportionment ratio. But, unlike the franchise tax property, payroll and sales factors, the Chapter 5745 property, payroll and sales factors are not weighted.

Municipal apportionment ratio

For purposes of determining the taxpayer's apportionment ratio for each municipality, the taxpayer's property, payroll and sales 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 in the municipality for services performed for the taxpayer by the taxpayer's employees, and that is subject to income tax withholding by the municipality.

Taxable year

For Chapter 5745 municipal income tax purposes, a taxpayer's taxable year 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 as a taxpayer 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

Net intangible income (R.C. 5745.01(G)(1) and (G)(2)) – Taxpayers may deduct 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. Intangible income is generally not part of the municipal income tax base.

Book-tax difference – Both electric companies and telephone companies must compute a book-tax difference adjustment which is either added to or subtracted from

federal taxable income. For details, see the instructions on the department's Web site, **tax.ohio.gov**.

Tax Rates

Tax rates are the same as those established locally by each city or village that imposes a municipal income tax. The rate that applies is the rate that was in effect as of Jan. 1 of the taxable year. If a taxpayer's taxable year is for a period of less than 12 months and does not include Jan. 1, then the rate that applies is the rate that was in effect on Jan. 1 of the preceding taxable year.

Credits

If the taxpayer has an interest in a pass-through entity that is also subject to and has paid the Chapter 5745 municipal income tax, then the taxpayer may claim a credit against its own Chapter 5745 liability. The credit equals the taxpayer's proportionate share of the tax due from, or paid by, the qualifying pass-through entity, whichever is less.

Special Provisions

Taxpayer elections – An "electric light company that is not an electric company" may elect to be a taxpayer under Chapter 5745 if, during the company's most recently concluded taxable year, at least 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 election is effective for five consecutive taxable years and, once made, is irrevocable for those five years. An "electric light company that is not an electric company" that does not make this election remains subject to the conventional municipal income tax as enacted by the municipalities with which the entity has taxable nexus (Chapter 718).

Qualified subchapter S subsidiaries – If an electric company or a telephone company is a qualified subchapter S subsidiary as defined in Internal Revenue Code (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.

Combined companies (R.C. 1701.18(F)(6)) – 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 Ohio property, payroll, and sales factors) to include only the company's activity as an electric company. This is so because only a combined company's income from its activity as an electric company is subject to taxation by a municipal corporation.

Alternative apportionment methods – If the standard 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 set out in R.C. 5733.05(B)(2)(d).

Municipality cannot require tax return (R.C. 5745.02(E)) – A municipality that has enacted an income tax cannot 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.

Filing and Payment Dates

Estimated payment requirements

For each taxable year, each taxpayer must file a declaration of estimated tax report and make payment as follows:

- 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.
- 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.
- 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.
- 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.

The term "combined tax liability" means the total of the taxpayer's income tax liabilities to all Ohio municipalities for a taxable year.

Returns and extensions

Returns are due by the 15th day of the fourth month following the end of the taxpayer's taxable year. An extension will be granted if, by that date, 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.

Payment by electronic funds transfer

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

Revenue from the Municipal Income Tax Fund is distributed to municipal corporations quarterly, by the first day of March, June, September, and December. The Department of Taxation certifies the amount distributed to each municipality and, to defray the costs of administering the tax, receives 1.5 percent of collections.

Administration

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

House Bill 1, 128th General Assembly (FY 2010-2011 biennium budget bill; budget provisions effective July 17, 2009, other provisions effective Oct. 16, 2009 or on other dates)

Internal Revenue Code (I.R.C.) conformity – H.B. 1 amended R.C. 5701.11 to incorporate into the definition of "Internal Revenue Code as amended" all amendments to the I.R.C. through Oct. 16, 2009. Previously, "Internal Revenue Code as amended" only included amendments through Dec. 30, 2008.

Table

Revenue from Municipal Income Tax For Electric Light Companies and Telephone Companies: Calendar Years 2005 - 2009

(figures in millions)

Calendar Year	Distribution to Municipalities	Municipal Income Tax Administration Fund	Total
2005	$40.3	$0.6	$40.9
2006	31.5	0.5	32.0
2007	41.2	0.6	41.8
2008	31.2	0.5	31.7
2009	22.5	0.3	22.8