



Ohio Department of
TAXATION

*P.O. Box 2476
Columbus, OH 43216-2476*

2002



**Ohio Corporation Franchise Tax
Report Instructions for
Financial Institutions**

This instructions booklet applies only to financial institutions.

Unless otherwise stated, all references are to the Ohio Revised Code (ORC). The Ohio Revised Code and the Department's information releases cited in these instructions are on the Department's web site:

<http://www.state.oh.us/tax>

If any of the preprinted information on the form (i.e., the corporation's legal name, Ohio license/charter number or federal employer identification number) is incorrect, please contact us with the correct information at any of the telephone numbers listed in the back of this booklet.

A **"financial institution"** is any of the following:

- ♦ A national bank organized and existing as a national bank association pursuant to the "National Bank Act," 12 U.S.C. 21;
- ♦ A federal savings association or federal savings bank that is chartered under 12 U.S.C. 1464;
- ♦ A bank, banking association, trust company, savings and loan association, savings bank, or other banking institution that is incorporated or organized under the laws of any state;
- ♦ Any agency or branch of a foreign depository as defined in 12 U.S.C. 3101;
- ♦ A company licensed as a small business investment company under the "Small Business Investment Act of 1958," 72 Stat. 689, 15 U.S.C. 661, as amended; or
- ♦ A company chartered under the "Farm Credit Act of 1933," 48 Stat. 257, 12 U.S.C. 1131(d), as amended.

Specifically excluded from the definition of a "financial institution" (and from the definition of a "dealer in intangibles") are insurance companies, credit unions and corporations or institutions organized under the "Federal Farm Loan Act" and amendments thereto. In addition, for franchise tax purposes a production credit association is not a financial institution.

For a summary of legislation enacted within the last year that affects the franchise tax and for a summary of the franchise tax cases decided within the last year, please see the full text version of the instructions for corporations that are not financial institutions available on the Department's web site.

GENERAL INSTRUCTIONS AND INFORMATION

1. WHO MUST FILE

The Ohio corporation franchise tax is an excise tax imposed on both domestic and foreign corporations for the privilege of doing business in Ohio, owning capital or property in Ohio, or holding a charter or certificate of compliance authorizing the corporation to do business in Ohio during a calendar year. A financial institution is subject to the franchise tax for each calendar year (tax year) that on the first day of January of that calendar year the corporation holds an Ohio charter, does business in Ohio, owns or uses a part or all of its capital or property in Ohio, holds a

certificate of compliance authorizing the corporation to do business in Ohio, or otherwise has nexus with Ohio under the Constitution of the United States.

The calendar year in and for which the tax is paid is called the “tax year.” The tax year is also referred to as the “report year.” The franchise tax for tax year 2002 is paid in 2002 for the corporation’s privilege of doing business in Ohio, owning or using part or all of its capital or property in Ohio, holding a certificate of compliance with the laws of Ohio authorizing the corporation to do business in Ohio, or otherwise having nexus with Ohio under the Constitution of the United States during 2002.

The accounting period on which the tax is based is called the “taxable year” and is defined as “. . . a period ending on the date immediately preceding the date of commencement of the corporation’s annual accounting period that includes the first day of January of the tax year.” A taxable year may consist of an aggregation of more than one federal taxable year and can exceed one year in length. The franchise tax for tax year 2002 is based upon the taxpayer’s activity during its taxable year ending in 2001. See ORC sections 5733.031(A) and 5733.04(E).

The tax is levied on the value of a corporation’s issued and outstanding shares of stock. Taxpayers other than financial institutions must determine the value of their issued and outstanding shares of stock under both the net income base and the net worth base and pay the tax on the base that produces the greater tax. Financial institutions are not subject to the tax on the net income base but are subject to the tax on the net worth base at a higher rate than other taxpayers.

2. ENTITIES GENERALLY NOT SUBJECT TO FRANCHISE TAX

A. Financial Institutions that are S Corporations

If a financial institution is an S corporation, it generally is not subject to the franchise tax. However, if the S corporation financial institution was a C corporation during any portion of a taxable year ending in 2001, the S corporation is subject to the franchise tax for tax year 2002 and must file an Ohio Corporation Franchise Tax Report (form FT-1120-FI). See *Sanders Health & Fitness Inc. v. Limbach*, B.T.A. Case No. 88-E-559, June 21, 1991. If a corporation is an S corporation for a taxable year that ended in 2001, the S corporation must file a Notice of S Corporation Status (form FT-1120 S) by June 30, 2002.

Although an S corporation financial institution is not subject to the franchise tax, the S corporation may be subject to the tax on pass-through entities. For taxable years beginning after 1997 an S corporation that has nexus with Ohio is subject to the tax on pass-through entities enacted by Am. Sub. H.B. No. 215, 122nd General Assembly (Budget Bill) if one or more shareholders of the S corporation are nonresidents for any portion of the S corporation’s taxable year and the S corporation does not file a composite Ohio income tax return on behalf of the nonresident shareholders. For a further explanation of the tax on pass-through entities see the instructions for Ohio form IT-1140, Tax Return for Pass-through Entities.

B. Qualified Subchapter S Subsidiaries

A financial institution that is a “qualified Subchapter S subsidiary” (QSSS) is exempt from the franchise tax that is based on the taxable year for which the parent S Corporation makes the election under IRC section 1361(b)(3)(B)(ii).

A QSSS is exempt because its separate legal existence is ignored for purposes of the franchise tax. If a corporation is a QSSS for any portion of 2001, the corporation must file by June 30, 2002 a Notice of S Corporation Status separate from the Notice of S Corporation status filed by its parent S corporation.

C. Corporations in Bankruptcy

A corporation in bankruptcy proceedings under Chapter 7 of the U. S. Bankruptcy Code is not liable for the franchise tax for that portion of the tax year during which the corporate franchise is impaired because of the Chapter 7 bankruptcy proceedings. A corporation in Chapter 7 bankruptcy is not exempt from the \$50 minimum fee. A corporation in reorganization proceedings under Chapter 11 of the U.S. Bankruptcy Code is not exempt from the franchise tax because a corporation in reorganization is not equivalent to a corporation which has been adjudicated bankrupt or for which a receiver has been appointed. See *Vought Industries, Inc. v. Tracy* (1995), 72 Ohio St.3d 261.

3. NEXUS

Unless an exemption applies, a corporation that has nexus in or with Ohio under the Constitution of the United States is subject to the franchise tax. A corporate investor in a pass-through entity that does business in Ohio or otherwise has nexus in or with Ohio under the Constitution of the United States is itself doing business in Ohio and has nexus with Ohio. Accordingly, a foreign corporation is subject to the franchise tax even if the corporation's only connection with Ohio is as a partner or limited partner in a partnership which has nexus with Ohio or as a member of a limited liability company which has nexus with Ohio. (A pass-through entity is defined as an S corporation, partnership, limited liability company, or any other person, other than an individual, trust, or estate, if the partnership, limited liability company, or other person is not classified for federal income tax purposes as an association taxed as a corporation. See the following: (1) ORC section 5733.04(O), (2) the Department's September 2001 information release describing the standards the Department will apply to determine whether an out of state corporation is subject to the franchise tax, and (3) the Department's March 2001 information release entitled *Corporation Franchise Tax Nexus for Nonresident Limited Partners Following the UCOM Decision*. The Ohio Revised Code and the information releases are available on the Department's web site.)

4. ENTITY CLASSIFICATION

Any entity that is treated as a corporation for federal income tax purposes is also treated as a corporation for franchise tax purposes. Thus, if a business trust, partnership or limited liability company is treated as a corporation for federal income tax purposes, it will also be treated as a corporation for franchise tax purposes. (See the ORC section 5733.01 and the Department's Information Release entitled "IRS 'check-the-box' entity selection regulations" available on the Department's web site.)

An entity that is treated as a "disregarded entity" for federal income tax purposes is also treated as a disregarded entity for franchise tax purposes. Accordingly, a single member LLC that is treated as a division of the corporate member for federal income tax purposes is treated as a division of the corporate member for

franchise tax purposes. The corporate owner-member is subject to the franchise tax as if the LLC were a division of the corporation for both federal income tax and franchise tax purposes.

5. DISSOLUTION OR SURRENDER OF LICENSE

The mere termination of business activities or voluntary dissolution does not exempt a corporation from the franchise tax. A corporation which on January 1 of the tax year holds a charter or license to transact business in Ohio is subject to the Ohio franchise tax for that tax year even if prior to the beginning of the tax year it has ceased all business activities in Ohio and has applied for certificates showing the payment or adequate guarantee of all required taxes.

Each corporation seeking dissolution of its charter or surrender of its license to transact business in Ohio must submit to the Secretary of State a filing fee along with various affidavits or documents evidencing that the corporation has paid or adequately guaranteed various taxes and fees. For further information regarding the requirements of dissolving a corporation's charter or surrendering a corporation's license to conduct business in Ohio, please contact the office of the Secretary of State, 180 East Broad Street, 16th Floor, Columbus, Ohio 43215 or telephone that office at (614) 466-3910 or toll free 1-877-767-3453. For specific information necessary to obtain a tax release from the Ohio Department of Taxation, please contact the Ohio Department of Taxation, Business Taxpayer Services, P.O. Box 182382, Columbus, Ohio 43218-2382 or call (614) 995-4422.

6. ACCOUNTING PERIOD – TAXABLE YEAR

A corporation's taxable year for franchise tax purposes generally is the same as the corporation's taxable year for federal income tax purposes. A corporation's franchise taxable year ends on the date immediately preceding the date of commencement of the corporation's annual accounting period that includes the first day of January of the tax year. If a corporation's taxable year is changed for federal income tax purposes, the corporation's franchise tax taxable year is changed accordingly. A franchise tax taxable year may consist of an aggregation of more than one federal taxable year. Thus, a taxable year can exceed one year in length. The tax commissioner has statutory authority to write rules prescribing an appropriate period as the taxable year for the following: (i) a corporation that has changed its taxable year for federal income tax purposes, (ii) a corporation that as a result of a change of ownership has two or more short federal taxable years, and (iii) a new taxpayer that would otherwise not have a taxable year. See ORC sections 5733.031(A) and 5733.04(E).

Except for taxpayers which have changed their accounting period and for taxpayers that have two or more federal taxable years that ended in calendar year 2001, taxpayers must determine the value of their issued and outstanding shares of stock as follows:

- ♦ **For report year 2002 taxpayers that have a calendar year end must use the period ending December 31, 2001.**
- ♦ **For report year 2002 taxpayers that have a fiscal year end must use the fiscal period ending in 2001.** However, taxpayers filing their first report should see below.
- ♦ **For report year 2002 taxpayers that are filing their first franchise tax first report must use the applicable period set forth below:**

- A. If the taxpayer incorporated in Ohio during 2001 and adopted a fiscal period ending in 2001, then the taxpayer must use the accounting period commencing on the date of incorporation and concluding with the last day of the fiscal period ending in 2001.
- B. If the taxpayer is a foreign corporation and first became an Ohio taxpayer during 2001 (that is, during 2001 the corporation began doing business in Ohio, began owning or using part or all of its capital or property in Ohio, obtained a license authorizing it to do business in Ohio or otherwise established nexus with Ohio under the Constitution of the United States) and after it became an Ohio taxpayer its fiscal year ended in 2001, then the taxpayer must use the accounting period commencing on the earliest of the following: (i) the date that it began doing business in Ohio, (ii) the date that it began owning or using a part or all of its capital or property in Ohio, (iii) the date that it obtained a license authorizing it to do business in Ohio or (iv) the date that it established nexus with Ohio under the Constitution of the United States. The accounting period will end on the taxpayer's fiscal year ending in 2001.
- C. All other new taxpayers will use the accounting period commencing with the earliest of the four dates set forth in B., above, and concluding with December 31, 2001. See paragraphs (E)(2) and (E)(4) of Tax Commissioner's Rule 5703-5-03.

Taxpayers that have changed their accounting period and taxpayers that have two or more short federal taxable years - The Department of Taxation has adopted the following rules regarding franchise taxpayers' taxable year and changes of taxable year:

- ♦ 5703-5-01 – Definitions Applicable to Rules 5703-5-01 to 5703-5-05 of the Administrative Code
- ♦ 5703-5-02 – Date as of Which the Value of a Taxpayer's Issued and Outstanding Shares of Stock is Determined
- ♦ 5703-5-03 – Dates on Which a Taxpayer's Taxable Year Begins and Ends
- ♦ 5703-5-04 – Changes of a Taxpayer's Annual Accounting Period

Important features of these rules are as follows:

- ♦ Generally, a taxpayer's taxable year begins on the date immediately following the end of the taxpayer's prior taxable year and ends on the date immediately preceding the beginning of the taxpayer's annual accounting period that includes the first day of January of the tax year.
- ♦ If a taxpayer changes its annual accounting period, there is (i) no period that is not subject to tax, (ii) no period that is subject to tax in more than one tax year, and (iii) no choice of accounting periods.
- ♦ A franchise tax "taxable year" under certain circumstances may be more than or less than one year in length.

If the corporation changed its taxable year in 2000 or 2001, please contact the Department of Taxation for a copy of the rules and time line illustrations of the rules. Send your request to the Ohio Department of Taxation, P.O. Box 2476, Columbus, Ohio 43216-2476 Attn: Rules. The rules are also available on the Department's web site.

7. TIME, PLACE AND METHOD FOR FILING AND PAYMENT

A. Filing Date; Payment Date

The filing and payment of the Ohio franchise tax for report year 2002 is due between January 1 and March 31, 2002. However, if the Ohio Franchise Tax Report is not filed by January 31 and if full payment is not made by January 31, then form FT-1120E, Declaration of Estimated Corporation Franchise Tax, must be filed by January 31 along with payment of one-third of the estimated tax, but not less than the \$50 minimum fee.

If the due date of the report or the due date of an extension or payment falls on a Saturday, Sunday or legal holiday, then the report, extension, or payment may be made on the next succeeding day which is not a Saturday, Sunday or legal holiday. Certain large taxpayers must pay by electronic funds transfer (see "EFT Method of Payment", below).

Except as otherwise provided, if a payment or document is mailed on or before the due date but delivered after the due date, the postmark date is deemed the date of delivery.

B. Extension

The tax commissioner will grant an extension of time for filing the report until May 31 if by March 31 the taxpayer submits form FT-1120ER together with payment of the second one-third of the estimated tax due.

Additional Extension. The tax commissioner will grant an additional extension of time for filing the report beyond May 31 if the corporation has been granted an extension by the Internal Revenue Service and by May 31 the taxpayer submits form FT-1120EX together with the balance of the tax due. The second extension extends the filing date to the 15th day of the month following the month for which the Internal Revenue Service has granted an extension for filing the corporation's federal income tax return. A copy of the federal extension must be attached to the franchise report, form FT-1120 FI, when filed.

The table below lists the latest possible due dates for filing the franchise tax report for tax year 2002 for the various taxable years ending in 2001. The table assumes the following:

- ♦ If the taxpayer's taxable year ended on or after August 31, 2001, the taxpayer has the maximum allowable federal extension,
- ♦ The taxpayer has timely filed franchise tax forms FT-1120E, FT-1120ER, and, where applicable, FT-1120EX, and
- ♦ The taxpayer has timely paid all estimated franchise tax.

Taxable Year Ending	Latest Possible Due Date for Filing the 2002 Franchise Tax Report
01/31/01 through 7/31/01	05/31/2002
08/31/2001	06/15/2002
09/30/2001	07/15/2002
10/31/2001	08/15/2002
11/30/2001	09/15/2002
12/31/2001	10/15/2002

Note: payment of all franchise tax for tax year 2002 is due by May 31, 2002, even if the taxpayer has an extension to file after that date.

C. Place

File the franchise report with the Treasurer of State, P.O. Box 27, Columbus, Ohio 43216-0027.

D. EFT Method of Payment

A taxpayer must pay by electronic funds transfer (EFT) if the taxpayer's total franchise tax liability after reduction for nonrefundable credits exceeded \$50,000 for the second preceding tax year. For further EFT information see the Department's July 31, 1994 Franchise Tax Information Release entitled "Recently-enacted Legislation Revises the Requirements for Corporations Paying Corporate Franchise Tax by Electronic Funds Transfer (EFT)." The information release is available on the Department's web site. Please direct questions regarding the EFT payment program to the 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).

8. INTEREST ON UNDER- AND OVERPAYMENTS

If a corporation fails to pay the tax by the due date, interest accrues on the unpaid tax. Interest on tax due is charged in addition to any penalties which may be incurred for late filing and late payment or failure to file. The period of the underpayment runs from the date the tax payment was required to be made to the date on which such payment is made. Interest on franchise tax overpayments runs from whichever of the following dates is the latest until the date the refund is paid:

- ♦ the date of payment,
- ♦ the ninetieth day after the final date the franchise report was required to be filed, or
- ♦ the ninetieth day after the date that the franchise report was filed.

During calendar year 2002 interest on both underpayments and overpayments will accrue at the rate of 7% per annum.

9. PENALTIES FOR LATE PAYMENT, FAILURE TO FILE, OR LATE FILING

- ♦ Penalty may be imposed for failure to timely pay the tax (including estimated tax). The penalty imposed may not exceed twice the interest charge.
- ♦ Penalty may be imposed for failure to file a report or failure to file a report timely. 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 report up to 50%.
- ♦ Additional penalties may be imposed for filing a fraudulent report and for filing a fraudulent refund claim.

10. OFFICERS, STATUTORY AGENT AND SIGNATURE

The president, vice-president, secretary, treasurer, general manager, superintendent, or managing agent of the corporation in Ohio must sign the report. If a domestic corporation has not completed its organization, one of its incorporators must sign the report. In addition, each taxpayer must list its president, secretary and treasurer along with the name and address of its statutory agent.

11. METHODS OF ACCOUNTING

The value of issued and outstanding shares of stock must be determined from the books of the corporation. The taxpayer must keep its books in accordance with a generally recognized and approved accounting system. The tax-basis method of

accounting is a generally recognized and approved accounting system. See *Gray Horse Inc. v. Limbach* (1993), 66 Ohio St. 3d 631. If a taxpayer keeps its books both in accordance with regulatory accounting principles and in accordance with generally accepted accounting principals, the value of the taxpayer's issued and outstanding shares of stock must be based upon those books kept in accordance with generally accepted accounting principles. See Tax Commissioner's Rule 5703-5-08.

12. ROUNDING OFF TO WHOLE DOLLAR AMOUNTS

The money items on the franchise tax report and accompanying schedules must be shown as whole dollar amounts by eliminating amounts less than 50 cents and increasing amounts from 50 cents to 99 cents to the next highest dollar.

13. RECORDS TO BE MAINTAINED

Every corporation must maintain books and records which substantiate the information reported on its Ohio Franchise Tax Report. These books and records must be available for inspection by agents of the Ohio Department of Taxation for a period of four years from the later of the date the taxpayer filed the franchise report or the date the report was required to be filed.

14. ENTERPRISE ZONE TAX BENEFITS

Amended Substitute House Bill 283, 123rd General Assembly (Budget Bill) extends through June 30, 2004 the authority for local governments to enter into enterprise zone agreements. See ORC section 5709.62.

Businesses that establish, expand, renovate or occupy a facility pursuant to an enterprise zone agreement and that create new jobs in a certified enterprise zone without reducing employment elsewhere in Ohio may be entitled to a series of tax benefits on their Ohio Corporation Franchise Tax Report. Among these benefits are an employee training credit, a day-care credit, exclusion of qualifying property and payroll from the numerators of the property and payroll factors, and treatment of the qualifying property as an exempted asset under the net worth base.

To qualify, businesses must hold a Tax Incentive Qualification Certificate (issued by the Department of Development) and must hire new employees to fill nonretail positions at the facility. Also, at the time of employment at least twenty-five percent of the new employees must have been at least one of the following:

- ♦ Unemployed persons who had resided at least six months in the county in which the enterprise's project site is located;
- ♦ Job Training Partnership Act eligible employees who had resided at least six months in the county in which the enterprise's project site is located;
- ♦ Recipients of aid to dependent children, general relief, or unemployment compensation benefits who had resided at least six months in the county in which the enterprise's project site is located;
- ♦ Handicapped persons, as defined under division (A) of section 3304.11 of the Revised Code, who had resided at least six months in the county in which the enterprise's project site is located;
- ♦ Residents for at least one year of a zone located in the county in which the enterprise's project site is located. See ORC sections 5709.64 and 5709.65.

In addition to the enterprise zone franchise tax benefits described above, a taxpayer may apply to the Director of Development for an "employee tax credit certificate" for each eligible new employee the enterprise hires after June 30, 1994 at the

facility to which the enterprise zone agreement applies provided that the taxpayer is complying with an enterprise zone agreement and has not closed or reduced employment at any place of business in Ohio within the twelve months preceding the application. A taxpayer who is issued a tax credit certificate for an eligible employee may claim a \$1,000 nonrefundable credit for each taxable year covered under the enterprise zone agreement during which the eligible employee is employed by the taxpayer. An "eligible employee" is a new employee who at the time the employee was hired to work at the facility was a recipient of aid to dependent children or general assistance and resided for at least one year in the county in which the facility is located. See Ohio Revised Code section 5709.66. Credit applications are available from the Office of Tax Incentives, Ohio Department of Development, P.O. Box 1001, Columbus, OH 43216-1001 or call (614) 466-4551 or 1-800-848-1300.

For a further discussion and summary of Ohio's enterprise zone program see Stempfer, "Economic Development Program Opportunities in Ohio, Summary and Update Focusing on Recent Tax-Related Legislation," *Ohio Tax Review*, vol. 8.3 (1994), at page 2.

15. ASSESSMENTS

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

- ♦ The final date the report subject to assessment was required to be filed, or
- ♦ The date the report 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 by signing form FT-WAIVER.

An amended franchise tax report filed as a result of an adjustment to the corporation's federal income tax return is deemed a report subject to assessment. However, the amended report does not reopen those facts, figures, computations or attachments from a previously filed report no longer subject to assessment or refund that are not affected, either directly or indirectly, by the adjustment to the corporation's federal income tax return. Furthermore, once the three-year refund statute of limitations has passed, the taxpayer may not offset the additional franchise tax resulting from IRS audit adjustments against franchise 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 net operating loss carried forward from a year closed to assessment or refund to a year still open to assessment or refund; nor does the statute of limitations prohibit either the tax commissioner or the taxpayer from adjusting the unused credits 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, and does not file a petition for reassessment within sixty days of receipt of the assessment, interest accrues on the assessment at the rate prescribed in ORC section 5703.47 from the date the tax commissioner issues the assessment until the taxpayer pays the assessment.

If the taxpayer disagrees with an assessment, the taxpayer may object to the assessment by timely filing a petition for reassessment. See general instruction #16.

16. APPLICATION FOR REFUND AND PETITION FOR REASSESSMENT

Corporation franchise taxpayers may request a refund by filing either prescribed form FT-REF, Application for Corporation Franchise Tax Refund, or by filing an amended report accompanied by the full and complete reason for the refund claim. Please do not file an **application for refund if the claimed overpayment is indicated on the originally filed franchise tax report**. Corporations may use form FT-PR, Petition for Reassessment, to initiate review proceedings in connection with a franchise tax assessment issued by the Department of Taxation.

Application for Corporation Franchise Tax Refund. Form FT-REF applies to claimed overpayments by a taxpayer, whether made voluntarily or as the result of the payment of an assessment issued by the Ohio Department of Taxation. If the overpayment is not the result of an IRS adjustment and the statute of limitations has not been extended by form FT-WAIVER (see general instruction # 15), then the Department must receive the application for refund or an amended report accompanied by the full and complete reason for the refund claim within three years of the date of the illegal, erroneous, or excessive payment. See *Abitibi-Price Corporation and Subsidiaries v. Tracy*, BTA No. 98-N-401 (3-12-01). Payments remitted with the estimated tax report (form FT-1120E) and extension requests (forms FT-1120ER and FT-1120EX) are deemed to have been made on the earlier of the date the Ohio Corporation Franchise Tax Report was filed or the due date of the report including extensions. Thus, if a franchise tax report is filed before its extended due date, the three year refund statute of limitations begins to run on the date the report was filed rather than the extended due date. See *Hanna Mining Co. v. Limbach* (1985), 20 Ohio St. 3d 3 and *Athena Manor, Inc. v. Limbach*, BTA Case No. 91-Z-12, February 26, 1993.

If the claimed overpayment is the result of a change in federal taxable income, then the Department must receive the claim for refund within the later of the following: (a) the three-year time period set forth above, or (b) the one-year period set forth in ORC section 5733.031. However, if the refund claim is filed outside the three year refund statute of limitations and the statute of limitations has not been extended by form FT-WAIVER (see general instruction #15), the refund claim can include only the direct and indirect effects of the federal adjustments. See *Gen. Motors Corp. v. Limbach* (1993), 67 Ohio St. 3d 90 and *The First Federal Savings Bank v. Tracy*, BTA Case No. 94-T-1353, August 23, 1996.

Regardless of the above provisions to the contrary, a franchise tax refund claim that is based on a capital loss carryback is timely if the refund claim is filed within three years from the due date of the franchise tax report (including extensions thereof) for the taxable year in which the capital loss arose. See *Prechter v. Tracy*, BTA Case No. 95-M-1214, April 4, 1997.

A taxpayer may not appeal an assessment by filing a claim for refund unless the taxpayer has paid the assessment. For example, if the taxpayer fails to file a petition for reassessment within sixty days of receipt of the assessment, then the taxpayer cannot file a refund claim protesting the assessment until after the taxpayer has paid the assessment.

Petition for Reassessment. Form FT-PR (formerly known as Application for Review and Correction, form FT-RC) applies only to assessments issued by the Ohio

Department of Taxation. A taxpayer must file its petition within sixty days of receipt of the assessment. If the taxpayer sends the petition by certified mail, the date of postmark is considered the date filed. If the taxpayer sends the petition by regular mail, the date the Department receives the petition 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 sixty day period described above, the tax commissioner will dismiss the petition as the tax commissioner has no jurisdiction to consider a late-filed petition.

The portion of an assessment which must be paid upon the filing of a Petition for Reassessment is as follows:

- a. If the sole item objected to is the assessed penalty or interest, the assessed corporation must pay the entire assessment except for the penalty.
- b. If prior to the date of issuance of the assessment the assessed corporation failed to file (i) the annual report required by section 5733.02 of the Revised Code, (ii) any amended report required by division (C) of section 5733.031 of the Revised Code for the tax year at issue, or (iii) any amended report required by division (D) of section 5733.067 of the Revised Code to indicate a reduction in the amount of the credit provided under that section, the assessed corporation must pay the entire assessment except for the penalty.
- c. If prior to the date of issuance of the assessment the assessed corporation filed (i) the annual report required by section 5733.02 of the Revised Code, (ii) all amended reports required by division (C) of section 5733.031 of the Revised Code for the tax year at issue, and (iii) all amended reports required by division (D) of section 5733.067 of the Revised Code to indicate a reduction in the amount of the credit provided under that section, and if a balance of the taxes shown due on the reports as computed on the reports remains unpaid, the assessed corporation must pay only that portion of the assessment representing any unpaid balance as shown on those reports together with all related interest.
- d. If the assessed corporation does not dispute that it is a taxpayer but claims the protections of section 101 of Public Law 86-272, 73 Stat. 555, 15 U.S.C.A. 381, as amended, the assessed corporation must pay only that portion of the assessment representing any unpaid balance of taxes shown due on the corporation's annual report.
- e. If none of the conditions specified in (a), (b), (c) and (d), above, apply, or if the assessed corporation claims that it is not a taxpayer (that is, if the assessed corporation disputes that it is subject to the franchise tax), the assessed corporation is not required to pay any portion of the assessment.

However, any unpaid portion of the assessment which upon final determination is found to be correct bears interest at the rate prescribed in ORC section 5703.47 from the date the Department of Taxation issues the assessment until the date the taxpayer pays the assessment. See ORC section 5733.11 as amended by Amended Substitute House Bill No. 215 (Budget Bill), 122nd

General Assembly and section 213 of Budget Bill. If the taxpayer decides to pay the assessment in full, such payment is not acknowledgment of agreement and will not prejudice the final determination of the petition, and the taxpayer will receive interest on any refund found due. See general instruction #8 for interest on underpayments and overpayments.

17. TAXPAYER'S BILL OF RIGHTS – REQUESTS FOR AN OPINION

The Taxpayer's Bill of Rights (Amended Substitute Senate Bill 147, 118th General Assembly) established and amended certain administrative procedures relating to Department of Taxation audits and assessments. The law provides that at or before the commencement of an audit, the Department of Taxation must provide to the taxpayer a written description of the roles of the Department and the taxpayer during an audit and a statement of the taxpayer's rights.

A brochure which discusses the Department's interpretation of this law is available on the Department's web site.

In addition, this law permits the tax commissioner to issue binding opinions regarding the taxation of proposed activities of the taxpayer. As set forth in Ohio Administrative Code (Rule) 5703-1-12 a request for an opinion of the tax commissioner must comply with the following:

- ♦ Be in writing;
- ♦ Explicitly request an "Opinion of the Tax Commissioner";
- ♦ Specifically refer to section 5703.53 of the Revised Code;
- ♦ State all facts of the activity or transaction for which the opinion is requested;
- ♦ Identify the parties involved in the activity or transaction about which the opinion is requested;
- ♦ Set out the specific legal question or questions for which the opinion is requested; and
- ♦ Be signed by an officer of the corporation authorized to act on its behalf.

For further information see ORC section 5703.53 and Rule 5703-1-12, Requests for an Opinion of the Tax Commissioner.

18. SUBSTANCE OVER FORM

Generally, the tax commissioner has authority to apply the doctrines of "economic reality," "sham transaction," "step transaction," and "substance over form." The tax commissioner bears the burden of establishing by a preponderance of the evidence that those doctrines should apply. See ORC section 5733.111.

19. RIGHT TO OFFSET REFUND

The tax commissioner may apply a taxpayer's franchise tax refund against the taxpayer's indebtedness to the State for any tax or fee and any charge, penalty, or interest arising from such a tax or fee which is administered by the tax commissioner and paid to the State or to the clerk of courts. This provision applies only to the taxpayer's debts which have become "final." See ORC section 5733.121.

LINE INSTRUCTIONS
SCHEDULE A – COMPUTATION OF FRANCHISE TAX

Line 7 – Overpayment Carryforward from 2001.

Enter the overpayment shown on the originally filed 2001 report which was credited to estimated tax payments for tax year 2002. An overpayment claimed on an amended report cannot be credited against the tax liability for any other year. If an amended report reflects an overpayment, please see general instruction #16.

Line 8 – Estimated payments made in 2002.

Enter the estimated payment paid with form FT-1120E, Declaration of Estimated Franchise Tax; form FT-1120ER, Application for Automatic Extension; and form FT-1120EX, Request for Additional Extension.

Line 9 – New jobs refundable credit.

Enter the new jobs credit as provided by ORC sections 5733.0610 and 122.17 and attach a copy of the certificate of verification issued by the Department of Development. The refundable new jobs credit is considered a payment made on January 1 of the tax year. The amount of the credit equals the amount of Ohio income tax the taxpayer withheld from compensation paid to “new employees” during the taxpayer’s taxable year multiplied by the percentage specified in the taxpayer’s agreement with the Tax Credit Authority.

The term “new employee” means a full-time employee first employed by the taxpayer in the project that is the subject of the tax credit agreement after the taxpayer enters into the agreement. New employees include employees hired after the Tax Credit Authority approves the taxpayer’s project but before the taxpayer signs the tax credit agreement with the Tax Credit Authority as long as the taxpayer signs the agreement within sixty days after receiving the agreement from the Department of Development. If the Authority determines that it is appropriate, a “new employee” also may include an employee re-hired or called back from layoff to work in a new facility or on a new product or service.

If the taxpayer claims the refundable new jobs credit with respect to an employee, the taxpayer may not claim the nonrefundable ORC section 5709.66 enterprise zone new employee credit with respect to that same employee.

The Tax Credit Authority and the Ohio Department of Development administer this credit. Tax Credit Agreement application forms are available from the Ohio Department of Development, Economic Development Division, P.O. Box 1001, Columbus, Ohio 43266-0101 or call (614)-466-4551 or 1-800-848-1300.

Line 12 – Interest and Penalty.

Enter any interest due as explained in general instruction #8, and enter any penalty due as explained in general instruction #9.

Line 15 – Amount of line 14 to be credited to year 2002 estimated tax and

Line 16 – Amount of line 14 to be refunded.

Enter the amount of overpayment to be refunded and/or to be credited against next year’s tax liability.

Note: An overpayment shown on an **amended** report cannot be credited against the tax liability for any other year. If an amended report reflects an overpayment, please submit form FT-REF and see general instruction #16.

SCHEDULE B – BALANCE SHEET

Attach to the franchise tax report a balance sheet which reflects the books of the taxpayer as of the beginning and the end of the taxpayer's taxable year.

SCHEDULE C – EXEMPTED ASSETS (NET BOOK VALUE)

Exempted assets are determined from the books of the taxpayer as of the beginning of the taxpayer's annual accounting period that includes the first day of January of the tax year. (See division (B) of Ohio Revised Code section 5733.056). For example, assume that an Ohio franchise taxpayer has a taxable year beginning July 1, 2000 and ending June 30, 2001. The taxpayer's exempted assets for tax year 2002 are determined as of July 1, 2001, the beginning of the taxpayer's annual accounting period that includes the first day of January of 2002. Generally, the figures at the beginning of the taxpayer's annual accounting period that includes the first day of January of the tax year (in this example, July 1, 2001) will be the same as the figures at the end of the taxable year that concludes prior to January 1 of the tax year (in this example, June 30, 2001).

Line 1 – Goodwill.

Enter the amounts which reflect goodwill as shown in the annual report to shareholders. "Goodwill" is the cost in excess of fair value of net assets acquired. An intangible asset is not goodwill if it can be separately purchased and sold and has a separate, identifiable value. See *GCC Beverages, Inc. v. Limbach*, B.T.A. Case Nos. 87-H-1278 and 87-B-1279, August 25, 1989.

Line 2 – Abandoned Property.

Enter the amounts which reflect abandoned property as shown in the annual report to shareholders.

Line 3 – Appreciation.

Enter the amounts which reflect appreciation as shown in the annual report to shareholders. Appreciation is an increase in asset value that occurs after acquisition. A taxpayer who accounts for its investment in subsidiaries under the equity method of accounting and maintains on its books a separate investment account for each individual investee may exclude as exempt appreciation the sum of the positive appreciation amounts and is not required to net positive and negative appreciation amounts. *SHV North America Corp. v. Tracy* (1994), 70 Ohio St.3d 395. (Under the equity method of accounting the investor initially records an investment in stock of an investee at cost and increases the carrying amount of the investment to recognize its share of the earnings of the investee after the date of acquisition. Likewise, the investor reduces the carrying amount of an investment by its share of the investee's losses and by dividends received from the investee.) Following a reorganization and merger in which there has been no substantial change of ownership, a taxpayer may deduct as exempt appreciation the undistributed earnings of the merged corporation which it previously deducted prior to the reorganization and merger and which after the reorganization and merger are reflected in the taxpayer's investment in the new corporation. See *Sun Refining and Marketing Co. v. Limbach*. B.T.A. Case No. 90-R-464, June 30, 1993.

A holding company may not deduct as exempt appreciation the amount of retained earnings of an operating company at the time the shareholders of the operating company contributed their shares of the operating company to the holding company in return for an equal number of shares of the holding company pursuant to an IRC section 351 tax free exchange. See *Edwards Industries, Inc. v. Tracy*, (1996), 74 Ohio St.3d 643.

Line 5 – Other.

The following qualify as exempted assets but generally do not apply to financial institutions: (1) the net book value of air, noise and water pollution control facilities for which the State of Ohio has issued a pollution control certificate (2) the net book value 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 improvements facility, (3) the net book value of qualifying improvements to land or tangible personal property in an enterprise zone for which the Department of Development has issued a Tax Incentive Qualification Certificate, (4) the net book value of property within Ohio which is used exclusively during the taxable year for qualified research and (5) the book value of land in Ohio that pursuant to section 5713.31 of the Ohio Revised Code the county auditor of the county in which such land is located has determined is devoted exclusively to agricultural use.

SCHEDULE D – APPORTIONMENT FORMULA

Amended Substitute House Bill 215 (the Budget Bill enacted in 1997), 122nd General Assembly substantially changed the franchise tax law for financial institutions for tax years 1998 and thereafter by adopting (with some variation) the property, payroll and sales factors from the Multistate Tax Commission's model legislation pertaining to apportionment for banks.

Please note: terms appearing in bold print are defined in the new law. The definitions of the terms begin on page 24.

Sales Factor

The sales factor is a fraction, the numerator of which is the taxpayer's Ohio receipts during the taxable year and the denominator of which is the taxpayer's everywhere receipts during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The sales factor includes the taxpayer's receipts from the following sources:

Line 1 – Receipts from the lease, or rental of **real property owned** by the taxpayer and receipts from the sublease of real property.

The numerator of the factor (within Ohio) includes receipts from the lease, rental or sublease of real property located in Ohio.

Line 2 – Receipts from the lease or rental of **tangible personal property owned** by the taxpayer.

The numerator of the factor includes receipts from the lease or rental of tangible personal property other than **transportation property** if the property is located in

Ohio when first placed in service by the lessee. The numerator of the factor also includes receipts from the lease or rental of transportation property owned by the taxpayer to the extent that the property is used in Ohio. The extent an aircraft is deemed to be used in Ohio and the amount of receipts included in the numerator of the factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in Ohio and the denominator of which is the total number of landings of the aircraft. If the extent of use within Ohio of any transportation property cannot be determined, the property will be deemed to be used wholly in the state in which the property has its **principal base of operations**. A motor vehicle is deemed to be used wholly in the **state** in which it is registered.

Line 3 – Interest (and fees or penalties in the nature of interest) from loans secured by real property.

The numerator of the factor includes interest (and fees or penalties in the nature of interest) from **loans** secured by real property located in Ohio. If the real property that secures the loan is located both within Ohio and one or more other states, such amounts are included in the numerator of the sales factor if more than fifty percent of the fair market value of the real property is located in Ohio. If more than fifty percent of the fair market value of the real property is not located within any one state, then such receipts are included in the numerator of the sales factor if the **borrower is located in Ohio**. The determination of whether the real property securing a loan is located in Ohio is made at the time the original loan agreement was made and all subsequent substitutions of collateral are disregarded.

Line 4 – Interest (and fees or penalties in the nature of interest) from loans not secured by real property.

The numerator of the factor includes interest (and fees or penalties in the nature of interest) from loans not secured by real property if the **borrower is located in Ohio**.

Line 5 – Net gains from the sale of loans (including income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code) secured by real property.

The amount of net gain from the sale of loans secured by real property included in the numerator of the factor is determined by multiplying such net gains by a fraction the numerator of which is interest (and fees or penalties in the nature of interest) from loans secured by real property located in Ohio and the denominator of which is the total amount of interest (and fees or penalties in the nature of interest) from loans secured by real property.

Line 6 – Net gains from the sale of loans (including income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code) not secured by real property.

The amount of net gain from the sale of loans not secured by real property included in the numerator of the factor is determined by multiplying such net gains by a fraction the numerator of which is interest from loans not secured by real property to **borrowers located in Ohio** and the denominator of which is interest from loans not secured by real property to borrowers everywhere.

Line 7 – Interest (and fees or penalties in the nature of interest) from credit card receivables and receipts from fees charged to credit card holders, such as annual fees.

The numerator of the factor includes interest (and fees or penalties in the nature of interest) from credit card receivables and receipts from fees charged to credit card holders, such as annual fees, if the **billing address** of the card holder is in Ohio.

Line 8 – Net gains from the sale of credit card receivables.

The amount of such net gains included in the numerator of the factor is determined by multiplying such net gains by a fraction, the numerator of which is the sum of (1) interest (and fees or penalties in the nature of interest) from credit card receivables if the **billing address** of the card holder is in Ohio and (2) fees charged to credit card holders, such as annual fees, if the billing address of the card holder is in Ohio. The denominator of the fraction is the sum of such amounts for credit card holders everywhere.

Line 9 – Credit card issuer's reimbursement fees.

The amount of credit card issuer's reimbursement fees included in the numerator of the factor is determined by multiplying such fees by the fraction determined in the instructions for line #8, above

Line 10 – Receipts from merchant discount.

Such receipts are computed net of any card holder charge backs, but are not reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

The numerator of the factor includes receipts from merchant discounts if the **commercial domicile** of the merchant is in Ohio.

Line 11 – Loan servicing fees derived from loans secured by real property.

The amount of such loan servicing fees included in the numerator of the factor is determined by multiplying such fees by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to the instructions for line #3, above, and the denominator of which is the total amount of interest (and fees or penalties in the nature of interest) from loans secured by real property.

Line 12 – Loan servicing fees derived from loans not secured by real property.

The amount of such loan servicing fees included in the numerator of the factor is determined by multiplying such fees by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to the instructions for line #4, above, and the denominator of which is the total amount of interest (and fees or penalties in the nature of interest) from loans not secured by real property.

Line 13 – Loan servicing fees for servicing either the secured or unsecured loans of others.

The numerator of the factor includes loan servicing fees for servicing either the secured or unsecured loans of another if the **borrower is located in Ohio**.

Line 14 – Receipts from services not otherwise apportioned.

The numerator of the factor includes receipts from services not otherwise apportioned if the service is performed in Ohio. If the service is performed both within

and without Ohio, the numerator of the sales factor includes receipts from such services, if a greater proportion of the income producing activity is performed in Ohio based on cost of performance.

Line 15 – Interest, dividends, net gains, and other income from investment assets and activities and from trading assets and activities.

“Investment assets and activities” and “trading assets and activities” include but are not limited to: investment securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

- A. Components of the denominator with respect to interest, dividends, net gains and other income from investment assets and activities and from trading assets and activities:
 - (i.) With respect to investment assets and activities and trading assets and activities, the factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.
 - (ii.) With respect to trading assets and activities, the factor includes the amount by which interest, dividends, gains, and other income from trading assets and activities, including, but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.
- B. Average value method for determining components of the numerator with respect to interest, dividends, net gains, and other income from investment assets and activities and from trading assets and activities described above. “Average value” as used below is determined using the same rules for determining the average value of tangible personal property for purposes of the property factor.
 - (i.) The amount of interest and dividends (other than interest and dividends from a subsidiary corporation at least 51% of whose common stock is owned by the taxpayer) and the amount of net gains and other income from investment assets and activities in the investment account included in the numerator of the factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a **regular place of business** of the taxpayer within Ohio and the denominator of which is the average value of all such assets.
 - (ii.) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements included in the numerator of the factor is determined by multiplying the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a **regular place of business** of the tax-

- payer within Ohio and the denominator of which is the average value of all such funds and such securities.
- (iii.) The amount of interest, dividends, gains, and other income from trading assets and activities, but excluding amounts described in #B.(i.) and B.(ii.), above, included in the numerator of the factor is determined by multiplying the amount described in #A.(ii.), above, by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a **regular place of business** of the taxpayer within Ohio and the denominator of which is the average value of all such assets.
 - (iv.) Dividends and interest received from subsidiaries – amount included in numerator. The amount of dividends received on the capital stock of, and the amount of interest received from **loans** and advances to, subsidiary corporations at least fifty-one percent of whose common stock is owned by the taxpayer included in the numerator of the factor is determined by multiplying such dividends and interest by a fraction the numerator of which is the sum of the net book value of the payor's **real property owned** in Ohio and the payor's **tangible personal property owned** in Ohio and whose denominator is the sum of the net book value of the payor's real property owned wherever located and the payor's tangible personal property owned wherever located. For purposes of determining this fraction, the taxpayer must determine net book value in accordance with generally accepted accounting principles.
- C. Gross income method for determining components of the numerator with respect to interest, dividends, net gains, and other income from investment assets and activities and from trading assets and activities described above. In lieu of using the average value method set forth in the instructions for item #15.(B.), above, the taxpayer may elect, or the tax commissioner may require in order to fairly represent the business activity of the taxpayer in Ohio, the following alternative method:
- (i.) The amount of interest and dividends (other than interest and dividends from a subsidiary corporation at least 51% of whose common stock is owned by the taxpayer) and the amount of net gains and other income from investment assets and activities in the investment account included in the numerator of the factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a **regular place of business** of the taxpayer within Ohio, and the denominator of which is the gross income from all such assets and activities.
 - (ii.) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements included in the numerator of the factor is determined by multiplying the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a **regular place of business** of the taxpayer within Ohio and the denominator of which is the gross income from all such funds and such securities.

- (iii.) The amount of interest, dividends, gains, and other income from trading assets and activities but excluding amounts described in #15.C.(i.) and 15.C.(ii.), above, included in the numerator is determined by multiplying the amount described in #15.A.(ii.) by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a **regular place of business** of the taxpayer within Ohio and the denominator of which is the gross income from all such assets and activities.
- (iv.) Dividends and interest received from subsidiaries - amount included in numerator. The amount of dividends received on the capital stock of, and the amount of interest received from **loans** and advances to, subsidiary corporations at least fifty-one percent of whose common stock is owned by the taxpayer included in the numerator of the factor is determined by multiplying such dividends and interest by a fraction the numerator of which is the sum of the net book value of the payer's **real property owned** in Ohio and the payer's **tangible personal property owned** in Ohio and whose denominator is the sum of the net book value of the payer's real property owned wherever located and the payer's tangible personal property owned wherever located. For purposes of determining this fraction, the taxpayer must determine net book value in accordance with generally accepted accounting principles.
- D. If the taxpayer elects or is required by the tax commissioner to use the method set forth in #15.C., above, the taxpayer must use this method on all subsequent reports unless the taxpayer receives prior permission from the tax commissioner to use a different method or the tax commissioner requires a different method.
- E. The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a **regular place of business** outside of Ohio by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside Ohio. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in Ohio and one such regular place of business is outside Ohio such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies or guidelines shall be presumed to be established at the **commercial domicile** of the taxpayer.

Line 16 – All other receipts.

The numerator of the factor includes all other receipts if either the income-producing activity is performed entirely in Ohio or the income-producing activity is performed both within and without Ohio and a greater proportion of the income-producing activity is performed within Ohio than in any other **state**, based on costs of performance.

Property Factor

Line 18 – Real property and tangible personal property owned,

Line 19 – Real property and tangible personal property rented x 8, and

Line 20 – Loans and credit card receivables.

The property factor is a fraction, the numerator of which is the sum of the following: (1) the average value of the taxpayer's **real property owned** and **tangible personal property owned** and physically located or used in Ohio during the taxable year, (2) the average value of real property and tangible personal property that the taxpayer has rented from another and which is physically located or used in Ohio during the taxable year, and (3) the average value of the taxpayer's **loans** and **credit card** receivables that are located within Ohio during the taxable year. The denominator of the property factor is the average value of all such property located or used both within and without Ohio during the taxable year.

The value of the taxpayer's real property owned and tangible personal property owned is the original cost or other basis of such property for federal income tax purposes without regard to depreciation, depletion or amortization. The value of **loans** and **credit card** receivables is the outstanding principal balance of such accounts without regard to any reserve for bad debts. However, if a loan or credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the loan or credit card receivable charged-off is not outstanding. Furthermore, a specifically allocated reserve which is established pursuant to generally accepted accounting principals and treated as charged-off for federal income tax purposes will be treated as charged-off for purposes of determining the property factor.

The average value of owned property (including **loans** and **credit card** receivables) is computed annually by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two. However, the tax commissioner may require or the taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the tax commissioner or elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without Ohio, and the same method must be used on all subsequent reports unless the taxpayer receives prior permission from the tax commissioner or the tax commissioner requires a different method of determining value. The average value of rented property is determined by multiplying the **gross rents** payable during the taxable year by eight.

A motor vehicle is deemed to be used wholly in the **state** in which it is registered. All other **transportation property** is included in the numerator of the property factor to the extent that the property is used in Ohio. The extent that an aircraft is deemed to be used in Ohio and the amount of value that is to be included in the numerator of the property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in Ohio and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of use within Ohio of any transportation property cannot be determined, then the property is deemed to be used wholly in the state in which the property has its principal base of operations.

A **credit card** receivable or a **loan**, other than a loan to a subsidiary corporation at least fifty-one percent of whose common stock is owned by the taxpayer, is assigned to the taxpayer's **regular place of business** with which the credit card receivable or loan has a preponderance of substantive contacts. A credit card receivable or loan is located in Ohio if it is properly assigned to a regular place of business of the taxpayer within Ohio, and a credit card receivable or loan is located outside Ohio if it is properly assigned to a regular place of business of the taxpayer outside Ohio.

A **credit card** receivable or a **loan** is presumed to have been properly assigned if:

- ♦ The taxpayer assigned the credit card receivable or loan to a **regular place of business** and the assignment is consistent with federal or **state** regulatory requirements;
- ♦ The assignment is based upon substantive contacts of the credit card receivable or loan to such regular place of business; and
- ♦ The taxpayer uses the assignment for filing all state and local tax returns for which an assignment of credit card receivables or loans is required.

In determining the **state** in which the preponderance of substantive contacts relating to a **credit card** receivable or a **loan** have occurred, the facts and circumstances regarding the credit card receivable or loan at issue must be reviewed on a case-by-case basis with consideration given to such activities as solicitation (both active and passive), investigation, negotiation, approval, and administration.

- ♦ “Active solicitation” occurs when an **employee** of the taxpayer initiates the contact with the customer. Active solicitation is located at the **regular place of business** which the employee is regularly connected with or working out of, regardless of where the employee’s services were actually performed.
- ♦ “Passive solicitation” occurs when the customer initiates the contact with the taxpayer. If the customer’s initial contact was not at a **regular place of business** of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.
- ♦ “Investigation” is the procedure whereby the taxpayer’s **employees** determine the credit worthiness of the customer and the degree of risk in making a **loan**. Investigation is located at the **regular place of business** which the taxpayer’s employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.
- ♦ “Negotiation” is the procedure whereby **employees** of the taxpayer and its customer determine the terms of the **loan** agreement such as the amount, duration, interest rate, frequency of repayment, currency denomination, and security required. Negotiation is located at the **regular place of business** to which the taxpayer’s employees are regularly connected or working from, regardless of where the services of such employees were actually performed.
- ♦ “Approval” is the procedure whereby the taxpayer’s **employees** or board of directors make the final determination whether to enter the **loan** agreement. Approval is located at the **regular place of business** to which the employees are regularly connected or working from, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the taxpayer’s **commercial domicile**.
- ♦ “Administration” is the process of managing the account. Administration includes bookkeeping, collecting payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Administration is located at the **regular place of business** from which the taxpayer oversees these activities.

Absent any change of material fact, a **loan** (other than a loan or advance to a subsidiary corporation at least fifty-one percent of whose common stock is owned by the taxpayer) that has been properly assigned to a **state** shall remain assigned to that **state** for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substan-

tive contacts to a **regular place of business** there.

The amount of a **loan** or advance to a subsidiary corporation at least fifty-one percent of whose common stock is owned by the taxpayer to be included in the numerator of the property factor is determined by multiplying the average value of the loan by a fraction the numerator of which is the net book value of the subsidiary's physical assets in Ohio and the denominator of which is the net book value of the subsidiary's physical assets everywhere. The fraction is determined as of the end of the subsidiary's taxable year that is included in the taxpayer's taxable year. If the subsidiary corporation owns at least fifty-one per cent of the common stock of another corporation, the ratio must be calculated by including the other corporation's real property and tangible personal property. The calculation of the ratio applies with respect to all lower-tiered subsidiaries, provided that the immediate parent corporation of the subsidiary owns at least fifty-one per cent of the common stock of that subsidiary. As noted above, the average value of a loan is computed by adding the outstanding principal balance of such loan on the first day of the taxable year and the outstanding principal balance of such loan on the last day of the taxable year and dividing the sum by two.

Note: If the property factor as determined above is less than 1.00, please attach to the report a schedule which separately lists the taxpayer's Ohio and everywhere cost values at the beginning and the end of the taxpayer's taxable year for the following assets: (1) buildings and other depreciable assets, (2) land, (3) credit card receivables, (4) loans to subsidiaries and (5) loans other than loans to subsidiaries.

Payroll Factor

Line 22 – Compensation paid to employees.

The payroll factor is a fraction, the numerator of which is the taxpayer's total **compensation** paid in Ohio during the taxable year, and the denominator of which is the taxpayer's total compensation paid everywhere during the taxable year.

Compensation is paid in Ohio if any one of the following three tests, applied consecutively, is met:

1. The **employee's** services are performed entirely within Ohio.
2. The employee's services are performed both within and without Ohio, but the service performed without Ohio is incidental to the employee's service within Ohio. The term "incidental" means any service which is temporary or transitory in nature or which is rendered in connection with an isolated transaction.
3. The employee's services are performed both within and without Ohio and:
 - (a) The employee's **principal base of operations** is within Ohio; or
 - (b) There is no principal base of operations in any **state** in which some part of the services are performed, but the place from which the services are directed or controlled is in Ohio; or
 - (c) The principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed, but the employee's residence is in Ohio.

Alternative Apportionment Methods

If the above apportionment provisions do not fairly represent the extent of the taxpayer's business activity in Ohio, the taxpayer may request or the tax commis-

sioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- ♦ Separate accounting;
- ♦ The exclusion of any one or more of the factors;
- ♦ The inclusion of one or more additional factors which will fairly represent the extent of the taxpayer's business activity in Ohio; or
- ♦ The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's value.

SCHEDULE D-2 – DEPOSITS FACTOR

For each of the tax years 1998 through 2003 in lieu of using the property, payroll and sales factors as set forth above, **qualified institutions** may elect to use a single **deposits** fraction whose numerator is the deposits assigned to **branches** in Ohio and whose denominator is the deposits assigned to branches everywhere. Deposits are assigned to branches within and without Ohio in the same manner such assignment is made for regulatory purposes. Qualified institutions can make this election on: (1) an original report, (2) an amended report and refund claim filed within the statute of limitations, or (3) a timely filed petition for reassessment. The election applies only to the tax year specified in the election and can be revoked at any time within the statute of limitations.

DEFINITIONS

Billing address means the address where any notice, statement, or bill relating to a customer's account is mailed, as indicated in the books and records of the taxpayer on the first day of the taxable year or on such later date in the taxable year when the customer relationship began.

Borrower or credit card holder located in Ohio means: (1) a borrower, other than a credit card holder, that is engaged in a trade or business and maintains its **commercial domicile** in Ohio or (2) a borrower that is not engaged in a trade or business, or a credit card holder, whose **billing address** is in Ohio.

Branch means a "domestic branch" as defined in section 3 of the "Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 1813(o), as amended.

Commercial domicile means the principal place from which the trade or business of the taxpayer is directed or managed. (The term "commercial domicile" is not defined in ORC section 5733.056; the definition here is taken from ORC 5733.04.)

Compensation means wages, salaries, commissions, and any other form of remuneration paid to **employees** for personal services that are included in such employee's gross income under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, such as those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the Internal Revenue Code is made as though such employees were subject to the Internal Revenue Code.

Credit card means a credit, travel, or entertainment card.

Credit card issuer's reimbursement fee means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

Deposits has the meaning given in section 3 of the "Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 1813(1), as amended.

Employee means, any individual who under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of the taxpayer.

Gross rents means the actual sum of money or other consideration payable for the use or possession of property. Gross rents includes: (1) any amount payable for the use or possession of real property or tangible personal property whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise; (2) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement; and (3) a proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land, by or on behalf of the taxpayer, the value of the building is determined in the same manner as if owned by the taxpayer.

Gross rents does not include: (1) reasonable amounts payable as separate charges for water and electric service furnished by the lessor; (2) reasonable amounts payable as service charges for janitorial services furnished by the lessor; (3) reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and (4) that portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it.

Loan means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include debt obligations of subsidiaries, **participations**, **syndications**, and leases treated as loans for federal income tax purposes. Loan does not include: properties treated as loans under section 595 of the Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; **credit card** receivables, including purchased credit card relationships; non-interest bearing balances due from depositor institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit or other mortgage-backed or asset-backed security; and other similar items.

Loan secured by real property means that fifty percent or more of the aggregate value of the collateral used to secure a **loan** or other obligation, when valued at fair

market value as of the time the original loan or obligation was incurred, was real property.

Merchant discount means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a **credit card** is accepted in payment for merchandise or services sold to the card holder.

Participation means an extension of credit in which an undivided ownership interest is held on a pro-rata basis in single loan or pool of **loans** and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

Principal base of operations

With respect to an **employee**, the “principal base of operations” means the place of more or less permanent nature from which the employee regularly (a) starts work and to which the employee customarily returns in order to receive instructions from the employer or (b) communicates with the employee’s customers or other persons or (c) performs any other functions necessary to the exercise of the trade or profession at some other point or points.

With respect to **transportation property**, “principal base of operations” means the place of more or less permanent nature from which the transportation property is regularly directed or controlled.

Qualified institution means a financial institution that has at least ten percent of its **deposits** in Ohio as of the last day of June prior to the beginning of the tax year and meets one of the following three tests:

1. On or after June 1, 1997, the financial institution has consummated one or more approved transactions with insured banks with different home states that would qualify under section 102 of the “Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,” Public Law 103-328, 108 Stat. 2338; or
2. The financial institution is a federal savings association or federal savings bank that on or after June 1, 1997 has consummated one or more interstate acquisitions that result in a financial institution that has **branches** in more than one **state**; or
3. On or after June 1, 1997 the financial institution has consummated one or more approved interstate acquisitions under authority of Title XI of the Ohio Revised Code that result in a financial institution that has branches in more than one state.

Real property owned and **tangible personal property owned** means real property and tangible personal property, respectively, on which the taxpayer can claim depreciation for federal income tax purposes or to which the taxpayer holds legal title and on which no other person can claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax. Real property and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure. Federal income tax treatment (not book treatment) of a lease governs whether property is considered “owned” or “rented” by the lessee. Property is rented by the lessee if a transaction between lessor and lessee is considered a lease or rent for federal income tax purposes;

property is owned by the lessee if the transaction is considered a purchase for federal income tax purposes.

Regular place of business means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by **employees** of the taxpayer.

State means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

Syndication means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

Transportation property means vehicles and vessels capable of moving under their own power as well as any equipment or containers attached to such property.

SCHEDULE E – NET VALUE OF STOCK

The value of issued and outstanding shares of stock is determined from the books of the taxpayer as of the beginning of the taxpayer's annual accounting period that includes the first day of January of the tax year. See division (B) of Ohio Revised Code section 5733.056. For example, assume that an Ohio franchise taxpayer has a taxable year beginning July 1, 2000 and ending June 30, 2001. The taxpayer's franchise tax net value of stock for tax year 2002 is determined as of July 1, 2001 the beginning of the taxpayer's annual accounting period that includes the first day of January of tax year 2002. Generally, the figures at the beginning of the taxpayer's annual accounting period that includes the first day of January of the tax year (in this example, July 1, 2001) will be the same as the figures at the end of the taxable year that concludes prior to January 1 of the tax year (in this example, June 30, 2001).

Line 2 – Ownership interest of depositors.

With respect to a financial institution that does not have capital stock "issued and outstanding shares of stock" includes, but is not limited to ownership interests of depositors in the capital employed in such an institution (see ORC section 5733.04(A)). Except for the amounts determined under the instructions for lines 4 and 5, below, ownership interest of depositors does not include any amount which is treated as a liability in accordance with generally accepted accounting principles.

Line 4 – Reserves and net deferred tax liabilities.

Reserves and net deferred tax liabilities (that is, deferred tax liabilities less deferred tax benefits) are includable in the computation of net value of stock. See *Kroger v. Bowers* (1965), 3 Ohio St. 2d 76; *Baldwin Piano and Organ Company v. Kosydar* (April 7, 1975) First District Court of Appeals Hamilton County, Case No. 7425500; and *Allied Stores of Penn-Ohio, Inc. v. Limbach*, B.T.A. Case No. 85-B-484, February 19, 1988.

The debit balance of the taxpayer's deferred income tax account (that is, the excess of deferred tax benefits over deferred tax liability) accounted for in

accordance with generally accepted accounting principles is deductible from net worth as a negative reserve, thereby decreasing taxable net worth. See *USX v. Tracy*, BTA Nos. 92-1479, 92-1480 (1-22-99).

The gross profit portion of income received but not yet earned is includable in the net value of stock. For example, the gross profit portion of unearned subscription revenue received by a magazine publisher is includable in the net worth computation.

Contingent liabilities are includable in the net worth computation if:

- ♦ The taxpayer cannot reasonably estimate the amount of the liability; or
- ♦ The taxpayer cannot establish from information available prior to the issuance of the financial statements that it is probable that a liability had been incurred at the balance sheet date.

A taxpayer is not required to add to its net worth as a reserve any account, whether shown on the taxpayer's books as a liability or a reserve, if that account results from and is maintained in accordance with FASB Statement No. 106 (see Tax Commissioner's Rule 5703-5-10). Deferred income that is neither earned nor received is not generally includable in the net worth computation. However, the gross profit portion of income from an installment sale is includable in the net worth computation.

Line 5 – Qualifying amount (if the taxpayer is a related member to a qualifying holding company) ORC section 5733.05(C)(2).

If the taxpayer is a **related member** to a **qualifying holding company**, the taxpayer must adjust its net worth and debt by the **qualifying amount**.

A **qualifying holding company** is any corporation that satisfies all six of the following requirements:

- ♦ The corporation's "intangible assets ratio" equals or exceeds 90%,
- ♦ The corporation's "investment in related members ratio" equals or exceeds 50%,
- ♦ During the taxable year the corporation's "gross income from intangible assets ratio" equals or exceeds 90%,
- ♦ The corporation is not a financial institution on the last day of the taxable year ending prior to the first day of the tax year,
- ♦ The corporation's related members adjust their net worth and debt for purposes of computing their franchise tax on the net worth base, such that the related members' debt-to-equity ratio equals the consolidated debt-to-equity ratio of the "qualifying controlled group." (A "**qualifying controlled group**" is defined in ORC section 5733.04(M) as two or more corporations that satisfy the ORC section 5733.052(A) ownership and control requirements to file a combined report (whether or not the corporations actually file a combined report).), and
- ♦ The corporation elects to be treated as a qualifying holding company for the tax year by filing form FT-QHC.

The **qualifying amount** is the amount that when added to the taxpayer's net worth and subtracted from the taxpayer's liabilities or when subtracted from the taxpayer's net worth and added to the taxpayer's liabilities will result in the taxpayer's debt-to-equity ratio equaling the consolidated debt-to-equity ratio of the **qualifying controlled group** of which the taxpayer is a member. The consolidated debt-to-equity ratio is computed in accordance with generally accepted accounting principles on the last day of the taxpayer's taxable year ending prior to the first day of the tax

year. The qualifying amount that is added to the taxpayer's net worth and subtracted from the taxpayer's liabilities may not exceed the amount of the taxpayer's liabilities owed to **related members**. Furthermore, the taxpayer's net worth after adjustment by the qualifying amount may not exceed the net book value of the corporation's assets. If the qualifying amount will be subtracted from the taxpayer's net worth, enter the qualifying amount in parenthesis. See ORC section 5733.05(C)(2).

The term "**related member**" means a person that with respect to the taxpayer is any of the following:

- ♦ An individual stockholder, or a member of the stockholder's family enumerated in IRC section 318, if the stockholder and the members of the stockholder's family own directly or indirectly in the aggregate at least 50% of the value of the taxpayer's outstanding stock,
- ♦ A stockholder, or stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts and corporations own directly or indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock,
- ♦ A corporation, or a party related to the corporation in a manner that would require IRC section 318 attribution of stock from the corporation to the party or from the party to the corporation, if the taxpayer owns directly or indirectly in the aggregate at least 50% of the value of the corporation's outstanding stock,
- ♦ A "component member" as defined in IRC section 1563(b), or
- ♦ A person to whom or from whom there is attribution of stock ownership in accordance with IRC section 1563(e) except that "20% shall be substituted for "5% wherever "5%" appears in IRC section 1563(e). ORC 5733.042(A)(6).

For further information see form FT-QHC, Qualifying Holding Company Election.

SCHEDULE F – ADJUSTED NET VALUE OF STOCK FOR HOLDING COMPANIES

This schedule applies to:

- ♦ Financial institutions which own at least 25% of the issued and outstanding shares of common stock of another financial institution,
- ♦ Financial institutions which own at least 80% of the issued and outstanding shares of common stock of a public utility as defined in ORC section 5727.01, and
- ♦ Financial institutions which own at least 80% of the issued and outstanding shares of common stock of an insurance company as defined in ORC section 5725.01.

The taxpayer's excludable investment, total assets and net value of stock are determined from the books of the taxpayer as of the beginning of the taxpayer's annual accounting period that includes the first day of January of the tax year. See division (B) of Ohio Revised Code section 5733.056. For example, assume that an Ohio franchise taxpayer has a taxable year beginning July 1, 2000 and ending June 30, 2001. For tax year 2002 the taxpayer's franchise tax excludable investment, total assets and net value of stock are determined as of July 1, 2001 the beginning of the taxpayer's annual accounting period that includes the first day of January of tax year 2002. Generally, the figures at the beginning of the taxpayer's

annual accounting period that includes the first day of January of the tax year (in this example, July 1, 2001) will be the same as the figures at the end of the taxable year that concludes prior to January 1 of the tax year (in this example, June 30, 2001).

Line 1 – Excludable Investment.

If the taxpayer owns the applicable percentage of the common stock of a public utility, insurance company or another financial institution, as set forth above, enter the taxpayer's investment in such public utility, insurance company, or other financial institution net of goodwill and appreciation included in such investment. Appreciation does not include "negative appreciation". See *SHV North American Corp. v. Tracy* (1994), 70 Ohio St.3d 395.

Line 2 – Total Assets.

Enter the taxpayer's total assets as shown by the books of the corporation net of all appreciation and goodwill.

**SCHEDULE A-1
NONREFUNDABLE CREDITS APPLICABLE TO
FINANCIAL INSTITUTIONS**

ORC section 5733.98 sets forth the order in which franchise tax nonrefundable credits and unused credit carryforward amounts must be used. A nonrefundable credit may be used to reduce the tax liability (before considering any payments) to the \$50 minimum fee, but a nonrefundable credit may not reduce the tax liability (before considering any payments) below the minimum fee. A lower ranking credit must be used before any higher ranking credit is used. The order is important if the corporation is entitled to more than one nonrefundable credit and the corporation is unable to utilize some portion of the total credit amount in the year the credits were generated (because the total credit amount exceeds the tax due before the credit). Nonrefundable credits that are not used in the year generated can generally be carried forward to future years. However, the carryforward period is limited and varies from credit to credit. Any unused credit amount that remains after the carryforward period for that credit has expired is lost. The unused amount of a particular credit that is carried forward to a later year is used prior to the same credit generated in the later year and prior to any higher numbered credit on the list.

Note 1: The new jobs credit is not summarized below because the new jobs credit is a refundable credit which is considered a payment of the tax. See line instructions for Schedule A, line 9.

Note 2: For tax years 1999 and thereafter Amended Substitute House Bill 215, 122nd General Assembly eliminated the credit for investment in qualified subsidiaries provided for in ORC section 5733.067.

- 1. Credit for Taxes Paid by a Qualifying Pass-Through Entity**(ORC section 5733.061) – Upon filing a corporation franchise tax report, a qualifying inves-

tor corporation in a qualifying pass-through entity can claim a nonrefundable credit equal to the corporation's proportionate share of the tax paid by the qualifying pass-through entity. To claim this credit, the qualifying investor must attach to its franchise tax report a copy of the IRS form K-1 indicating the qualifying investor's proportionate share of the amount of the pass-through entity tax for which the qualifying investor seeks to claim a credit. For an explanation of the tax on qualifying pass-through entities see the instructions for form IT-1140, Tax Return for Pass-Through Entities and Trusts. This credit has an unlimited carryforward period.

2. **Credit for Savings and Loan Association Fees** (ORC section 5733.063) – Savings and loan associations are permitted a credit against the total tax due equal to the amount of the annual assessment the association paid during the taxable year to the Division of Savings and Loan Associations under Section 1155.13 of the Revised Code less the amount the association paid in supervisory fees during the taxable year to the Federal Savings and Loan Insurance Corporation or in the case of a savings and loan association not insured by the Federal Savings and Loan Insurance Corporation, the amount it would have paid if insured thereby. To qualify for this credit, the association must file with the franchise report a document certified by the Superintendent of the Division of Savings and Loan Associations verifying the amount of state annual assessment fees and supervisory fees paid by the association during the taxable year..
3. **Credit for Employers that Enter into Agreements with Child Day-Care Centers** (ORC section 5733.36) – A taxpayer that makes periodic “support payments” to an Ohio licensed day-care center which agrees to serve a child of the taxpayer's employee for the period covered by the support payment may claim a credit equal to 50% of the support payments that the taxpayer made to the day-care center during the taxable year. The credit applies to tax years 1999 through 2003 and has no carryforward provision. The Department interprets the term “child of the taxpayer's employee,” as used above and in the “credit for employers that establish on-site child day-care centers” to mean any child who lives in the home of an employee and an employee's natural child, stepchild or adopted child whether or not the natural child, stepchild or adopted child lives in the home of the employee.
4. **Credit for Employers that Reimburse Employee Child Day-Care Expenses** (ORC section 5733.38) – A taxpayer that reimburses its employees for dependent child day-care expenses at an Ohio-licensed day-care center may claim a credit equal to fifty percent of the amount that the taxpayer reimbursed its employees for such expenses, but the credit may not exceed seven hundred fifty dollars per dependent child. In determining the credit, the taxpayer may not include any amount incurred in connection with a cafeteria plan described in section 125 of the Internal Revenue Code; nor may the taxpayer include “support payments” used to determine the credit for employers that enter into agreements with child day-care centers (see credit #3, above). The credit applies to tax years 1999 through 2003 and has no carryforward provision..

Note: The Job Training Credit (ORC section 5733.42) does not appear on the 2002 franchise tax report because this temporary credit no longer applies to tax years 2002 and 2003. As a result of Amended Substitute House Bill 94, 124th General Assembly (the Budget Bill enacted in June 2001), the credit now applies to tax years 2001, 2004, 2005 and 2006.

- 5. Credit for Employers that Establish On-Site Child Day-Care Centers** (ORC section 5733.37) – A taxpayer that establishes an Ohio licensed day-care center that serves only children of the taxpayer’s employees and is located at the employees’ worksite may claim a credit equal to the lesser of one hundred thousand dollars or fifty percent of the amount the taxpayer incurred for equipment, supplies, labor, and real property, including renovation of real property, to establish the day-care center. The taxpayer can claim the credit only for the tax year immediately following the taxable year in which the child day-care center begins operations, and the taxpayer can claim the credit only for tax year 1999, 2000, 2001, 2002, or 2003. The credit amount that the taxpayer does not use in the tax year claimed may be carried forward for five taxable years. However, if the taxpayer ceases to operate the center within the five year carryforward period, any unused portion of the credit is lost. ORC 5733.37.

Although the credits listed in the table on page 34 are available, they generally do not apply to financial institutions. For additional information with respect to the credits listed in the table, please see the franchise tax instructions book applicable to general taxpayers available on the Department’s web site.

Tax Commissioner’s Rules Applicable to Financial Institutions in Determining the Ohio Corporation Franchise Tax	
5703-5-01	Definitions applicable to rules 5703-5-01 to 5703-5-05 of the Administrative Code
5703-5-02	Date as of which the value of a taxpayer’s issued and outstanding stock is determined
5703-5-03	Dates on which a taxpayer’s taxable year begins and ends
5703-5-04	Changes of a taxpayer’s annual accounting period
5703-5-05	Taxes excludable in computing the corporate tax under the net worth basis
5703-5-08	Books from which the value of issued and outstanding shares of stock is determined under the net worth basis of the corporation franchise tax
5703-5-10	Corporate franchise tax; accounts maintained under Statement of Financial Accounting Standards No. 106
5703-1-12	Requests for an opinion of the tax commissioner

INFORMATION RELEASES

Information Releases are available on the Department’s web site. Since 1991 the Income Tax Audit Division has issued the following Information Releases:

“Corporate Franchise Tax –Nexus Standards,” September, 2001

"Corporation Franchise Tax Nexus for Non-resident Limited Partners Following the UCOM Decision," March 15, 2001 -

"IRC Section 482 Study: Safe Harbor to Avoid Ohio Corporate Franchise Tax Report Required or Expanded Combinations," June 23, 2000

"Withdrawal of Special Instructions," October 31, 1997

"Am. Sub. H.B. No. 215, 122nd General Assembly (Budget Bill), Summary of Franchise Tax & Income Tax Provisions," September 18, 1997

"IRS 'Check the Box' Entity Selection Regulations," August 19, 1997

Revisions to May 6, 1996 Information Release," June 18, 1996

"Alternative 20% Credit," May 7, 1996

"Examples Setting Forth the Division's Interpretation of Ohio Revised Code Sections 5733.33 and 5747.31, 'Second Credit for Purchases of New Manufacturing Machinery and Equipment,'" May 6, 1996

"Second Credit for Purchases of New Manufacturing Machinery and Equipment," September 22, 1995

"20% Threshold Test Credit for Purchases of New Manufacturing Machinery and Equipment," September 21, 1995

"Newly-enacted Investment Tax Credit Law," October 14, 1994

"Recently-enacted Legislation Revises the Requirements for Corporations Paying Corporate Franchise Tax by Electronic Funds Transfer (EFT)," July 31, 1994

"Taxation of S Corporations and Their Shareholders," July 31, 1994

"New Legislation Requires Certain Corporations to Pay Corporate Franchise Tax by Electronic Funds Transfer," October 29, 1993

"Safe Harbor Leases: Franchise Tax Policy Change," November 10, 1992

"Application of Ohio Revised Code Section 5733.053 (Transferor Statute) to the Merger of a C Corporation into an S Corporation," September 24, 1992

"Schedule B-3 (Combined) — Related Entity and Related Member Adjustments for Corporations Included in a Combined Franchise Tax Report," May 6, 1992

"Exempt Federal Interest," January 9, 1992

"Credit for Investment in Qualified Subsidiaries," July 16, 1991

"Taxpayer Elected Franchise Tax Combinations," May 15, 1991

"Foreign Technical Service Fee Deductions," May 15, 1991

Tax Information Releases are not "Opinions of the Tax Commissioner" within the meaning of ORC section 5703.35. Nevertheless, the releases do reflect the Income Tax Audit Division's interpretation of the law.

Rank	Nonrefundable Credit	Carryforward Period	ORC Section
1	Credit for recycling and litter prevention donations	None	5733.064
2	Credit for maintaining railroad crossing warning devices.	None	5733.43
3	Credit for purchases of lights and reflectors for tractors	None	5733.44
4	Second credit for purchases of new manufacturing machinery and equipment (7.5%/13.5% Credit)	Three years	5733.33
5	Credit for qualified research expense	Seven years	5733.351
6	Credit for eligible new employees in an enterprise zone	Three years	5709.66
7	Credit for eligible costs associated with a voluntary action (brownfield site clean-up)	Three years	5733.34
8	Credit for grape production property	Seven years	5733.32
9	Export sales credit	1994-2005	5733.069
10	Edison Center credit for research & development investors	Fifteen years	5733.35, 122.15, 122.151, 122.152, 122.153, 122.154
11	Enterprise zone day care and training credits	Unlimited*	5709.65(A)

*Unused credit amounts may be carried forward until fully utilized.

Taxpayer Assistance

Internet: www.state.oh.us/tax/
Tax Forms
Instructions
Information Releases
E-mail us

Phone: Toll-free 1-888-405-4039

Walk-in: Walk-In Services are available at all Office Locations Monday through Friday, 800 a.m. to 5:00 p.m.

Corporate Franchise Tax Division
P.O. Box 2476
Columbus, OH 43216-2476

Taxpayer Services Division
P.O. Box 182382
Columbus, OH 43218-2382

Business Taxpayer Services: 1-888-405-4039
Registration Unit: 1-888-405-4089
Forms Requests: 1-800-282-1782

Taxpayer Service Locations

Akron Taxpayer Service Center
Akron Government Center
161 South High St., Suite 501
Akron, OH 44308-1600

Cincinnati Taxpayer Service Center
900 Dalton Ave. at West 8th St.
Cincinnati, OH 45203-1171

Cleveland Taxpayer Service Center
Cleveland State Office Tower
615 West Superior Ave., 5th Floor
Cleveland, OH 44113-1891

Columbus Taxpayer Service Center(s)
800 Freeway Drive North
Columbus, OH 43229 **OR**
30 East Broad St., 20th Floor
Columbus, OH 43215

Dayton Taxpayer Service Center
15 E. Fourth St., 5th Floor
Dayton, OH 45402-2162

Toledo Taxpayer Service Center
One Government Center, Suite 1400
Toledo, OH 43604-2232

Youngstown Taxpayer Service Center
242 Federal Plaza West, Suite 402
Youngstown, OH 44503-1294

Zanesville Taxpayer Service Center
601 Underwood St.
Zanesville, OH 43701-3786

For Deaf, Hearing-Impaired or Speech Impaired who use TTY or TDD only:
Please contact the Ohio Relay Service at 1-800-750-0750 and give the communication assistant the Ohio Department of Taxation telephone number you wish to contact.