



*Ohio Department of*  
**TAXATION**  
*P.O. Box 2476*  
*Columbus, OH 43216-2476*

**2003**



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

## 2003 Franchise Tax Instructions for Financial Institutions

**This Ohio franchise tax instruction booklet applies only to financial institutions. Financial institutions must file Ohio form FT-1120-FI.**

**Unless otherwise stated, all references are to the Ohio Revised Code (O.R.C.). The O.R.C. and the Department of Taxation'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 on 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 corporation organized under 12 U.S.C. 611 to 631;
- 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 on the department's Web site: <http://www.state.oh.us/tax>.**

### 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, holding a charter or certificate of compliance authorizing the corporation to do business in Ohio, or otherwise having nexus with Ohio during a calendar year. Unless an exemption applies (see general instruction #2), a corporation 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.

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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 2003 is paid for the privilege of doing business in Ohio during the calendar year 2003. 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 2003 is based upon the taxpayer's activity during its taxable year ending in 2002. (O.R.C. sections 5733.031(A) and 5733.04(E)).

The franchise tax is levied on the value of a corporation's issued and outstanding shares of stock. Taxpayers other than financial institutions (and certain high-tech start-up companies) 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. Financial institutions must file form FT-1120-FI.

## **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 2002, the S corporation is subject to the franchise tax for tax year 2003 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 2002, the S corporation must file a Notice of S Corporation Status (form FT-1120 S) by June 30, 2003.

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 Internal Revenue Code (I.R.C.) 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 2002, the corporation must file by June 30, 2003 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

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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 that has been adjudicated bankrupt or for which a receiver has been appointed. See *Vought Industries, Inc. v. Tracy* (1995), 72 Ohio St.3d 261.

#### **D. Corporations Exempt Under Federal Law**

Certain corporations are exempt from state tax because Congress has expressly granted them immunity as a “federally chartered instrumentality.” For example, federal land bank associations are exempt from state taxes under Section 2098, Title 12, U.S. Code. Certain other corporations are exempt because the United States Constitution’s Supremacy Clause grants implied immunity to private corporations that actually stand in the federal government’s shoes and are so closely connected to the government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned. An Agricultural Credit Association (ACA) is not immune from state taxation as a “federally chartered instrumentality” because (i) Congress has not expressly granted immunity to ACAs and (ii) the Supremacy Clause of the United States Constitution does not grant implied immunity to ACAs. See *Farm Credit Serv. of Mid-America v. Zaino* (2001), 91 Ohio St.3d 564.

### **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 (LLC) that 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) O.R.C. 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 information releases are available on the department’s Web site at [www.state.oh.us/tax](http://www.state.oh.us/tax).

### **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 O.R.C. section 5733.01 and the department’s information release entitled “I.R.S. ‘Check-the-Box’ Entity Selection Regulations” available on the department’s Web site at [www.state.oh.us/tax](http://www.state.oh.us/tax).)

**Any 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 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.

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That is, for franchise tax purposes:

- If the disregarded entity has nexus with Ohio, then the owner has nexus with Ohio.
- An interest in a disregarded entity is treated as ownership of the assets and liabilities of the disregarded entity itself.
- A disregarded entity's income, including gains or loss is included in the owner's O.R.C. Chapter 5733 net income.
- Any sale or other disposition of an interest in a disregarded entity is treated as a sale or other disposition of the disregarded entity's underlying assets or liabilities and the gain or loss from such sales are included in the owner's Chapter 5733 net income.
- A disregarded entity's property, payroll and sales are included in the owner's property, payroll and sales factor.

#### **5. DISSOLUTION OR SURRENDER OF LICENSE**

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.

The mere termination of business activities or voluntary dissolution does not exempt a corporation from the franchise tax. A corporation that 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.

#### **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 O.R.C. sections 5733.031(A) and 5733.04(E).

Except for taxpayers that have changed their accounting period and for taxpayers that have two or more federal taxable years that ended in calendar year 2002, taxpayers must determine the value of their issued and outstanding shares of stock as follows:

- **For report year 2003 taxpayers that have a calendar year end must use the period ending December 31, 2002.**

- **For report year 2003 taxpayers that have a fiscal year end must use the fiscal period ending in 2002.** However, taxpayers filing their first report should see below.
- **For report year 2003 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 2002 and adopted a fiscal period ending in 2002, 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 2002.
  - B. If the taxpayer is a foreign corporation and first became an Ohio taxpayer during 2002 (that is, during 2002 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 2002, 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 2002.
  - 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, 2002. 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 2001 or 2002, 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 at [www.state.oh.us/tax](http://www.state.oh.us/tax).

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## 7. TIME, PLACE AND METHOD FOR FILING AND PAYMENT

Except as otherwise provided, if a payment or document is mailed on or before the due date but delivered after the required date, the postmark date is deemed the date of delivery. 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 that is not a Saturday, Sunday or legal holiday. Certain large taxpayers must pay by electronic funds transfer (see general instruction #7D, below).

### A. Filing Date; Payment Date

The filing and payment of the Ohio franchise tax for report year 2003 is due between January 1 and March 31, 2003. 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.

### 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 2003 for the various taxable years ending in 2002. The table assumes the following:

- If the taxpayer's taxable year ended on or after August 31, 2002, 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.

<b>Taxable Year Ending in 2002</b>	<b>Latest Possible Due Date for Filing the 2003 Franchise Tax Report</b>
01/31/02 through 7/31/02	05/31/2003
08/31/2002	06/15/2003
09/30/2002	07/15/2003
10/31/2002	08/15/2003
11/30/2002	09/15/2003
12/31/2002	10/15/2003

**Note: Payment of all franchise tax for tax year 2003 is due by May 31, 2003, even if the taxpayer has an extension to file after that date.**

### C. Place

File the franchise report with the Ohio Department of Taxation, P.O. Box 27, Columbus, Ohio 43266-0027.

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#### **D. EFT Method of Payment**

A taxpayer must pay 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 at [www.state.oh.us/tax](http://www.state.oh.us/tax). Please direct questions regarding the EFT payment program to the Treasurer of State's office at 30 East Broad Street, 9<sup>th</sup> Floor, Columbus, Ohio 43266-0421 or telephone that office at (614) 466-8063 or toll free at 1-877-EFT-Ohio (338-6446).

#### **8. INTEREST ON UNDER-AND OVERPAYMENTS**

During calendar year 2003 interest on both underpayments and overpayments will accrue at the rate of 6% per annum. 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 that may be incurred for late filing, failure to file or late payment. 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 90th day after the final date the franchise report was required to be filed, or
- the 90th day after the date that the franchise report was filed.

#### **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 – see estimated tax safe harbors, below). Under new law (see Senate Bill 200, 124<sup>th</sup> General Assembly), the O.R.C. section 5733.28(A)(2) late payment penalty may not exceed 15% of the delinquent payment (under prior law the O.R.C. section 5733.28(A)(2) penalty for late payment could not exceed twice the interest charged under O.R.C. section 5733.26(A)).

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. PENALTY SAFE HARBORS FOR ESTIMATED PAYMENTS**

Substitute Senate Bill 200 (Taxpayer Services II), 124<sup>th</sup> General Assembly, effective September 6, 2002 enacted the following safe harbor applicable to penalty on underpayment of estimated tax.

- With respect to estimated payments, the O.R.C. section 5733.28(A)(2) failure to pay penalty applies to two periods: (1) "any period of delinquency ending prior to the first day of June of the tax year" and (2) "any period of delinquency commencing the first day of June of the tax year and concluding on the extended due date." See O.R.C. section 5733.021 as amended by Senate Bill 200.
- For purposes of determining the O.R.C. section 5733.28(A)(2) failure to pay penalty for any period of delinquency ending prior to the first day of June of the tax year, the commissioner may charge penalty on the delinquent portion of the estimated tax and estimated tax means the lesser of 100% of last year's tax or 90% of this year's tax. See O.R.C. section 5733.021(C)(1)(c).
- For purposes of determining the O.R.C. section 5733.28(A)(2) failure to pay penalty for any period of delinquency commencing the first day of June of the tax year and

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concluding on the extended due date, the commissioner may charge penalty on the delinquent portion of the estimated tax and estimated tax means 90% of this year's tax. See O.R.C. section 5733.021(C)(2)(c).

#### **11. 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.

#### **12. 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.

#### **13. 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.

#### **14. RECORDS RETENTION**

Every corporation must maintain books and records that 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.

#### **15. ENTERPRISE ZONE TAX BENEFITS**

**Amended Substitute House Bill 283, 123<sup>rd</sup> General Assembly (Budget Bill) extends through June 30, 2004 the authority for local governments to enter into enterprise zone agreements.** See O.R.C. 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 daycare credit, 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 25% 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 O.R.C. 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 12 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 O.R.C. 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 (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), page 2.

## 16. 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 I.R.S. 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 60 days of receipt of the assessment, and does not file a petition for reassessment within 60 days of receipt of the assessment, interest accrues on the assessment at the rate prescribed in O.R.C. 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 #17.

#### **17. APPLICATION FOR REFUND AND PETITION FOR REASSESSMENT**

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 show on the originally filed franchise tax report.** Franchise taxpayers may initiate review proceedings pertaining to a franchise tax assessment issued by the Department of Taxation by filing form FT-PR, Petition for Reassessment.

**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 I.R.S. adjustment and the statute of limitations has not been extended by form FT-WAIVER (see general instruction #16), 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).

**New Refund Statute of Limitations Law:** Effective September 6, 2002 for purposes of the refund statute of limitations, payment made before the due date or extended due date for filing the report to which the payment relates are deemed to have been made on the due date or extended due date. See O.R.C. section 5733.12 as amended by Substitute Senate Bill 200 (Taxpayer Services Bill II), 124<sup>th</sup> General Assembly, effective September 6, 2002. For additional information please see general instruction #27 in the full text version of the instructions for corporations other than financial institutions, which are available on the department's Web site: [www.state.oh.us/tax](http://www.state.oh.us/tax).

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 general instruction #14 in the full text version of the instructions for corporations other than financial institutions, which are available on the department's Web site: [www.state.oh.us/tax](http://www.state.oh.us/tax). 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 #16), 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 60 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.

**New Law – Uniform Application for Refund Procedure.** Substitute Senate Bill 200, 124<sup>th</sup> General Assembly, effective June 7, 2002, enacted O.R.C. section 5703.70 to establish a uniform application for refund procedure applicable to franchise tax and various other taxes (but not to individual income tax, school district income tax, withholding tax or pass-through entity tax). If a taxpayer properly files an application for refund under a law that specifies that the O.R.C. section 5703.70 uniform procedure applies, then the tax commissioner and the taxpayer must proceed as follows:

1. If the commissioner determines that the amount of the refund to which the applicant is entitled is less than the amount that the applicant claimed, the commissioner must notify the applicant in writing by ordinary mail of the disallowed portion of the claimed refund.
2. The applicant has 60 days from the date the commissioner mails the notification to provide additional information to the commissioner and/or to request a hearing.
3. If within the 60-day period described in #2, above, the applicant neither requests a hearing nor provides additional information, the commissioner will take no further action, and the refund amount denied becomes final. That is, the taxpayer may not appeal to the Board of Tax Appeals the denied portion of the refund.
4. If within the 60-day period described in #2, above, the applicant requests a hearing, the commissioner must assign a time and place for hearing. After the hearing, the commissioner may make such adjustments to the refund as the commissioner finds proper and must issue a final determination. The taxpayer may appeal the commissioner's final determination to the Board of Tax Appeals pursuant to O.R.C. section 5717.02.
5. If within the 60-day period described in #2, above, the applicant does not request a hearing but does provide additional information, the commissioner must review the information, may make such adjustments to the refund as the commissioner finds proper, and must issue a final determination. The taxpayer may appeal the commissioner's final determination to the Board of Tax Appeals pursuant to O.R.C. section 5717.02.

**Petition for Reassessment.** Form FT-PR applies only to **assessments** issued by the Ohio Department of Taxation. A taxpayer must file its petition within 60 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 60-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 that must be paid upon the filing of a Petition for Reassessment is as follows:

1. If the sole item objected to is the assessed penalty or interest, the assessed corporation must pay the entire assessment except for the penalty.
2. 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.

3. 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.
4. 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.
5. If none of the conditions specified in (1), (2), (3) and (4), 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 O.R.C. section 5703.47 from the date the Department of Taxation issues the assessment until the date the taxpayer pays the assessment. See O.R.C. section 5733.11 as amended by Amended Substitute House Bill No. 215 (Budget Bill), 122nd General Assembly and section 213 of the 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.

**Refunds of Amounts Paid Toward an Assessment.** The amount of an assessment that may be refunded under a timely filed petition for reassessment is limited to the amount of the assessment that the taxpayer paid. No portion of the amount paid with the filing of the franchise tax report is available for refund under the O.R.C. section 5733.11 petition for reassessment statute because there is no provision in O.R.C. section 5733.11 that grants the commissioner the authority to refund any amount greater than the amount that the taxpayer paid toward the assessment. The fact that the taxpayer raises additional objections to the assessment prior to the tax commissioner's final determination and the fact that the taxpayer mentions in those objections that the taxpayer is overpaid with respect to amounts paid with the original report does not convert a petition for reassessment into a timely filed refund claim with respect to amounts paid with the original report. See *International Business Machines Corp. v. Zaino* (2002), 94 Ohio St.3d 152.

**New Law – Uniform Petition for Reassessment Procedure.** Substitute Senate Bill 200, 124<sup>th</sup> General Assembly enacted O.R.C. section 5703.60 to establish a uniform petition for reassessment procedure and a uniform assessment correction procedure applicable to franchise tax, individual income tax, pass-through entity tax, withholding tax, school district income tax and various other taxes. If the taxpayer has properly filed a petition for reassessment, this new law permits the tax commissioner, upon receipt of additional

information from the taxpayer, to correct an assessment without issuing a final determination and without a hearing. The commissioner's corrected assessment issued in response to the taxpayer's petition may increase the original assessment outside the assessment statute of limitations period. In addition, this new law permits the commissioner to correct an assessment even if the taxpayer did not properly file a petition for reassessment or did not file a petition for reassessment. A more in-depth summary of this new law is available in general instruction #27 of the full text version of the franchise tax instructions for corporations other than financial institutions, which are available on the department's Web site: [www.state.oh.us/tax](http://www.state.oh.us/tax).

If (a) the tax commissioner issues a corrected assessment or final determination, (b) the corrected assessment or final determination reduces the assessment **below** the amount the taxpayer has already paid toward that assessment, and (c) the reduction is made as a result of the taxpayer's properly filed petition for reassessment or other written request, then the commissioner may certify any overpayment as a refund only to the extent that a refund could have been claimed at the time the party assessed made the written request. If tax commissioner reduces an assessment on the commissioner's own motion, then the commissioner will certify any overpayment only to the extent a refund could have been claimed at the time the commissioner made the reduction.

#### **18. 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 that discusses the department's interpretation of this law is available upon request from the Ohio Department of Taxation, P.O. Box 2476, Columbus, Ohio 43216-2476, Attn: Bill of Rights.

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 O.R.C. section 5703.53;
- 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 O.R.C. section 5703.53 and Rule 5703-1-12, Requests for an Opinion of the Tax Commissioner.

#### **19. 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 O.R.C. section 5733.111.

## **20. 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 that 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 that have become "final." See O.R.C. section 5733.121.

### **LINE INSTRUCTIONS**

#### **SCHEDULE A – COMPUTATION OF FRANCHISE TAX**

**Line 7 – Overpayment Carryforward from 2002.** Enter the overpayment shown on the originally filed 2002 report that was credited to estimated tax payments for tax year 2003. 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 #17.

**Line 8 – Estimated Payments Made in 2003.** 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 – Refundable Credits.**

**New jobs refundable credit.** Enter the new jobs credit as provided by O.R.C. 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 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.

The term "new employee," as used above, 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 60 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 rehired 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 O.R.C. section 5709.66 enterprise zone new employee credit with respect to that same employee.

**Credit for Tax Withheld By the Ohio Lottery Commission.** Enter the amounts that the Ohio Lottery Commission withheld from its payments to the taxpayer pursuant to O.R.C. section 5747.062(B)(2). For background information with regard to this credit please see the line instructions for form FT-1120, schedule C, line 6 (applicable to taxpayers other than financial institutions).

**Line 12 – Interest and Penalty.** Enter any interest and penalty due as explained in general instructions #8, 9 and 10.

**Line 15 – Amount of Line 14 To Be Credited to Year 2004 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 see general instruction #17.

### SCHEDULE B – BALANCE SHEET

Attach to the franchise tax report a balance sheet that 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 O.R.C. section 5733.056). For example, assume that an Ohio franchise taxpayer has a taxable year beginning July 1, 2001 and ending June 30, 2002. The taxpayer's exempted assets for tax year 2003 are determined as of July 1, 2002, the beginning of the taxpayer's annual accounting period that includes the first day of January of 2003. 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, 2002) 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, 2002).

**Line 1 – Goodwill.** Enter the amounts that 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 that reflect abandoned property as shown in the annual report to shareholders.

**Line 3 – Appreciation.** Enter the amounts that 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.)

15.

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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 that it previously deducted prior to the reorganization and merger and that 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 I.R.C. 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 that is used exclusively during the taxable year for qualified research; and (5) the book value of land in Ohio that pursuant to O.R.C. section 5713.31 the county auditor of the county in which such land is located has determined is devoted exclusively to agricultural use.

#### SCHEDULE D – APPORTIONMENT FORMULA

**Note: Terms appearing in *italics* are defined in the 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 50% of the fair market value of the real property is located in Ohio. If more than 50% 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 I.R.C. section 1286) 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 I.R.C. section 1286) 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 cardholders, 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 cardholder 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 cardholder is in Ohio and (2) fees charged to credit cardholders, such as annual fees, if the billing address of the cardholder is in Ohio. The denominator of the fraction is the sum of such amounts for credit cardholders 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 cardholder 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 cardholders. 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 taxpayer 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 that 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 51% 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 that 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 15C(i.) and 15C(ii.), above, included in the numerator is determined by multiplying the amount described in 15A(ii.) by a fraction, the numerator of which is the gross income from such trading assets and activities that 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 51% 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 15C, 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

**Note: If the property factor as determined below 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.**

**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 that 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.

21.

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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 51% 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 51% 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 substantive contacts to a **regular place of business** there.

The amount of a **loan** or advance to a subsidiary corporation at least 51% 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 51% 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 51% 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.

#### 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 that is temporary or transitory in nature or that 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 commissioner 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 that 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

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 cardholder 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 O.R.C. section 5733.056; the definition here is taken from O.R.C. 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 I.R.C. In the case of employees not subject to the I.R.C., such as those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the I.R.C. is made as though such employees were subject to the I.R.C.

**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 that 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 that 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 I.R.C. section 595; futures or forward contracts; options; notional principal contracts such as swaps; **credit card** receivables, including purchased credit card relationships; noninterest-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 50% 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 cardholder.

**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 9% 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 O.R.C. that result in a financial institution that has branches in more than one state.

The definition of “qualified institution,” as set forth above, reflects the change to that definition made by Amended Substitute House Bill 405, 124<sup>th</sup> General Assembly, effective December 13, 2001.

**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 that 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

**Note: Qualifying Amount Debt to Equity Adjustment.** For franchise tax years 2002 and thereafter, a financial institution that is a related member to a company that makes the qualifying holding company election will not be required (nor will it be permitted) to make the schedule E “qualifying amount” debt to equity adjustment set forth in O.R.C. 5733.05(C).

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 O.R.C. section 5733.056. For example, assume that an Ohio franchise taxpayer has a taxable year beginning July 1, 2001 and ending June 30, 2002. The taxpayer’s franchise tax net value of stock for tax year 2003 is determined as of July 1, 2002 the beginning of the taxpayer’s annual accounting period that includes the first day of January of tax year 2003. 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, 2002) 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, 2002).

**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 O.R.C. section 5733.04(A)). Except for the amounts determined under the instructions for line 4, below, ownership interest of depositors does not include any amount that 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.

#### **SCHEDULE F – ADJUSTED NET VALUE OF STOCK FOR HOLDING COMPANIES**

This schedule applies to:

- Financial institutions that own at least 25% of the issued and outstanding shares of common stock of another financial institution,
- Financial institutions that own at least 80% of the issued and outstanding shares of common stock of a public utility as defined in O.R.C. section 5727.01, and
- Financial institutions that own at least 80% of the issued and outstanding shares of common stock of an insurance company as defined in O.R.C. 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 O.R.C. section 5733.056. For example, assume that an Ohio franchise taxpayer has a taxable year beginning July 1, 20010 and ending June 30, 2002. For tax year 2003 the taxpayer's franchise tax excludable investment, total assets and net value of stock are determined as of July 1, 2002 the beginning of the taxpayer's annual accounting period that includes the first day of January of tax year 2003. 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, 2002) 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, 2002).

**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**

**O.R.C. 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 listed in O.R.C. 5733.98.

**Note:** 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.

1. **Credit for Taxes Paid by a Qualifying Pass-Through Entity** (O.R.C. section 5733.061). Upon filing a corporation franchise tax report, a qualifying investor 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 I.R.S. 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 dealer in intangibles tax paid by member of qualifying controlled group** (O.R.C. section 5733.45 credit). If on January 1 of the franchise tax year a financial institution is a member of a qualifying controlled group of which a dealer in intangibles is also a member, the financial institution is allowed a nonrefundable franchise tax credit. (A "qualifying controlled group" is defined in O.R.C. section 5733.04(M) as two or more corporations that meet the O.R.C. section 5733.052(A) ownership and control requirements to file a combined report, whether or not the corporations actually file a combined report and whether or not the corporations are subject to the franchise tax). The franchise tax credit equals the lesser of the amounts described in (a) or (b), below:
  - (a) The amount of the dealer in intangibles tax paid by the dealer during the calendar year preceding the financial institution's tax year (reduced by any refund of such tax received), or
  - (b) The product of the amounts described in (i) to (iii), below:
    - (i) The cost of the financial institution's direct investment in capital stock of the dealer in intangibles (exclusive of goodwill and appreciation associated with such investment) as of the last day of the financial institution's taxable year ending immediately preceding the franchise tax year for which the financial institution is claiming the credit.
    - (ii) The dealer in intangibles' "percentage allocable to Ohio" ratio included in Exhibit B or C of dealers in intangibles tax form 980 for the calendar year immediately preceding the franchise tax year for which the financial institution is claiming the credit.
    - (iii) The dealer in intangible tax rate for the calendar year immediately preceding the franchise tax year for which the financial institution is claiming the credit.

**For franchise tax years 2002 and 2003 the credit is available only if the dealer in intangibles with respect to which the financial institution is claiming the credit submitted to the Tax Commissioner not later than January 15, 2002 a written statement that the qualifying dealer in intangibles irrevocably agrees that it will not seek a refund of the tax which the dealer paid in 2000 and 2001 under O.R.C. section 5707.03 and irrevocably agrees to continue paying that tax in 2002, regardless of the amendment of O.R.C. section 5725.26 by Am. Sub. H.B. 405, 124<sup>th</sup> General Assembly. See O.R.C. section 5733.45.**

3. **Credit for Savings and Loan Association Fees** (O.R.C. 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 O.R.C. section 1155.13 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.
4. **Credit for Employers that Enter into Agreements with Child Daycare Centers** (O.R.C. section 5733.36). A taxpayer that makes periodic "support payments" to an Ohio licensed daycare center that 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 daycare 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 onsite child daycare 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.
5. **Credit for Employers that Reimburse Employee Child Daycare Expenses** (O.R.C. section 5733.38). A taxpayer that reimburses its employees for dependent child daycare expenses at an Ohio-licensed daycare center may claim a credit equal to 50% of the amount that the taxpayer reimbursed its employees for such expenses, but the credit may not exceed \$750 per dependent child. In determining the credit, the taxpayer may not include any amount incurred in connection with a cafeteria plan described in I.R.C. section 125; nor may the taxpayer include "support payments" used to determine the credit for employers that enter into agreements with child daycare centers (see credit #3, above). The credit applies to tax years 1999 through 2003 and has no carryforward provision.
6. **Credit for Employers that Establish Onsite Child Daycare Centers** (O.R.C. section 5733.37). A taxpayer that establishes an Ohio licensed daycare 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 \$100,000 or 50% of the amount the taxpayer incurred for equipment, supplies, labor and real property, including renovation of real property, to establish the daycare center. The taxpayer can claim the credit only for the tax year immediately following the taxable year in which the child daycare

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. O.R.C. 5733.37.

7. **Ethanol plant investment credit** (O.R.C. sections 5733.46 and 901.13). This nonrefundable franchise tax and individual income tax credit equals 50% of the amount of money that the taxpayer invests in O.R.C. section 901.13 certified ethanol plants in the calendar year preceding the tax year (the investment period is the calendar year preceding the tax year regardless of whether the taxpayer's taxable year is a calendar year). The credit is limited to \$5,000 per taxpayer per certified ethanol plant regardless of the number of years in which the taxpayer makes such investments. The credit applies to tax years 2003 through 2013. Credits not used in the tax year following the calendar year in which the taxpayer makes the investment may be carried forward for three tax years.

**Note:** Although the credits listed in the table on page 33 are available, they generally do not apply to financial institutions. For information with respect to the credits listed in the table, please see the full text version of the franchise tax instructions applicable to general taxpayers, which are available on the department's Web site: [www.state.oh.us/tax](http://www.state.oh.us/tax). The Job Training Credit (O.R.C. section 5733.42) does not appear on the 2003 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, 124<sup>th</sup> General Assembly (the budget bill enacted in June 2001), the credit now applies to tax years 2001, 2004, 2005 and 2006

<b>Tax Commissioner's Rules Applicable to Financial Institutions in Determining the Ohio Corporation Franchise Tax</b>	
5703-05-01	Definitions applicable to rules 5703-5-01 to 5703-5-05 of the Administrative Code
5703-05-02	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
5703-05-05	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

Since 1991 the Income Tax Audit Division has issued the following Information Releases:

- "Ohio Bonus Depreciation Adjustment and the Internal Revenue Code's Passive Activity Loss, Basis Limitation and At-Risk Rules," November, 2002

- "Recently Enacted Ohio Legislation Affects Depreciation Deductions for Taxable Years Ending in 2001 and Thereafter" July, 2002.
- "Pass-through Entity Tax: Certain Estimated Tax Payments Due September 16, 2002," July 3, 2002
- "Corporate Franchise Tax – Nexus Standards," September, 2001
- "Corporation Franchise Tax Nexus for Non-resident Limited Partners Following the UCOM Decision," March 15, 2001
- "I.R.C. 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 and Income Tax Provisions," September 18, 1997
- "I.R.S. '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 O.R.C. section 5703.35. Nevertheless, the releases do reflect the department's interpretation of the law. Information releases are available on the department's Web site at [www.state.oh.us/tax](http://www.state.oh.us/tax).

Rank	Credit	Carryforward Period	O.R.C. 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 and 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.

Visit the department's Web site: <http://www.state.oh.us/tax>

<b>Ohio Franchise Tax Forms</b>		
<b>Many of the Department's forms are available on the Internet at: <a href="http://www.state.oh.us/tax/">http://www.state.oh.us/tax/</a></b>		
		<b>Revision Date</b>
FT-COM	Request for Permission to File or to Amend a Combined Corporation Franchise Tax Report	7/00
FT-1120E	Declaration of Estimated Corporation Franchise Tax	12/02
FT-1120ER	Application for Automatic Extension	12/02
FT-1120EX	Request for an Additional Extension of Time for Filing Corporation Franchise Tax Report	12/02
FT-1120	Corporation Franchise Tax Report	12/02
FT-1120VL	Valuation Limitation on Gains and Losses from Sales or Exchanges of Property	7/00
FT-1120C	Corporation Franchise Tax (Combined Report)	12/02
FT-WAIVER	Consent to Extend the Time to Assess or Refund the Ohio Corporation Franchise Tax	5/02
FT-OTAS	Ohio Taxpayers' Affiliation Schedule	No Revisions
FT-EXPORT	Corporation Franchise Tax Credit for Increasing Export Sales	12/99
FT-1120-FI	Corporation Franchise Tax Report for Financial Institutions	12/02
FT-1120-S	Notice of S Corporation Status	12/02
FT-REF	Application for Corporation Franchise Tax Refund	12/02
FT-PR	Petition for Reassessment	11/02
FT-HELP	Special Handling Notice	11/02
FT-QHC	Qualifying Holding Company Election	No Revisions
FT-Electric	Supplemental Schedules for Electric Companies	12/02

## Taxpayer Assistance

**Internet:** [www.state.oh.us/tax/](http://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, 8:00 a.m. to 5:00 p.m.

### **Income and 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

### **Dayton Taxpayer Service Center**

15 E. Fourth St., 5<sup>th</sup> Floor  
Dayton, OH 45402-2162

### **Cincinnati Taxpayer Service Center**

900 Dalton Ave. at West 8<sup>th</sup> St.  
Cincinnati, OH 45203-1171

### **Toledo Taxpayer Service Center**

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

### **Cleveland Taxpayer Service Center**

Cleveland State Office Tower  
615 West Superior Ave., 5<sup>th</sup> Floor  
Cleveland, OH 44113-1891

### **Youngstown Taxpayer Service Center**

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

### **Columbus Taxpayer Service Center(s)**

800 Freeway Drive North  
Columbus, OH 43229 **OR**  
30 East Broad St., 20<sup>th</sup> Floor  
Columbus, OH 43215

### **Zanesville Taxpayer Service Center**

601 Underwood St.  
Zanesville, OH 43701-3786

**For the 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 Department of Taxation phone number that you wish to contact.