Ohio | Department of Taxation
P.O. Box 2476
Columbus, OH 43216-2476

2009

Ohio Corporation Franchise Tax Report Instructions

Table of Contents

Page

Table of Contents **Page**

Ohio Corporation Franchise Tax Instructions for Tax Year (Report Year) 2009 Form FT 1120

In our effort to serve Ohio taxpayers in a cost-effective manner the **Department of Taxation did not mail the 2009 franchise tax instruction booklet or the 2009 franchise tax forms.** Instead, the **franchise tax instructions and forms are available on the Department of Taxation's Web site**. In addition to forms and instructions, our Web site has links to the Ohio Revised Code, Administrative Code (tax commissioner rules), Department of Taxation information releases, and other information. We encourage you to become familiar with our Web site:

tax.ohio.gov

Taxpayers not having Internet access can obtain printed forms and instructions by calling us toll-free at 1-800-282-1782.

Unless otherwise stated, all references are to the Ohio Revised Code (R.C.).

Recent Legislation

Amended Substitute House Bill 554, 127th Ohio General Assembly (effective Sept. 9, 2008). Among other provisions this new law amended the R.C. 149.311 historical building preservation tax credit. The new law:

1. Eliminates the credit application period July 1, 2008 through June 30, 2009, and creates two new 12-month application periods: one beginning July 1, 2009, the other beginning July 1, 2010.
2. Eliminates the cost-benefit analysis from the application review and approval process. Prior law required a cost-benefit analysis showing that the rehabilitation project would yield a net revenue gain in state and local taxes. In place of the cost-benefit analysis, the new law requires consideration of the proposed project's "potential economic impact and a regional distributive balance of credits throughout the state."
3. Eliminates the first-come-first-serve order of reviewing and approving credit applications.
4. Limits the credit per project to the lesser of (a) $5 million or (b) 25% of estimated "qualified rehabilitation expenditures" (QREs) shown on the application. Prior law did not limit the amount of the credit per project and prior law did not limit the credit to 25% of estimated QREs.
5. Limits the total aggregate credit divided-up among all applicants to $60 million for each of application periods beginning July 1, 2009 and July 1, 2010. Prior law did not limit the aggregate credit per application period.
6. Earmarks $45 million of the $60 million total aggregate credit for each of the application periods beginning July 1, 2009 and July 1, 2010 to applications that were filed during the period beginning July 1, 2007 but had not been approved by March 1, 2008.
7. Eliminates the provision under prior law that limited to 100 the total number of projects that could be approved with respect to an application period. That is, the new law does not limit the number of projects that can be approved for the credit for each application period (but as noted above, the new law limits the credit per project to $5 million and the total aggregate credit to $60 million), and
8. Specifically provides that the owner of a historic building may not include the state, a state agency, or any political subdivision (which has been the Ohio Department of Development's (ODOD) position since enactment of the credit).

Note 1: ODOD will apply prior law to those applications that as of March 1, 2008 ODOD had approved for the credit. Thus, for the 41 credit applications that ODOD had approved by that date, the credit is not limited to $5 million per application, and the aggregate limit of $60 million does not apply. ODOD will apply the new law (see #1 through #7 above) to those completed applications that as of March 1, 2008 ODOD had not approved for the credit. ODOD refers to such applications as "in queue" or "round two" applications.

Note 2: While the historic building preservation credit continues to be entirely refundable under the new law when claimed against the franchise tax, such is not the case for the income tax credit and the dealer in intangibles credit. The new law provides that if any amount of the income tax credit or dealer in intangibles tax credit is refunded, then the sum of the amount refunded and the amount applied to reduce the tax otherwise due in that year may not exceed three million dollars. The unused credit balance can be carried forward for five years.

See page 21 of these instructions for additional information on claiming the credit against the franchise tax.

Amended Substitute House Bill 562, 127th Ohio General Assembly (effective Sept. 23, 2008). Among other provisions this new law amended the R.C. 122.171 nonrefundable job retention credit by reducing the required number of years a credit recipient must maintain operations at the project site for which the recipient claims the credit from at least twice the term of the credit to the greater of (a) seven years, or (b) the term of the credit plus three years. The new law also reduces the credit repayment requirements for taxpayers that fail to maintain operations at the project site for the required number of years as set forth in the credit agreement.

Note: For the great majority of taxpayers that are subject to the franchise tax phase-out and the commercial activity tax (CAT) phase-in, the 2008 franchise tax report was the last report for claiming the job retention credit against the franchise tax. Such taxpayers can begin claiming the credit against their CAT liability for CAT periods beginning on or after Jan. 1, 2008. But, for purposes of making payments, taxpayers cannot apply the credits against their CAT liability for periods beginning before July 1, 2008. Taxpayers not subject to the franchise tax phase-out can continue claiming the credit against the franchise tax.

Substitute House Bill 458, 127th General Assembly. Among other provisions this new law amended the R.C. 5701.11 definition of "Internal Revenue Code as amended" and thereby adopted the Internal Revenue Code (IRC) amendments enacted by Congress from December 21, 2007 (the effective date of the General Assembly's previous amendment to R.C. 5701.11 enacted by House Bill 157) through December 30, 2008 (the effective date of Substitute House Bill 458's amendment to R.C. 5701.11). For specific information regarding the effects of Substitute House Bill 458's amendment to R.C. 5701.11, see the instructions for schedule B, lines 1(e) and 2(i) – "Miscellaneous federal adjustments and bonus depreciation and section 179 expense adjustment from Schedule B-4" on page 24 of these instructions.

The Department of Taxation sometimes refers to R.C. 5701.11 as the "IRC conformity provision." IRC amendments do not automatically apply for Ohio tax purposes. Rather, each time the Ohio General Assembly amends R.C. 5701.11 the General Assembly adopts the version of the IRC existing on the effective date of that amendment, and that version of the IRC applies for Ohio tax purposes until the General Assembly subsequently adopts a more current version by amending R.C. 5701.11 once again. If for Ohio tax purposes the federal amendments were applied without adoption of the changes (by amendment of R.C 5701.11), the Ohio

General Assembly would be unconstitutionally delegating its legislative authority to the U.S. Congress.

Decisions

Ohio Board of Tax Appeals

Family Dollar Stores of Ohio, Inc. v. Wilkins, BTA No. 2005-V-469 (1-04-08). The Board of Tax Appeals held that to the extent the taxpayer's related member apportioned or allocated to the states of Massachusetts and South Carolina intangible income received from the taxpayer for the taxpayer's use of the related member's trademarks and service marks, the taxpayer could not claim the R.C. 5733.055 adjustment (the deduction for related members' net interest and intangible income taxed by another state).

The R.C. 5733.055 adjustment to a taxpayer's R.C. 5733.042 intangible expense add-back applies to net intangible income received by the taxpayer's related member for the taxpayer's use of the related member's intangible property <u>only if</u> the related member actually allocated or apportioned that intangible income to "other states" that impose a tax on or measured by net income in accordance with the other states' allocation and apportionment rules. "Other states" do <u>not</u> include those states in which the taxpayer files or could have elected to file with the related member, or the related member files or could have elected to file with another related member, a combined income tax report or return or a consolidated income tax report or return and such report or return results in the elimination of the tax effects from transactions directly or indirectly between either the taxpayer and the related member or between the related member and another corporation.

The taxpayer argued that the R.C. 5733.055 adjustment does apply with respect to Massachusetts and South Carolina because for each of those states the effects of intercompany transactions between members of the combined/consolidated return or report are <u>not</u> eliminated and therefore the references to combined/consolidated reporting in each of those state's taxing schemes should be ignored. Nevertheless, the Board held that the R.C. 5733.055 adjustment does <u>not</u> apply with respect to Massachusetts and South Carolina because the Ohio statute is plain and unambiguous: the term "other states" does not include those states under whose laws the related member files or could have elected to file with another related member, a combined income tax report or return, a consolidated income tax report or return . . ."

Nestle R & D Center, Inc. v. Wilkins, BTA No. 2006-M-1365 (6-03-08). The Board of Tax Appeals held that the tax commissioner correctly denied the taxpayer's refund claim because the taxpayer filed the claim outside the R.C. 5733.12 three year refund statute of limitations. Nestle argued that the refund claim based on a job creation tax credit certificate issued by the Ohio Department of Development (ODOD) should be granted because Nestle could not have filed the refund claim timely as ODOD issued the credit certificate outside the refund limitation period and because Nestle submitted the claim within one month of ODOD's issuance of the certificate. Relying on *SCM Chemicals, Inc. v. Zaino*, 106 Ohio St.3d 43, 2005-Ohio-3676, the Board noted that R.C. 5733.12(B) provides no exception for an untimely refund request based on the issuance of the jobs creation tax credit certificate. The tax commissioner has no authority to grant equitable relief and may not ignore the express terms of the statute. This taxpayer appealed this decision to the Ohio Supreme Court.

General Instructions and Information

This instruction booklet applies to taxpayers other than financial institutions. In these instructions we sometimes refer to taxpayers that are not financial institutions as "general taxpayers." General taxpayers (that is, taxpayers addressed in these instructions) must file franchise tax form FT 1120. These instructions do not apply to financial institutions because the law applicable to financial institutions differs substantially from the law applicable to other corporations. The franchise tax instructions for financial institutions are contained in a separate instruction booklet available on the Department of Taxation's Web site. Financial institutions must file franchise tax form FT 1120FI.

Electric companies and local exchange telephone companies. Electric companies and combined electric companies have been subject to the franchise tax since tax year 2002. Local exchange telephone companies have been subject to the franchise tax since 2005. **These instructions do apply to telephone companies, electric companies** and combined electric companies. However, because electric companies and telephone companies are subject to franchise tax deduction, add-back, apportionment and credit provisions not applicable to other franchise taxpayers, we have prepared supplemental schedules and instructions for electric companies and telephone companies. **The supplemental instructions for electric companies and telephone companies are not included in this instruction booklet. Rather, the supplemental schedules and instructions are available in a separate file in the forms section of our Web site.**

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) for which on the first day of Jan. 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.

Tax year. 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 2009 is paid for the privilege of doing business in Ohio during the calendar year 2009.

Taxable year. 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." Generally, a corporation's taxable year for franchise tax purposes is the same as the corporation's taxable year for federal income tax purposes. However, a franchise 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 2009 is based upon the taxpayer's activity during its taxable year ending in 2008.** See R.C. 5733.031(A) and 5733.04(E), tax commissioner rules 5703-5-01 through 5703-5-04 and general instruction #9.

The franchise tax is levied on the value of a corporation's issued and outstanding shares of stock. Generally a taxpayer corporation must determine the value of its 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. However, different rules apply to financial institutions and qualifying holding companies:

- 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. See general instruction #1C.
- Qualifying holding companies are not subject to the tax on the net worth base but are subject to the tax on the net income base. See general instructions #23.

Although a corporation that dissolves its Ohio charter or surrenders its license to conduct business in Ohio during 2008 is not subject to the franchise tax for tax year 2009, such corporation may be subject to the "exit tax" (see general instruction #8 and R.C. 5733.06(H)), or the corporation's income may be required to be included in the income of a transferee corporation (see R.C. 5733.053 and the instructions for Schedule A, line 9).

Most taxpayers are not subject to the franchise tax after tax year 2009.

1. Who Must File

A. Corporations

Unless an exemption applies (see general instruction #2), each for-profit domestic corporation (a corporation organized for-profit under the laws of Ohio) and each Chapter 1729 corporation (agricultural cooperative) organized not-for-profit under the laws of Ohio is subject to the Ohio franchise tax. Also subject to the franchise tax, unless an exemption applies, is each foreign corporation (a corporation organized under the laws of another state, a possession or instrumentality of the United States, or a foreign country) organized for-profit and each not-for-profit foreign agricultural cooperative organized or operating in the same or similar manner as a Chapter 1729 agricultural cooperative, for the privilege of doing business in Ohio, owning or using part or all of its capital or property in Ohio, holding a certificate of compliance with the laws of Ohio authorizing it to do business in Ohio, or otherwise having nexus with Ohio under the Constitution of the United States.

Each corporation subject to the franchise tax must file an Ohio corporation franchise tax report. Financial institutions must file form FT 1120FI; all other C corporations must file form FT 1120. Although S corporations (including S corporation financial institutions) and qualified subchapter S subsidiaries are generally not subject to the franchise tax, they each must file a Notice of S Corporation Status, form FT 1120S (see general instruction #2).

B. Entity classification

An entity not organized as a corporation but treated as a corporation for federal income tax purposes is also treated as a corporation for Ohio corporation franchise tax purposes. Furthermore, for Ohio franchise tax purposes an ownership interest in an entity not organized as a corporation but treated as a corporation for federal income tax purposes is treated as the ownership of stock in a corporation. Thus, if a business trust, partnership or limited liability company (LLC) is treated as a corporation for federal income tax purposes, the entity is treated as a corporation for franchise tax purposes. Accordingly, such entities with Ohio nexus, unless otherwise exempt, must compute the tax under both the net income base and the net worth base, and such entities can join in the filing of a combined franchise tax report provided that the R.C. 5733.052 "more than 50%" ownership requirement is met. See the following: (1) The Income Tax Audit Division's information release entitled "IRS 'Check-the-box' Entity Selection Regulations" dated Aug. 19, 1997 (available on the Department of Taxation's Web site) and (2) R.C. 5733.01.

Disregarded entity. For purposes of Chapter 5733 of the Ohio Revised Code, the term "disregarded entity" means an entity that for its taxable year is by default, or has elected to be, disregarded as an entity separate from its owner pursuant to 26 C.F.R. 301.7701-3. **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 that is treated as a division of its corporate member for federal income tax purposes is treated as a division of the corporation for franchise tax purposes. As such, the following apply:

- If the disregarded entity has nexus with Ohio, then the owner has nexus with Ohio regardless of whether the owner has nexus on a stand-alone basis.
- An ownership interest in a disregarded entity is treated as the ownership of the assets and liabilities of the disregarded entity itself.
- A disregarded entity's income, including gain or loss, is included in the owner's 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 gains and losses 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 computations.

See R.C. 5733.01(F) and 5745.01(D).

The department responds as follows to the argument that Ohio nexus over the owner of a disregarded entity cannot be imputed based on Ohio nexus over the disregarded entity:

− A single member LLC that is treated as a division of its corporate member for federal income tax purposes is a pass-through entity as defined in R.C. 5733.04(O), and

− The LLC's corporate member is a qualifying investor whose distributive share includes the sum of the income, gain, expense or loss of a disregarded entity (see R.C. 5733.40(S)).

− Therefore, a single member LLC that is treated as a division of its corporate member for federal income tax purposes is subject to the pass-through entity tax imposed by R.C. 5733.40 <u>unless</u> the corporate member files a franchise tax report and includes in its income the income and apportionment data of the LLC.

Regardless of whether the LLC disregarded entity files and pays the pass-through entity tax, the Department of Taxation maintains that if the LLC has nexus with Ohio, the corporate single member has nexus with Ohio, and the department will pursue and enforce that position against the corporation. See R.C. 5733.01 and 5733.40; also see the department's July 3, 2002 information release entitled "Pass-Through Entity Tax: Certain Estimated Tax Payments Due Sept. 16, 2002."

See general instruction #2A for the treatment of qualified subchapter S subsidiaries.

C. Financial Institutions

A financial institution is not subject to the franchise tax on the net income base but is subject to the tax on the net worth base at a higher rate than other taxpayers. Financial institutions that are S corporations are not subject to the franchise tax. Financial institutions (other than S corporation financial institutions) must file form FT 1120FI. The instructions for form FT 1120FI are contained in a separate instruction booklet.

R.C. 5725.01 defines a "financial institution" as 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 chartered under 12 U.S.C. 1464;
- A bank, banking association, trust company, savings and loan association, savings bank or other banking institution 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 "financial institution" (and from the definition of "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.

2. Entities Exempt From the Ohio Franchise Tax

A. S Corporations and Qualified Subchapter S Subsidiaries

An S corporation generally is not subject to the Ohio corporation franchise tax. See R.C. 5733.09 and the Department of Taxation's July 31, 1994 information release entitled "Taxation of S Corporations and Their Shareholders," which sets forth the department's interpretation of Ohio franchise tax law applicable to S corporations (the information release is available on the department's Web site). However, an S corporation is subject to the 2009 franchise tax and must file an Ohio Corporation Franchise Tax Report (form FT 1120) if the S corporation was a C corporation during any portion of a taxable year ending in 2008. See *First National Bank of Lebanon v Zaino,* BTA No. 2003 M-627 (3-19-2004) and *Sanders Health & Fitness Inc. v. Limbach*, BTA Case No. 88-E-559, June 21, 1991.

Furthermore, an S corporation must file form FT 1120 and is subject to the franchise tax on the income attributed to it from a C corporation if (i) the S corporation was the survivor of a merger with another corporation that was subject to the Ohio corporation franchise tax and (ii) the S corporation was a transferee as defined in R.C. 5733.053(A)(3). See the Department of Taxation's Sept. 24, 1992 franchise tax information release "Application of Ohio Revised Code Section 5733.053 (Transferor Statute) to the Merger of a C Corporation into an S Corporation" (the information releases is available on the department's Web site).

If a corporation is an S corporation for any portion of calendar year 2008, then by June 30, 2009 the S corporation must file a 2009 Notice of S Corporation Status (form FT 1120S). **The due date of the notice does not change even if the S corporation has an extension to file the federal 1120S after that date.**

A **"qualified subchapter S subsidiary"** (QSSS), as defined in Internal Revenue Code (I.R.C.) section 1361(b)(3)(B), is exempt from the franchise tax that is based on the taxable year for which the parent S corporation makes the election under 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 calendar year 2008, then by June 30, 2009 the corporation must file a notice of S Corporation Status separate from the Notice of S Corporation status filed by its parent S corporation.

Note 1: S corporations and the pass-through entity tax. An S corporation doing business in Ohio or otherwise having nexus with Ohio is subject to the tax on pass-through entities if one or more shareholders of the S corporation is a nonresident for any portion of the S corporation's taxable year and the S corporation does not file a composite Ohio income tax return (form IT 4708) on behalf of all the nonresident shareholders.

Note 2: QSSS's and the pass-through entity tax. A QSSS doing business in Ohio or otherwise having nexus with Ohio must pay the pass-through entity tax if its parent S corporation has shareholders that are not residents of Ohio. However, the various exemptions applying to S corporations also apply to QSSS's. Accordingly, a **QSSS is not subject to the pass-through entity tax if either (1) the S corporation owner/shareholder irrevocably acknowledges that the S corporation has nexus with Ohio, includes in its income the income of the QSSS, and makes a good faith and reasonable effort to comply with Ohio's pass-through entity tax, or (2) the S corporation files a composite Ohio income tax return** (form IT 4708) on behalf of all nonresident shareholders and includes on that composite return the nonresident shareholder's proportionate share of the income of the QSSS. See the following: (1) R.C. 5733.402 and 5733.41, (2) the Department of Taxation's July 3, 2002 income tax information release entitled "Pass-through entity tax: certain estimated tax payments due Sept. 16, 2002" and (3) the instructions for form IT 1140, Tax Return for Pass-Through Entities. All of the above are available on the department's Web site.

B. Public Utilities, Insurance Companies, Credit Unions and Dealers in Intangibles

- Any corporation, whether foreign or domestic, owning and operating a public utility required to file reports and pay an excise tax upon its gross receipts or gross earnings under Chapter 5727 of the Ohio Revised Code is not subject to the franchise tax. Railroads are subject to the franchise tax for tax years 1993 and thereafter. Electric companies and combined electric companies are subject to the franchise tax for tax years 2002 and thereafter. Local exchange telephone companies are subject to the franchise tax for tax years 2005 and thereafter.
- Insurance, fraternal, beneficial, bond investment, health maintenance organizations and other corporations required by law to file annual reports with the Superintendent of Insurance are not subject to the franchise tax.
- Credit unions and dealers in intangibles are not subject to the franchise tax.

C. REITs, RICs and REMICs

An entity, whether organized as a corporation or business trust, defined to be a real estate investment trust (REIT) under I.R.C. section 856, a regulated investment company (RIC) under I.R.C. section 851, or a real estate mortgage investment conduit (REMIC) under I.R.C. section 860D is not subject to the 2009 franchise tax **if the REIT, RIC or REMIC provides to the tax commissioner by March 31, 2009 the report of the entity's investors required by R.C. 5733.09(C). Except for closely held or privately held REITs, RICs and REMICs,** the tax commissioner by administrative journal entry dated Oct. 15, 2008 waived the investor report for such entities for tax year 2009. **The tax commissioner did not waive the 2009 reporting requirements if either the REIT, RIC or REMIC is a related member to the taxpayer or the taxpayer is a related member to the REIT, RIC or REMIC.** See the tax commissioner's administrative journal entry at the following address:

http://tax.ohio.gov/divisions/corporation_franchise/documents/reit_ ric_ remic_journal_entry_2009.pdf.

Each closely held REIT, RIC or REMIC for which the tax commissioner did not waive the reporting requirements must submit to the tax commissioner by March 31, 2009 the name of the entity with a list of the names, addresses and social security or federal identification numbers of all investors, shareholders and other similar investors who owned any interest or invested in the entity during the preceding calendar year. Taxpayers having questions regarding this matter should contact the Department of Taxation at (614) 387-0232.

Please send the investor report to:

Ohio Department of Taxation
Corporation Franchise Tax Unit
REIT-RIC-REMIC Report
P.O. Box 2476
Columbus, Ohio 43216-2476

D. 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 corporation's franchise is impaired because of the Chapter 7 bankruptcy proceedings. See R.C. 5733.06(E). However, a corporation in Chapter 7 bankruptcy is not exempt from the minimum fee.

A corporation in reorganization proceedings under Chapter 11 of the U.S. Bankruptcy Code is not exempt from the franchise tax because a corporation in bankruptcy reorganization proceedings 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.

E. 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 U.S. Code Section 2098, Title 12. 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. Franchise Tax Phase-Out

Under current law most franchise taxpayers will not be subject to the franchise tax after tax year 2009. For most taxpayers the franchise tax is ratably phasing out over the five franchise tax years 2006 through 2010 (taxable years ending in 2005 through 2009). During this same period Ohio's commercial activity tax (CAT) is ratably phasing in for most franchise taxpayers. (For a list of entities not subject to the franchise tax phase-out and not subject to the CAT, see the "exceptions to franchise tax phase-out" paragraph below.)

For report years 2006, 2007, 2008, 2009 and 2010 franchise taxpayers subject to the phase-out must pay 80%, 60%, 40%, 20% and 0%, respectively, of the franchise tax after nonrefundable credits that they would otherwise pay were it not for the phase-out. Thus, the benefit of nonrefundable credits and credit carryforwards also phase-out. However, the nonrefundable credit for tax paid by a qualifying pass-through entity is fully recoverable. (Instead, the phase-out applies to the tax that a pass-through entity must pay on its Ohio income passing-through to qualifying investors that are subject to the franchise tax phase-out – see the table on page 37 of these instructions.)

For report year 2009 franchise taxpayers subject to the phase-out must multiply their franchise tax after nonrefundable credits (other than the nonrefundable credit for tax paid by a qualifying pass-through entity) by the 20% phase-out factor. See R.C. 5733.01(G) (2)(b) and R.C. 5733.41.

Exceptions to franchise tax phase-out. The franchise tax phase-out and CAT phase-in do not apply to the following entities: (i) financial institutions, (ii) financial holding companies, (iii) bank holding companies, (iv) savings and loan holding companies, (v) affiliates of entities described in (i) through (iv) above when such affiliates are engaged in financial institution-type activities, (vi) certain affiliates of insurance companies when such affiliates are engaged in insurance-type activities, and (vii) "securitization" companies described in R.C. 5751.01(E)(10). See R.C. 5733.01(G) and 5751.01(E).

The phase-out factor does not reduce the franchise tax minimum fee. So, if the taxpayer's 2009 franchise tax minimum fee is $50, the 2009 phase-out factor of 20% does not reduce the minimum fee to $10 and, if the taxpayer's 2009 franchise tax minimum fee is $1,000, the 2009 phase-out factor of 20% does not reduce the minimum fee to $200.

4. Tax Rates and Minimum Fee

The tax rates as set forth in R.C. 5733.06 are as follows:

- The first $50,000 of Ohio net income is subject to tax at a rate of 5.1%. However, corporations that meet the ownership requirements to file a combined report must share the $0 to $50,000 tax bracket amount to which the 5.1% rate applies regardless of whether or not they actually file combined. Related taxpayers must prorate the $0 to $50,000 bracket amount on form FT OTAS. Related taxpayers may prorate the $0 to $50,000 bracket amount in any amount they choose, but a taxpayer's pro-rata amount may not be less than zero. The proration, however made, applies to both the franchise tax and the litter tax.
- Ohio net income in excess of $50,000 is subject to tax at a rate of 8.5%.
- The net worth rate for corporations other than financial institutions is 4 mills. In addition, the maximum net worth tax is $150,000 per taxpayer. The $150,000 limit applies separately to each member of a combined report; there is not an overall net worth limit for a combined group of taxpayers.
- The net worth rate for financial institutions is 13 mills, and the $150,000 net worth tax limit does not apply to financial institutions. Financial institutions are exempt from the net income base.
- The minimum franchise tax fee is $1,000 if (i) the sum of the taxpayer's gross receipts from its activities within and without Ohio during the taxable year equals or exceeds $5 million or (ii) the total number of the taxpayer's employees within and without Ohio at any time during the taxable year equals or exceeds 300. In determining whether the taxpayer's gross receipts and number of employees equal or exceed those thresholds, the taxpayer must include its proportionate share of the gross receipts of any pass-through entity in which the taxpayer has a direct or indirect ownership interest and its proportionate share of the number of employees of the pass-through entity. Furthermore, "gross receipts," as used here, includes receipts that generate nonbusiness income and receipts from the sale of capital assets and I.R.C. section 1231 assets whether those sales generate business income or nonbusiness income. The minimum fee is $50 for taxpayers whose gross receipts and number of employees are less than the thresholds discussed above (see R.C. 5733.06(E)).

  The franchise tax phase-out factor has no effect on the minimum fee (see general instruction #3). An "exiting corporation" is not subject to the minimum fee (see general instruction #8).

5. 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 corporation is doing business in Ohio or otherwise has nexus in or with Ohio if the corporation is an equity investor in a pass-through entity doing business in Ohio or otherwise having nexus with Ohio under the Constitution of the United States. Accordingly, a foreign corporation is subject to the franchise tax even if the corporation's only connection with Ohio is as (i) a partner or limited partner in a partnership having nexus with Ohio or (ii) a member of a limited liability company having nexus with Ohio.

A pass-through entity is 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 (1) R.C. 5733.04(O), (2) the Department of Taxation's Sept. 2001 information release describing the standards the department will apply to determine whether an out-of-state corporation is subject to the franchise tax, (3) the department's March 15, 2001 information release entitled "Corporation Franchise Tax Nexus for Nonresident Limited Partners Following the UCOM Decision", and (4) the department's nexus questionnaire. All of these documents are available on the department's Web site.

6. Public Law 86-272

Public Law 86-272, 15 U.S.C. 381-384, is federal law that restricts each state from imposing a tax on or measured by income derived by an out-of-state company within the state's borders. Public Law 86-272 applies only if the only business activity of the out-of-state company within the state consists of the solicitation of orders for sale of **tangible personal property.** This restriction from imposing tax on or measured by income is limited to orders sent outside the state for acceptance or rejection and, if accepted, filled by shipment or delivery from a point outside the state.

P.L. 86-272 does not prohibit Ohio from asserting that an out-of-state corporation has nexus with Ohio. In fact, implicit in the application of P.L. 86-272 is that an out-of-state corporation does have nexus. P.L. 86-272 merely prohibits the imposition of the Ohio corporate franchise tax based on net income in certain situations. Those situations are listed in issue IV (A) of the Department of Taxation's information release entitled "Corporation Franchise Tax – Nexus Standards" issued in Sept. 2001 and revised May 19, 2003. Because the net worth base of the corporation franchise tax is not a tax on or measured by income, **P.L. 86-272 offers no protection from the Ohio corporation franchise tax based on net worth.**

Whether or not P.L. 86-272, Section 381, Title 15, U.S. Code prohibits the imposition of franchise tax measured by the net income base is determined by the taxpayer's activities during the taxable year in which the taxpayer earned that income –

not by the taxpayer's activities during the tax year following the taxable year. If during the taxable year the taxpayer's activities in Ohio did exceed the activities protected by P.L. 86-272 but during the related tax year the taxpayer's activities did not exceed the protected activities, then P.L. 86-272 offers no protection for the tax year, and for that tax year the corporation is subject to the franchise tax on the net income base. Conversely, if during the taxable year the taxpayer's activities in Ohio did not exceed the activities protected by P.L. 86-272, but during the related tax year the taxpayer's activities did exceed the protected activities, then P.L. 86-272 does offer protection for the tax year, and for that tax year the corporation is not subject to the franchise tax on the net income base. See *LSDHC Corp. v. Zaino,* 98 Ohio St.3d 450, 2003-Ohio-1911.

7. Dissolution or Surrender of License

Each corporation seeking dissolution of its Ohio charter or surrender of its license to transact business in Ohio must submit to the Ohio 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 Ohio Secretary of State, 180 East Broad Street, 16th Floor, Columbus, Ohio 43215 or call that office at (614) 466-3910 or call toll free at (877) 767-3453. For specific information regarding obtaining a tax release from the Ohio Department of Taxation, please contact the Ohio Department of Taxation, Dissolution Unit, P.O. Box 182382, Columbus, Ohio 43218-2382 or call (614) 995-4422 or (888) 405-4039.

The mere termination of business activities or voluntary dissolution does not exempt a corporation from the franchise tax. A corporation that on Jan. 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 the corporation has ceased all business activities in Ohio and has applied for certificates showing the payment or adequate guarantee of all required taxes. See R.C. 5733.17.

A corporation that previously had nexus with Ohio but is not a franchise taxpayer on Jan. 1 of the tax year (for example, because the corporation dissolved, merged out of existence or surrendered its license to conduct business in Ohio before Jan. 1 of the tax year) may be subject to an income-based exit tax on its Ohio net income that was not reported on an earlier franchise tax report. See "exit tax" below.

8. Exit Tax – R.C. 5733.06(H)

An "exiting corporation" is a corporation that previously had nexus with Ohio but is not a franchise taxpayer for the tax year (for example, because the corporation dissolved, merged out of existence or surrendered its license to conduct business in Ohio before Jan. 1 of the tax year). Nevertheless, if a transferee corporation (see R.C. 5733.053 and the instructions for Schedule A, line 9) is required to include in its Ohio taxable income the income of a transferor corporation that would otherwise be an exiting corporation, then the transferor is not an exiting corporation and the exit tax does not apply.

An exiting corporation is subject to an income-based exit tax on its unreported Ohio net income that was earned in the two calendar years prior to the tax year to the extent that such income was not previously included on the corporation's franchise tax report. The exit tax does not apply to an exiting financial institution.

An exiting corporation is not subject to the minimum fee and is not subject to the tax on the net worth base or to the litter tax on the net worth base. However, an exiting corporation is subject to the litter tax on the net income base. An exiting corporation is subject to the R.C. 5733.052 combination provisions and all deductions and credits applicable to franchise taxpayers. An exiting corporation must compute its exit tax on the franchise tax form applicable to the tax year following the calendar year during which the corporation exits Ohio. The corporation must file the report by May 31 of the year following the year the corporation exits Ohio. However, upon request by the exiting corporation, the tax commissioner can extend the date for filing the report, but not the date for paying the tax.

The relationship between the exit tax and the transferor statute. R.C. 5733.06(H) and R.C. 5733.053 establish the following relationship between the exit tax and the transferor statute:

(1) If on Jan. 1 following the transfer of substantially all the transferor's assets to the transferee the transferor remains in existence, then the transferor is subject to the franchise tax and the transferor statute does not apply to the transferee. See R.C. 5733.053(B): *"The transferee shall add such income in computing its tax for the same tax year or years that such income would have been reported by the transferor if the transfer had not been made. The transferee shall add such income only to the extent the income is not required to be reported by the transferor for the purposes of the tax imposed by divisions (A) and (B) of section 5733.06 of the Revised Code."*

(2) If on Jan. 1 following the transfer of substantially all the transferor's assets to the transferee the transferor is not subject to the franchise tax (for example, because the transferor merged into the transferee before Jan. 1), and if for federal income tax purposes the transfer qualifies for nonrecognition of gain and loss, then the R.C. 5733.053 transferor statute applies to the transferee and the exit tax does not apply to the transferor. That is, the transferee is required to add to its income the income of the transferor and the franchise tax attributes of the transferor pass to the transferee.

(3) If (i) on Jan. 1 following the transfer of substantially all the transferor's assets to the transferee the transferor is not subject to the franchise tax imposed by divisions (A) and (B) of R.C. 5733.06 (for example, because the transferor merged into the transferee), and (ii) the R.C. 5733.053 transferor statue does not apply to the transferee (for example, because the merger is not a tax-free reorganization), and (iii) all other conditions applicable to the definition of an exiting corporation apply, then the exit tax applies to the transferor. See R.C. 5733.06(H)(1)(d) and 5733.06 (H)(6).

An exiting corporation having a fiscal year end must include on one franchise tax report all of its unreported net income even if the income would have been included on two franchise tax reports had the corporation remained subject to the franchise tax. See R.C. 5733.06(H).

Example:

ABC Inc. is chartered in another state and has operated in Ohio for several years. ABC has a Jan. 31 fiscal year end and filed its 2008 franchise tax report based on the fiscal year beginning Feb. 1, 2006 and ending Jan. 31, 2007. ABC shut down its Ohio operations and legally withdrew from Ohio on Dec. 1, 2008. ABC is not a "transferor" as defined in R.C. 5733.053 because ABC did not transfer substantially all its assets or equity to another corporation in a tax-free reorganization. Although ABC is not a franchise taxpayer on Jan. 1, 2009, ABC is nevertheless subject to the exit tax on its unreported Ohio net income earned during the 22-month period beginning Feb. 1, 2007 and ending Dec. 1, 2008 (the date that it withdrew from Ohio).

ABC must report its income for the entire 22-month period from Feb. 1, 2007 to Dec. 1, 2008 on a 2009 franchise tax report even though ABC would have reported income for the period from Feb. 1, 2008 to Dec. 1, 2008 on a 2010 franchise tax report if ABC would have had nexus with Ohio on Jan. 1, 2009 and had remained subject to the franchise tax. ABC's 2009 exit tax report is due by May 31, 2009, and all exit tax due is payable at that time notwithstanding other provisions of Chapter 5733 to the contrary. However, upon ABC's request the tax commissioner may grant an extension of time to file the report (but the law contains no provision for an extension of time to pay).

9. Accounting Period – Taxable Year

For franchise tax purposes a corporation's taxable year is 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 Jan. of the tax year. Generally, a corporation's taxable year for franchise tax purposes is the same as the corporation's taxable year for federal income tax purposes. 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 and can exceed one year in length. For example, a franchise tax taxable year can consist of two (or more) federal taxable years and can exceed one year in length in instances where the taxpayer changes its federal taxable year or the taxpayer is acquired by another corporation and then changes its taxable year.

In addition, the law gives the tax commissioner 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.

The tax commissioner has adopted the following rules regarding franchise taxpayers' taxable years and change of accounting period:

- 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.

Note: Effective for taxable years ending after Dec. 31, 2003, tax commissioner rule 5703-5-04 eliminates income proration for taxable years that exceed one year in length. In addition, the amended rule clarifies that if, as the result of a change of ownership, a taxpayer has two short-period federal taxable years because of the taxpayer's inclusion in one or more consolidated federal income tax returns, and if the year-end of the taxpayer's annual accounting period remains the same after the change of ownership as it was before the change, then for purposes of this rule there is not a change of the 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 Jan. of the tax year.
- If a taxpayer changes its annual accounting period, there is no period that is not subject to tax, and no period subject to tax in more than one tax year.
- Under certain circumstances a franchise tax "taxable year" may be more than or less than one year in length.

Except for taxpayers that have changed their accounting period and taxpayers that have more than one federal taxable year ending in calendar year 2008, taxpayers must determine the value of their issued and outstanding shares of stock under the net income base and the net worth base as follows:

− For report year 2009 **calendar year end taxpayers** must use the period ending Dec. 31, 2008.
− For report year 2009 **fiscal year end taxpayers** must use the fiscal period ending in 2008. However, **taxpayers filing their first report** must use the applicable period set out below:

A. If a taxpayer incorporated in Ohio during 2008 and adopted a fiscal year ending in 2008, then the taxpayer's taxable year begins on the date of incorporation and ends on the last day of its fiscal period ending in 2008.

B. If the taxpayer is a foreign corporation and first became an Ohio taxpayer during 2008 (that is, during 2008 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 2008, then the taxpayer must use the accounting period commencing on the earliest of the following dates: (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 ends on the taxpayer's fiscal year ending in 2008.

C. All other new taxpayers must use the accounting period commencing with the earliest of the four dates set forth in B above, and concluding with Dec. 31, 2008. See paragraphs (E)(2) and (E)(4) of tax commissioner rule 5703-5-03.

If the corporation changed its taxable year in 2007 or 2008 or if the corporation had more than one federal taxable year ending in calendar year 2008, please see the above rules to determine the taxpayer's taxable year. Please visit our Web site for a copy of the rules. If the corporation changed its taxable year as a result of a change in ownership, see the decision chart on page 44 of these instructions.

10. Methods of Computing Tax

In determining the Ohio franchise tax due, taxpayers other than financial institutions and qualifying holding companies must compute the tax on both the net worth base and the net income 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, and qualifying holding companies are not subject to the tax on the net worth base. In any event, franchise taxpayers are subject to the minimum fee.

Note: The net worth base exemption for high-tech start-up companies expired with the 2007 report.

Although an "exiting corporation" is not subject to the franchise tax, the corporation may be subject to an income based exit tax. An exiting corporation is not subject to the minimum fee. See general instruction #8.

11. 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 due 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 which is not a Saturday, Sunday or legal holiday. Certain taxpayers must pay by electronic funds transfer (see general instruction #11D below).

A. Filing Date; Payment Date; Declaration of Estimated Tax

The filing and payment of the Ohio franchise tax for report year 2009 is due between Jan. 1 and March 31, 2009. However, if by Jan. 31 the taxpayer did not file the report and make full payment of the tax, then by Jan. 31 the taxpayer must file form FT 1120E, Declaration of Estimated Corporation Franchise Tax, and must pay one-third of the estimated tax, but not less than the minimum fee.

If the taxpayer is required to pay by electronic funds transfer (EFT) and timely makes an estimated payment by Jan. 31, then the taxpayer should not file form FT 1120E (see general instruction 11D below).

B. Extension

The tax commissioner will grant an automatic extension of time for filing the report to May 31, 2009 if by March 31, 2009 the taxpayer submits form FT 1120ER together with payment of the second one-third of the estimated tax due. If the taxpayer will file its franchise tax report after March 31, the taxpayer must submit form FT 1120ER by March 31 even if no additional payment is due.

If the taxpayer is required to pay by EFT and timely makes its second estimated payment by March 31, then the taxpayer has an automatic extension for filing its franchise tax report to May 31 and the taxpayer should not file form FT 1120ER (see general instruction #11D below).

Additional Extension

The tax commissioner will grant an additional automatic extension of time for filing the report beyond May 31 if the taxpayer has been granted an extension by the Internal Revenue Service and by May 31, 2009 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. The taxpayer must include a copy of the federal extension with the franchise report, form FT 1120, when filed. If the taxpayer will file its franchise tax report after May 31, the taxpayer must submit form FT 1120EX by May 31 even if no additional payment is due.

If the taxpayer is required to pay by EFT and timely makes its third estimated payment by May 31, then the taxpayer has an automatic extension for filing its franchise tax report 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 and the taxpayer should not file form FT 1120EX (see general instruction #11D below).

Each member of a combined franchise tax report must file its own separate forms FT 1120E, FT 1120ER and FT 1120EX.

The following table lists the latest possible due dates for filing the 2009 franchise tax report for the various taxable years ending in 2008. The table reflects the following assumptions:

- If the taxpayer's taxable year ended on or after Aug. 31, 2008, the taxpayer has the maximum allowable federal extension,
- The taxpayer timely filed franchise tax forms FT 1120E, FT 1120ER and, if applicable, FT 1120EX, and
- The taxpayer has timely paid estimated franchise tax.

Taxable Year Ending In 2008	Latest Possible Due Date for Filing the 2009 Franchise Tax Report
01/31/08 through 7/31/08	05/31/2009
08/31/2008	06/15/2009
09/30/2008	07/15/2009
10/31/2008	08/15/2009
11/30/2008	09/15/2009
12/31/2008	10/15/2009

Note: Payment of all franchise tax for tax year 2009 is due by May 31, 2009, even if the taxpayer has an extension to file after that date.

C. Place

File the franchise tax report with the Ohio Department of Taxation, P.O. Box 27, Columbus, Ohio 43216-0027.

However, if the report is an **amended report**, please do not send it to the address above. If the amended report reflects a **balance due** or no change in liability, please send the report along with payment to:

Ohio Department of Taxation
Corporation Franchise Tax Unit
P.O. Box 2476
Columbus, Ohio 43216-2476

If an **amended report** reflects an **overpayment,** please send the report along with (i) an Application for Corporation Franchise Tax Refund (form FT REF) or (ii) a complete explanation of the amendment to:

Ohio Department of Taxation
Audit Division
P.O. Box 530
Columbus, Ohio 43216-0530

An overpayment shown on an amended report cannot be credited against the tax liability for any other year.

Please indicate that a report is an amended report by checking the appropriate box on the front of the report.

D. EFT Method of Payment

A taxpayer must pay by electronic funds transfer (EFT) if for the second preceding tax year the taxpayer's total franchise tax liability after reduction for nonrefundable credits exceeded $50,000. Nevertheless, payments made with an amended report cannot be made by EFT. For further EFT information see the Department of Taxation's July 31, 1994 franchise tax information release entitled "Recently Enacted Legislation Revises the Requirements for Corporations Paying Corporate Franchise Tax by Electronic Funds Transfer (EFT)." The information release is available on the department's Web site. Please direct questions regarding the EFT payment program to the Ohio Treasurer of State's office at 30 East Broad Street, 9th floor, Columbus, Ohio 43215, or call that office toll-free at 1-877-338-6446.

If the taxpayer is required to remit its estimated payments by EFT and timely does so, then those estimated payments are deemed to be accompanied by the appropriate declaration of estimated payment or request for extension form. So, a taxpayer that timely remits its estimated payments by EFT is generally not required to file paper forms FT 1120E, ER and EX.

However, if the taxpayer timely made estimated payment(s) by EFT and the taxpayer is not required to make additional estimated payment(s) (because the tax already paid exceeds the tax due), but the taxpayer needs an extension or an additional extension to file its franchise tax report, then the taxpayer must timely file the appropriate paper forms FT 1120ER and/or FT 1120EX. For example, if by EFT the taxpayer timely made a 2009 estimated payment on or before Jan. 31, 2009 and that payment exceeds the tax due but the taxpayer will not file its 2009 franchise tax report until May 2009, then the taxpayer must file paper form FT 1120ER on or before March 31, 2009 even though no payment is required with that form.

12. Interest on Underpayments and Overpayments

If a corporation fails to pay the tax by the date payment is due, interest accrues on the unpaid tax. In addition, penalties may be charged for late filing, late payment or failure to file. The period of the underpayment runs from the date payment was required to the date on which payment is made. **There is no safe-harbor from <u>interest</u> on the underpayment of estimated tax.**

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 tax report was required to be filed, or
- the 90th day after the date that the franchise tax report was filed.

Interest on an overpayment resulting from a net capital loss carryback is payable from the due date plus extensions for the report in which the loss arises (rather than from the report year to which the loss is carried back).

The interest rate on underpayments is the same as the interest rate on overpayments. **During calendar year 2009 interest on underpayments and overpayments accrues at the rate of 5% per annum** (based on the rounded federal short term rate of 2% plus the additional 3% prescribed by R.C. 5703.47(B)). See R.C 5703.47 and the tax commissioner's Oct. 15, 2008 administrative journal entry.

13. Penalties for Late Payment, Failure to File or Late Filing

- Penalty may be imposed for failure to timely pay the tax (including estimated tax). Late payment penalty may not exceed 15% of the delinquent payment. See R.C. 5733.28(A)(2); also see "penalty safe-harbor for estimated payments" below.
- Penalty may be imposed for failure to file or to timely file a report. 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.

14. Penalty Safe-Harbor for Estimated Payments

The following safe harbor applies to penalty (but not to interest) on the underpayment of estimated tax:

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

15. 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.

16. Paid Preparer's Signature

The Ohio Department of Taxation follows IRS Notice 2004-54. IRS Notice 2004-54 provides for alternative preparer-signature procedures for federal income tax paper returns that paid practitioners prepare on behalf of their clients. Paid preparers can follow those same procedures with respect to the following Ohio paper returns: individual income tax, school district income tax, withholding tax (employer and pass-through entity) and corporation franchise tax. See R.C. 5703.262(B) and 5747.08(F).

17. Reporting Federal Changes

If as a result of amendment or adjustment to the taxpayer's federal income tax return by the taxpayer or by the Internal Revenue Service or, if as a result of any other recomputation or redetermination a change occurs in the taxpayer's federal tax liability or any item entering the computation of the taxpayer's federal taxable income as reported for federal income tax purposes, the taxpayer must report such change to the Ohio Department of Taxation in the form of an amended report by the earliest of the following dates:

- One year after final determination of the adjustment for federal income tax purposes,
- One year after the taxpayer paid the additional federal income tax as a result of the adjustment (whether or not the adjustment was agreed to) or
- One year after the taxpayer received a federal income tax refund as a result of the adjustment.

This provision applies even if the three-year statute of limitations has passed and applies to amended reports that reflect overpayments as well as to amended reports that reflect underpayments. If the amended report reflects an underpayment, the amended report must be accompanied by payment of any additional tax and interest. If the amended report reflects an overpayment, the amended report must be accompanied by either form FT REF, Application for Refund, or by a statement that sets forth the full and complete reason for the overpayment. See *Abitibi-Price Corporation and Subsidiaries v. Tracy*, BTA No. 98-N-401 (3-12-01) and refer to general instruction #27.

Upon completing an amended report, **please check the amended report box on the front of the report and send the report to the appropriate address shown below.** Please do <u>not</u> send an amended report to P.O. Box 27 (the address shown on the form).

If an **amended report** reflects a **balance due** or no change in liability, please send the amended report along with the appropriate payment to:

Ohio Department of Taxation
Corporation Franchise Tax Unit
P.O. Box 2476
Columbus, Ohio 43216-2476

If an **amended report** reflects an **overpayment,** please send the report along with (i) an Application for Corporation Franchise Tax Refund (form FT REF) or (ii) a complete explanation of the amendment to:

Ohio Department of Taxation
Audit Division
P.O. Box 530
Columbus, Ohio 43216-0530

Please note that **taxpayers may not apply an overpayment reflected on an <u>amended</u> report to another year.**

18. Amounts Reported From Federal Tax Return
Amounts reported from IRS form 1120 as well as Ohio adjustments, apportionment and allocations are subject to verification and audit by the Ohio Department of Taxation.

19. Methods of Accounting
A taxpayer's method of accounting under the net income base must be the same as its method of accounting for federal tax purposes. If the taxpayer changes its method of accounting for federal income tax purposes, the taxpayer must also change its method of accounting under the net income base. In the absence of any method of accounting for federal income tax purposes, income must be computed under such method as the tax commissioner deems proper.

The tax on the net worth base must be determined from the books of the corporation that the taxpayer must keep 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 principles, the value of the taxpayer's issued and outstanding shares of stock under the net worth base (R.C. 5733.05(C)) must be based upon those books kept in accordance with generally accepted accounting principles. See tax commissioner rule 5703-5-08.

20. Rounding-off To Whole Dollar Amounts
The money amounts on form FT 1120 and accompanying schedules must be rounded to the nearest whole dollar by eliminating amounts less than 50 cents and by increasing amounts from 50 cents to 99 cents to the next highest dollar.

21. Records Retention
Every corporation must maintain books and records that substantiate the information reported on its Ohio corporation 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 (a) the date the taxpayer filed the franchise report or (b) the date the taxpayer was required to file the report. See the line instructions for Schedule A, line 12 for records to be maintained pertaining to net operating loss carryforwards.

22. Holding Companies of Insurance Companies, Public Utilities and Financial Institutions
A taxpayer that owns at least 25% of the issued and outstanding shares of common stock of one or more financial institutions as defined in Ohio Revised Code Chapter 5725 or a taxpayer that owns at least 80% of the issued and outstanding shares of common stock of one or more insurance companies or public utilities as defined in Ohio Revised Code Chapters 5725 and 5727, respectively, must exclude from its sales factor the receipts from sales to such financial institutions, public utilities or insurance companies. The sales factor exclusion does not apply to receipts from sales to electric companies and combined electric companies and to receipts from sales to local exchange telephone companies. See R.C. 5733.05(B)(2)(c).

In addition, a taxpayer that owns at least 80% of the issued and outstanding shares of common stock of one or more public utilities or insurance companies may deduct, to the extent not otherwise allowed, dividends received from such public utilities and insurance companies. This deduction does not apply to dividends received from electric companies, combined electric companies and for tax years 2005 and thereafter, to dividends received from local exchange telephone companies. For purposes of this deduction, the term "public utility" means a public utility as defined in Chapter 5727 of the R.C. whether or not the public utility is doing business in Ohio and the term "insurance company" means an insurance company taxable under Chapters 5725 or 5729 of the Ohio Revised Code. See R.C. 5733.04(I)(7) and (8).

23. Qualifying Holding Company
A qualifying holding company is exempt from the net worth base of the franchise tax (but not the net income base). A qualifying holding company is any corporation satisfying all six of the following requirements:
- The corporation's "intangible assets ratio" equals or exceeds 90%,
- The corporation's "investment in related members ratio" equals or exceeds 50%,
- During the taxable year the corporation's "gross income from intangible assets ratio" equals or exceeds 90%,
- The corporation is not a financial institution on the last day of the taxable year ending prior to the first day of the tax year,
- The corporation's related members adjust their net worth and debt for purposes of computing their franchise tax on the net- worth base so that the related members' debt-to-equity ratio equals the consolidated debt-to-equity ratio of the "qualifying controlled group." (A "qualifying controlled group" is defined in R.C. 5733.04(M) as two or more corporations that satisfy the R.C. 5733.052(A) ownership and control requirements to file a combined report), and
- The corporation elects to be treated as a qualifying holding company for the tax year by filing form FT QHC.

For further information see form FT QHC and R.C. 5733.04(L), 5733.05(D) and 5733.06(C).

24. Combined Report
A *taxpayer* that on Jan. 1 of the tax year owns or controls either directly or indirectly more than 50% of the voting stock of another *taxpayer* corporation may elect to combine net income with that corporation. A "taxpayer" is a corporation subject to the franchise tax. Taxpayers whose voting stock is more than 50% owned or controlled either directly or indirectly by another corporation or by related interests may also elect to combine net income. Brother-sister taxpayer corporations owned by an individual may elect to combine, and brother-sister taxpayer corporations owned by a parent corporation may elect to combine without inclusion of the parent corporation. However, where an election to combine is made by less than all eligible taxpayer corporations, the combined group must include an explanation of the reason for the nonparticipation by such eligible taxpayer corporations.

An elected combination may include only taxpayers having income [either positive income or negative income (loss)], other than dividend income, from sources within Ohio. "Income from sources within Ohio" means income that would be allocated or apportioned to Ohio if the taxpayer were not included in a combined report. Those taxpayer groups that elected to combine in prior tax years must amend their combinations to delete from this year's report taxpayers having no income, other than dividend income, from sources within Ohio during the taxable year.

Entities not organized as corporations but for federal income tax purposes treated as corporations are treated as corporations for franchise tax purposes as well. Such entities can join in the filing of a combined report provided that the more than 50% ownership requirement is met and the entity has income other than dividend income from Ohio sources.

Taxpayers electing to combine must do so in a timely filed franchise tax report. A timely filed report is a report filed within the time prescribed by R.C. 5733.02 and 5733.13. Only one member of a combined franchise tax group must satisfy the R.C. 5733.052(B) timely election requirement. A combination is timely elected if any member of the combination has complied with all of the franchise tax report deadlines even if other members have not so complied. Thus, a taxpayer that fails to make timely estimated payments and fails to file timely extension requests may file in combination with other corporations after the due date of the taxpayer's report if another corporation in the combined group has timely made its estimated payments, has timely filed its extension requests, and has timely elected to file in combination with the taxpayer. See *Roxane Laboratories, Inc. v. Tracy* (1996), 75 Ohio St.3d 125. Taxpayers that first filed separately may not elect to combine by filing an amended report after the due date of the report even if the amended report is filed within the three-year refund statute of limitations. See *Olan Mills Inc. of Tenn. v. Limbach* (1990), 56 Ohio St.3d 70.

Each member of a combined franchise tax report must separately file a Declaration of Estimated Tax (form FT 1120E) and Request(s) for Extension (forms FT 1120ER and FT 1120EX). See general instructions #11A and #11B. Members of a combined report that fail to comply with the filing deadlines are subject to the applicable penalty and interest charges.

An election to combine may not be changed either in amended reports or in reports for future years without the written consent of the tax commissioner. The addition of a new member to a previously elected combination and/or the deletion of a member previously included (other than the deletion of a member no longer satisfying the income or ownership requirements) is a change in that election. Accordingly, taxpayers seeking to add or delete member(s) to an already existing combination must receive the tax commissioner's consent. See R.C. 5733.052(B) and *Tranzonic Companies and Subs. v. Tracy*, BTA Case No. 90-M-1443, Dec. 4, 1992. Taxpayers requesting such consent must file form FT COM, Request for Permission to File or to Amend a Combined Corporation Franchise Tax Report.

If the above-discussed 50% ownership requirements are met, the Department of Taxation may require or permit a taxpayer and one or more other corporations (whether or not such corporations are taxpayers and whether or not such corporations have income from sources within Ohio) to combine their net income. A combination of this type will not be required or permitted unless it is necessary because of intercorporate transactions to properly reflect income and the tax liability.

The department will require franchise tax combinations and will pursue expanded combinations if the department ascertains that the failure either to combine income distorts the amount of income fairly apportioned and allocated to Ohio. For purposes of ascertaining whether such income distortion exists, the department will consider all relevant evidence. See the department's information release entitled, "IRC Section 482 Study: Taxpayers seeking to Avoid Ohio Corporate Franchise Tax Report Required or Expanded Combinations", Issued June 2000; Revised Jan. 2005 (the information release is available on the department's Web site). Taxpayers requesting the department's permission to file a combined report with corporations that are not taxpayers must file form FT COM. Non-taxpayer corporations included in a combined report must compute income in the same manner as if they were taxpayers.

Corporations that file combined franchise tax reports must prorate combined apportioned net income to each member in the group (see form FT 1120C). Each corporation must then compute its own Ohio taxable income and net income-based tax on its own form FT 1120. Each taxpayer in a combined report must separately determine its tax on the net worth base; net worth is not combined.

In addition, related taxpayers that on Jan. 1 of the tax year meet the ownership requirements to file a combined report must share the $0 to $50,000 tax bracket amount to which the 5.1% rate applies regardless of whether they actually file combined. Related taxpayers must prorate the $0 to $50,000 bracket amount on form FT OTAS.

25. Enterprise Zone Tax Benefits

Businesses that establish, expand, renovate, or occupy a facility pursuant to an enterprise zone agreement and create new jobs in a certified enterprise zone without reducing employment elsewhere in Ohio may be entitled to a series of franchise tax benefits (see R.C. 5709.64 and 5709.65). Among these benefits are an employee training credit, a day-care credit (see credit #13 in the instructions for Schedule A-1) and exclusion of qualifying property and payroll from the numerators of the property and payroll factors.

To qualify for franchise tax enterprise zone benefits, businesses must hold for the taxable year 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 hired 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 R.C. 3304.11(A), 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 R.C. 5709.64 and 5709.65.

In addition to the enterprise zone franchise tax benefits described above, a taxpayer may apply to the Director of the Ohio Department 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 complies with the enterprise zone agreement and has not closed or reduced employment at any place of business in Ohio within the 12 months preceding the application. For more information on the Credit for Eligible New Employees in an Enterprise Zone see credit #7 in the instructions for Schedule A-1.

26. Assessments

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

- The final date the report subject to assessment was required to be filed, or
- The date the report was filed.

However, if the taxpayer did not file a franchise tax report and is not guilty of fraud, then the commissioner may not issue an assessment after the expiration of 10 years from the due date or extended due date of the report or return (see R.C. 5703.58 as enacted by Substitute House Bill 390, 126th General Assembly). Prior to the enactment of R.C. 5703.58 there was no time limit to assess if the taxpayer failed to file the report subject to assessment (see R.C. 5733.11).

R.C. 5703.58 applies to franchise tax and other taxes payable to the state and administered by the commissioner but not to sales tax and employer withholding tax collected on the state's behalf but not remitted to the state. The R.C. 5703.58 10-year assessment statute of limitations applies to assessments made before, on, or after the Sept. 28, 2006 effective date of Substitute House Bill 390. But, if the 10-year period ends before Sept. 28, 2009, then the commissioner has until Sept. 28, 2009 to assess (see section 3 of Substitute House Bill 390, 126th General Assembly).

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 before the statute of limitations period would otherwise expire. **Furthermore, if the tax commissioner disregards a sham transaction, the assessment statute of limitations period is doubled.** See general instruction #29 and R.C. 5703.56.

An amended franchise tax report filed as a result of an adjustment to the corporation's federal income tax return (see general instruction #17) 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 not directly or indirectly affected by the adjustment to the corporation's federal income tax return. Furthermore, once the three-year refund statute of limitations has passed, the taxpayer may not offset the additional franchise tax resulting from IRS audit adjustments against franchise tax which 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 preclude 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. Furthermore, the statute of limitations does not preclude 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, interest accrues on the assessment at the rate prescribed in R.C. 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 filing a petition for reassessment. See general instruction #27.

27. 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 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 for the tax year is shown on the originally filed franchise tax report for that tax year.**

Franchise taxpayers may initiate review proceedings pertaining to a franchise tax assessment issued by the Department of Taxation by filing form 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 IRS adjustment and the statute of limitations period has not been extended by form FT WAIVER (see general instruction #26), then the Department of Taxation 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).

Please mail your completed form FT REF or an amended franchise tax report along with a complete explanation of the amendment to:

Ohio Department of Taxation
Audit Division
P.O. Box 530
Columbus, Ohio 43216-0530

Please indicate that the report is amended by checking the box on the front of the report**. Do not send the FT REF and amended report to the address shown on the franchise tax form.**

Refund Statute of Limitations Law. Effective Sept. 6, 2002 for purposes of the refund statute of limitations, payments 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 R.C. 5733.12). Thus, for payments made before the due date or extended due date for filing the report, the three- year refund statute of limitations begins to run on the report's due date or the later extended due date. (Under prior case law payments remitted with the estimated tax report [form FT 1120E] and extension requests [forms FT 1120ER and FT 1120EX] were deemed to have been made on the earlier of the date the Ohio corporation franchise tax report was filed or the due date of the report including extensions. Thus, under prior case law if a franchise tax report was filed before its extended due date, the three-year refund statute of limitations began to run on the date the report was filed rather than the later extended due date. See *Hanna Mining Co. v. Limbach* (1985), 20 Ohio St.3d 3 and *Athena Manor, Inc. v. Limbach*, BTA Case No. 91-Z-12, Feb. 26, 1993.)

If the claimed overpayment is the result of a change in federal taxable income, then the Department of Taxation 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 #17. 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 #26), 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, Aug. 23, 1996.

Regardless of the above provisions to the contrary, a franchise tax refund claim based on a capital loss carryback is timely filed if the refund claim is filed within three years from the due date of the franchise tax report (including extensions) 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 can not use an application for refund to appeal an assessment unless the taxpayer has paid the assessment. That is, 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 the taxpayer has paid the assessment.

Uniform application for refund procedure. R.C. 5703.70 establishes 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 specifying that the R.C. 5703.70 uniform procedure applies and if the commissioner determines the amount of the refund to which the applicant is entitled is less than the amount claimed, then the tax commissioner and the taxpayer must proceed as follows:

1. 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 <u>mails</u> the notification to provide additional information to the commissioner and/or to request a hearing.

3. If the applicant neither requests a hearing nor provides additional information within the 60-day period described in #2, then (a) the commissioner will take no further action, (b) the refund denial becomes final, and (c) the taxpayer may not appeal to the Board of Tax Appeals the tax commissioner's decision to deny all or a portion of the claimed overpayment.

4. If the applicant requests a hearing within the 60-day period described in #2, the commissioner must assign a time and place for a 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 R.C. 5717.02.

5. If the applicant does not request a hearing within the 60-day period described in #2 but does provide additional information within that period, then the commissioner (a) must review the information, (b) may make such adjustments to the refund as the commissioner finds proper and (c) must issue a final determination. The taxpayer may appeal the commissioner's final determination to the Board of Tax Appeals pursuant to R.C. 5717.02.

Petition for reassessment. Franchise taxpayers may initiate review proceedings pertaining to a franchise tax assessment issued by the Department of Taxation by filing form PR, petition for reassessment. Form PR applies only to <u>assessments</u> (not to proposed corrections) issued by the Ohio Department of Taxation.

A taxpayer must file its petition for reassessment 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 of Taxation 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 that 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 files the petition after the 60-day period has expired, the tax commissioner will dismiss the petition because the tax commissioner has no jurisdiction to consider a late-filed petition.

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

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 R.C. 5733.02, (ii) any amended report required by R.C. 5733.031(C) for the tax year at issue, or (iii) any amended report required by R.C. 5733.067(D) 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 R.C. 5733.02, (ii) all amended reports required by R.C. 5733.031(C) for the tax year at issue and (iii) all amended reports required by R.C. 5733.067(D) 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 the 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 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 the portion of the assessment representing any unpaid balance of taxes shown due on the corporation's franchise tax report.

5. If none of the conditions specified in (1), (2), (3) or (4) above apply, or if the assessed corporation claims 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 R.C. 5703.47 from the date the Department of Taxation issues the assessment until the date the taxpayer pays the assessment (see R.C. 5733.11). 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 #12 for interest on underpayments and overpayments.

Uniform petition for reassessment procedures. R.C. 5703.60 establishes 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 filed a proper petition for reassessment for a tax whose statute specifies the uniform reassessment procedure applies, this law permits the tax commissioner, upon receipt of additional information from the taxpayer, to correct an assessment without issuing a final determination and without a hearing. In addition, this law permits the commissioner to correct an assessment even if the taxpayer did not properly file a petition for reassessment or did not file a petition for reassessment. A more in-depth summary of the law is set out below.

A. Uniform Procedure if the Taxpayer Properly Files a Petition for Reassessment

If a taxpayer objects to an assessment by properly filing a petition for reassessment under a law specifying the R.C. 5703.60 petition for reassessment procedure applies, then the tax commissioner and the taxpayer are to proceed as follows:

1. Upon review of the taxpayer's properly filed petition for reassessment, the commissioner must either:
   a. Issue a **final determination** that affirms, increases, cancels, or reduces (without canceling) the assessment; or
   b. Issue a **corrected assessment** that increases, cancels or reduces (without canceling) the assessment. However, if the party assessed has requested in writing that the tax commissioner not use the corrected assessment procedure, then the tax commissioner may not issue a corrected assessment; instead, after a hearing, if the taxpayer so requests, the commissioner must issue a final determination. **Note:** A cancelled assessment is an assessment which the tax commissioner has reduced to **zero** by issuing either a corrected assessment or a final determination. If the tax commissioner **cancels** an assessment, the corrected assessment or final determination is *not* subject to further administrative review or appeal.

2. If upon review of the taxpayer's properly filed petition for reassessment (and after a hearing if the taxpayer so requests) the tax commissioner issues a final determination, the final determination may cancel, reduce, affirm or increase the assessment. The taxpayer may appeal the tax commissioner's final determination (other than a final determination canceling the assessment) to the Board of Tax Appeals.

   Note: The tax commissioner's final determination can increase the assessment even if the tax commissioner issues the determination outside the normal assessment statute of limitations period (three years for corporations; four years for individual income tax, pass-through entity tax and withholding tax).

3. If upon review of the taxpayer's properly filed petition for reassessment the tax commissioner issues a corrected assessment, then (a) the corrected assessment nullifies the taxpayer's original petition, and (b) the original petition is not subject to further administrative review and may not be appealed to the Board of Tax Appeals. The tax commissioner must send the corrected assessment by ordinary mail. (Unlike the corrected assessment, the tax commissioner must send the original assessment by certified mail or must hand deliver it.)

   Note: If the tax commissioner timely issued the original assessment, then the commissioner's corrected assessment is deemed timely issued even if the corrected assessment increases the original assessment outside the normal assessment statute of limitations period.

4. If upon review of the taxpayer's properly filed petition for reassessment the tax commissioner issues a corrected assessment, the taxpayer may file a new petition for reassessment. If the taxpayer files a new petition, the taxpayer must do so within 60 days after the commissioner mails the corrected assessment. (Unlike a new petition for reassessment, the taxpayer must file its original petition within 60 days of receipt of the original assessment. In all other respects, a franchise taxpayer must file the new petition in the same manner as provided in R.C. 5733.11 for filing the original petition, and an individual income taxpayer in the same manner as provided in R.C. 5747.13.)

5. If upon review of the taxpayer's properly filed petition for reassessment the tax commissioner issues a corrected assessment and the taxpayer does not file a new petition within the 60-day period described in #4 above, then the corrected assessment becomes final. That is, the corrected assessment is not subject to further administrative review, may not be appealed to the Board of Tax Appeals, and is due and payable.

6. If upon review of the taxpayer's properly filed petition for reassessment the tax commissioner issued a corrected assessment that does not cancel the original assessment, and in response to the tax commissioner's corrected assessment the taxpayer files a new petition within the 60-day period described in #4 above, then upon review of the new petition and upon completion of the hearing (if the taxpayer requests a hearing) the commissioner must either:
   a. Issue a **final determination** that affirms, increases, decreases or cancels the first corrected assessment. The taxpayer may appeal the tax commissioner's final determination (other than a final determination canceling the assessment) to the Board of Tax Appeals; or
   b. Issue a **second** corrected assessment that cancels the first corrected assessment in its entirety. If the commissioner cancels the first corrected assessment, the commissioner must send the cancellation by ordinary mail and the cancelled assessment is not subject to further administrative review or appeal.

   Note: The commissioner may *not* issue a second corrected assessment that reduces but does not cancel the corrected assessment, and the commissioner may *not* issue a second corrected assessment that increases the first corrected assessment.

B. Uniform Procedure if the Taxpayer Fails to File a Petition for Reassessment or if the Taxpayer Fails to File a Proper Petition for Reassessment

The commissioner, on the commissioner's own motion, may issue a corrected franchise tax assessment. That is, the commissioner may issue a corrected assessment even if the taxpayer did not file a petition for reassessment or the taxpayer's petition is not timely or is otherwise invalid. However, this provision applies only if (a) the assessment has not been certified to the attorney general for collection or (b) the taxpayer has not appealed the commissioner's final determination to the Board of Tax Appeals.

If the commissioner issues a corrected assessment on the commissioner's own motion, the corrected assessment may not increase the tax, penalty or additional charge unless the assessment statute of limitations period is still open at the time the tax commissioner issues the corrected assessment. (Unlike a corrected assessment issued on the commissioner's own motion, a corrected assessment issued in response to the taxpayer's petition may increase the original assessment outside the assessment statute of limitations period [see A.2. above]). The commissioner must send a corrected assessment issued on the commissioner's own motion by ordinary mail.

C. Refunds of Amounts Paid Toward an Assessment

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 a refund could have been timely claimed at the time the assessed party filed petition for reassessment or other written request. If the tax commissioner reduces an assessment on the commissioner's own motion, then the commissioner will certify any overpayment only to the extent that at the time the commissioner made the reduction the taxpayer could have timely claimed a refund.

28. Taxpayer's Bill of Rights – Request for an Opinion of the Tax Commissioner

R.C. sections 5703.50 through 5703.54 establish certain administrative procedures relating to Department of Taxation audits and assessments. 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 of Taxation's interpretation of this law is available on the department's Web site.

In addition, this law permits the tax commissioner to issue binding opinions regarding the taxation of proposed activities of the taxpayer. As set forth in Ohio Administrative Code (tax commissioner 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 R.C. 5703.53;
- State all the 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 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 tax commissioner rule 5703-1-12, "Requests for an Opinion of the Tax Commissioner," available on the Department of Taxation's Web site.

29. Sham Transaction, Economic Reality, Substance Over Form and Step Transactions

The tax commissioner has authority to apply the doctrines of "economic reality," "sham transaction," "step transaction" and "substance over form." Generally the tax commissioner bears the burden of establishing by a preponderance of the evidence that these doctrines should apply. However, with respect to transactions between members of a controlled group, the taxpayer bears the burden of establishing that a transaction or series of transactions between members of the controlled group was not a sham transaction. **If the tax commissioner disregards a sham transaction, the assessment statute of limitations period is doubled.**

For purposes of this provision the term "controlled group" means two or more persons related in such a way that one person directly or indirectly owns or controls the business operations of another member of the group. In the case of persons with stock or equity, one person owns or controls another if it directly or indirectly owns more than 50% of the other person's common stock with voting rights or other equity with voting rights. The term "sham transaction" means a transaction or series of transactions without economic substance because there is no business purpose or expectation of profit other than obtaining tax benefits. See R.C. 5733.111 and 5703.56.

Note: House Bill 95, 125th General Assembly law repealed the franchise tax sham transaction provision in R.C. 5733.111 (see section 2 of the bill) and replaced it with the more encompassing provision set out above. The law applies on and after June 26, 2003 to all taxes and fees administered by the tax commissioner to all years not closed by the statute of limitations.

30. Tax Commissioner's Right to Offset Refund

The tax commissioner may apply a taxpayer's franchise tax refund against the taxpayer's indebtedness to the state of Ohio for any tax or fee and any charge, penalty, or interest arising from such a tax or fee administered by the tax commissioner and paid to the state or to the Clerk of Courts. In addition, the tax commissioner may apply a taxpayer's franchise tax refund in satisfaction of the corporation's indebtedness to Ohio for workers' compensation premiums, unemployment compensation contributions, or unemployment compensation payments in lieu of contributions and interest on such amounts. The tax commissioner can make the offset only if those debts have become "final." See R.C. 5733.121.

Before completing the various schedules of your 2009 franchise tax report, form FT 1120, please review the check boxes on page one (top right side) of the form and mark the boxes that apply. Also, please complete the statutory agent and corporate officer information along with the taxpayer's name, address and all identification numbers.

Please note that if the taxpayer is new or new to Ohio and has not yet been assigned an Ohio franchise tax ID number, one will be assigned after the taxpayer files its first franchise tax report.

Line Instructions
Schedule A

If the taxpayer is a member of a **combined** franchise report (form FT 1120C), please:

- See general instruction #24 and the instructions for form FT 1120C – Combined Report;
- Skip lines 2 through 5 of Schedule A, form FT 1120;
- Enter on line 6 of Schedule A, form FT 1120 the taxpayer's separate company apportionment ratio; and
- Enter on line 7 of Schedule A, form FT 1120 the taxpayer's apportioned income from Schedule B (Combined), line 7 of the combined report, form FT 1120C.

A taxpayer must compute its Ohio taxable income for its taxable year (see general instruction #9).

Line 1 – Federal taxable income

Enter the taxpayer's federal taxable income before net operating loss deduction and special deductions from IRS form 1120, line 28. **If the taxpayer is a member of a consolidated federal return, compute the taxpayer's federal taxable income as if the taxpayer filed a separate federal return. The Department of Taxation maintains that the federal consolidation rules do not apply in determining federal taxable income for purposes of the franchise tax.**

Line 6 – Ohio apportionment ratio

Enter the taxpayer's apportionment ratio from Schedule D, line 4 determined on a separate company basis. Enter the taxpayer's separate company apportionment ratio even if the taxpayer is a member of a combined franchise tax report.

Line 9 – Income (loss) from transferor corporation

A taxpayer-***transferee*** that receives substantially all of the assets or equity of a *transferor* corporation must include in its own Ohio taxable income the transferor's Ohio taxable income **if following the *transfer* the transferor is not subject to the franchise tax**

and the transfer qualifies for nonrecognition of gain and loss under the Internal Revenue Code. If the transferor statute applies to the transferee, then the transferor's Ohio net operating losses, unused credit amounts and other franchise tax attributes transfer to the transferee subject to the limitations set forth in sections 381 and 382 of the Internal Revenue Code.

The Ohio taxable income of a transferor corporation is determined in the same manner as if the transfer had not been made and the transferor remained subject to the franchise tax. Thus, the federal taxable income of a transferor corporation is subject to the same adjustments and must be allocated and apportioned in the same manner as if the transferor remained subject to the franchise tax. The taxpayer-transferee must include such income in computing its tax for the same tax year or years such income would have been reported by the transferor if the transfer had not been made and the transferor had remained subject to the franchise tax. If the transferor was previously included in a combined report, the income of the transferor must be determined as if the transferor remained in the combined report.

If a taxpayer subject to R.C. 5733.053 subsequently becomes a transferor, then any income the taxpayer would have been required to add to its income under R.C. 5733.053 is included in its income as a transferor and any credits or deductions the taxpayer would have been entitled to under this section are available to the taxpayer as a transferor. See R.C. 5733.053.

The law defines the terms *transfer, transferor* and *transferee* as follows:

- "'**Transfer**' means a transaction or series of related transactions in which a corporation directly or indirectly transfers or distributes substantially all of its assets or equity to another corporation." R.C. 5733.053(A)(1).
- "'**Transferor**' means a corporation that has made a transfer." R.C. 5733.053(A)(2).
- "'**Transferee**' means a corporation that received substantially all the assets or equity of a transferor in a transfer." R.C. 5733.053(A)(3).

The relationship between the transferor statute (R.C. 5733.053) and the exit tax (see general instruction #8 and R.C. 5733.06(H)) is as follows:

(1) If on Jan. 1 following the transfer of substantially all the transferor's assets to the transferee the transferor remains in existence, then the transferor is subject to the franchise tax and the transferor statute does not apply to the transferee. See R.C. 5733.053(B): *"The transferee shall add such income in computing its tax for the same tax year or years that such income would have been reported by the transferor if the transfer had not been made. The transferee shall add such income only to the extent the income is not required to be reported by the transferor for the purposes of the tax imposed by divisions (A) and (B) of section 5733.06 of the Revised Code."*

(2) If on Jan. 1 following the transfer of substantially all the transferor's assets to the transferee the transferor is not subject to the franchise tax (for example, because the transferor merged into the transferee), and if for federal income tax purposes the transfer qualifies for nonrecognition of gain and loss, then the R.C. 5733.053 transferor statute applies to the transferee and the exit tax does not apply to the transferor. That is, the transferee is required to add to its income the income of the transferor and the franchise tax attributes (such as Ohio NOL carryforwards and credit carryforwards) of the transferor pass to the transferee.

(3) If on Jan. 1 following the transfer of substantially all the transferor's assets to the transferee the transferor is not subject to the franchise tax imposed by divisions (A) and (B) of R.C. 5733.06 (for example, because the transferor merged into the transferee), and if the R.C. 5733.053 transferor statue does not apply to the transferee (for example, because the merger is not a tax free reorganization) and if all other conditions of an exiting corporation apply, then the exit tax applies to the transferor. See R.C. 5733.06(H)(1)(d) and 5733.06(H)(6).

Line 12 – Ohio net operating loss deduction

Note: As a result of the enactment of House Bill 66, 126th Ohio General Assembly, certain "qualifying taxpayers" with franchise tax net operating loss (NOL) carryforwards in excess of $50 million could have elected to claim a credit against their commercial activity tax (CAT) liability. The credit is, in large part, based on a portion of those franchise tax NOL carryforwards. **If a qualifying taxpayer made the election before July 1, 2006, then the portion of the taxpayer's NOL carryforward upon which it claims the CAT credit for unused franchise tax NOLs cannot be claimed as an NOL deduction on the taxpayer's franchise tax report**.

Qualifying taxpayers are CAT taxpayers that after filing their 2005 franchise tax report on a separate company basis (or after filing an amended 2005 franchise tax report before July 1, 2006 on a separate company basis) had accumulated Ohio franchise tax NOL carryforwards of at least $50 million. Qualifying taxpayers also include CAT taxpayers that were members of a combined franchise tax group for report year 2005 if after filing their 2005 franchise tax reports (or after filing amended 2005 franchise tax reports before July 1, 2006), the sum of the accumulated Ohio franchise tax NOL carryforwards for all members of the combined group was at least $50 million.

An Ohio net operating loss is calculated in the same manner as positive Ohio net income is calculated. That is, in determining the Ohio net operating loss generated in a particular taxable year the same adjustment, allocation and apportionment provisions apply as in determining positive Ohio taxable income (before the net operating loss deduction). Any net operating loss is applied to subsequent net income to reduce that income to zero or until the net operating loss has been fully used as a deduction.

For net operating losses incurred in taxable years ending on or after Jan. 1, 1982 and before Aug. 6, 1997 the designated carryover period is 15 consecutive taxable years following the taxable year in which the net operating loss occurs. For net operating losses incurred in taxable years beginning on or after Aug. 6, 1997, the designated carryover period is 20 consecutive taxable years following the taxable year in which the net operating loss occurs. For purposes of calculating the carryforward period, the first year of the carryforward period is the taxable year following the taxable year for which the loss should have been reported.

A surviving corporation in a merger is permitted to use the Ohio net operating losses of a merged corporation provided that the surviving corporation for federal income tax purposes is permitted to use the federal net operating losses, if any, of the merged corporation. IRC sections 381 and 382 apply with respect to the allowable loss. A merged corporation has no Ohio net operating loss for a period if it is not subject to the Ohio franchise tax measured by income from that period. See *Litton Industrial Products, Inc. v. Limbach* (1991), 58 Ohio St.3d 169 and *American Home Products Corporation, nka Wyeth, as successor in interest to A.H. Robins Company, Incorporated v. Tracy*, Court of Appeals, Tenth Appellate District, No. 02AP-759 (3-27-03). But see the instructions for Schedule A, line 9, for Ohio net operating losses of a transferor corporation that pass to a transferee corporation in a transfer above.

Each corporation filing as a member of a combined franchise tax group will have its own net operating loss deduction since each will compute its own Ohio taxable income on its own franchise tax report.

For each year in which the taxpayer uses any portion of a net operating loss carryforward please include with the franchise tax report a schedule which shows when the loss was generated, the amount of loss used in earlier years and the remaining carryforward amount. The taxpayer must maintain information regarding a net operating loss carryforward for at least four years after the later of the filing date or the due date of the report in which any portion of the carryforward is claimed.

The statute of limitations does not prohibit either the tax commissioner or the taxpayer from adjusting the net operating loss carried forward from a tax year closed to assessment to a year still open to assessment or refund. See *Consumer Direct v. Limbach* (1991), 62 Ohio St.3d 180.

Line 19 – The sum of nonrefundable credits #1 through #13 from Schedule A-1, line 14, and
Line 21 – R.C. 5733.0611 nonrefundable credit for taxes paid by a qualifying pass-through entity, Schedule A-1, line 15
Note: The franchise tax is phasing out for most franchise taxpayers starting with the 2006 report. For taxpayers subject to the franchise tax phase-out, nonrefundable credits #1 through #13 on Schedule A-1 are subject to the same phase-out factor (20% for report year 2009) as the tax. However, the nonrefundable credit for tax paid by a qualifying pass-through entity (Schedule A-1, line 15) is recoverable at 100%. As such, the sum of nonrefundable credits #1 through #13 on Schedule A-1 are shown on Schedule A separate from the nonrefundable credit for tax paid by a qualifying pass-through entity. See R.C. 5733.01(G)(2)(a)(ii) and 5733.01(G)(2)(b).

Line 20 – Line 17 plus line 18 minus line 19. Multiply the result by 20%.
Caution: As noted above, for report year 2009 taxpayers subject to the franchise tax phase-out must pay 20% of the sum of the franchise and litter taxes <u>after nonrefundable credits</u> (other than the credit for tax paid by a qualifying pass-through entity) they would otherwise pay were it not for the franchise tax phase-out.

The franchise tax phase-out does not apply to the following entities: (i) financial institutions, (ii) financial holding companies, (iii) bank holding companies, (iv) savings-and-loan holding companies, (v) affiliates of entities described in (i) through (iv) above when such affiliates are engaged in financial institution type activities, (vi) certain affiliates of insurance companies when such affiliates are engaged in insurance type activities and (vii) certain "securitization" companies described in R.C. 5751.01(E)(10).

If the taxpayer is not subject to the franchise tax phase-out, indicate such by checking the appropriate box on the top right side of the front page of the franchise tax report. **Taxpayers not subject to the phase-out must enter on line 20 the sum of lines 17 and 18 less line 19 (do not multiply the result by 20%).**

Line 23 – 7.5%–13.5% grant for purchases of new manufacturing machinery and equipment times 20%.
Note: In *DiamlerChrysler Corp. v. Cuno* 547 U.S. (2006) the United States Supreme Court held that the plaintiffs had not established their standing to challenge the 7.5%-13.5% credit. Because the plaintiffs had no standing to challenge the credit, the lower courts erred by considering the plaintiffs' claims on the merits. Because of this decision, taxpayers can continue to claim the grant as provided by Ohio law. See the Department of Taxation's Sept. 2006 information release entitled "Questions Regarding Ohio's Manufacturing Machinery and Equipment Tax Credit and Subsequent Grant."

For taxable years ending on or after July 1, 2005 the R.C. 5733.33 second credit for purchases of new manufacturing machinery and equipment (the 7.5%-13.5% manufacturer's credit) converts to a nonrefundable grant administered by the Ohio Department of Development. Thus, **for franchise report year 2009, (taxable year ending in 2008) taxpayers must claim the grant** – not the credit. This is so even for the 1/7 amounts from 2005 and earlier qualifying purchases for which the taxpayer claimed a credit on earlier reports. See R.C. 5733.33(B)(1) and 122.172(B)(1).

The R.C. 122.173 grant is computed in exactly the same manner, at the same rate, and for the same qualifying purchase periods as the R.C. 5733.33 credit. Compare R.C. 5733.33 to R.C. 122.173.

Franchise tax phase-out factor applies to the grant. If the taxpayer requesting the grant is subject to the franchise tax phase-out, then for each year of the phase-out the grant is subject to the same phase-out factor as the tax after nonrefundable credits. For example, in tax year 2009 franchise taxpayers subject to the phase-out can claim only 20% of the grant that they otherwise could claim were it not for the franchise tax phase-out. **For those taxpayers subject to the franchise tax phase-out, the grant, like the tax itself, will end with their final (2009) franchise tax report. Taxpayers cannot apply their remaining 1/7 grant amounts toward their CAT liability. Taxpayers eligible for the grant but not subject to the franchise tax phase-out may continue claiming their remaining 1/7 grant amounts after 2009. Income taxpayers may also continue claiming their remaining 1/7 grant amounts against their Ohio individual income tax liability just as before the enactment of this law.** See R.C. 122.173(J).

Grant request requirement. Taxpayers claiming the grant must file a "grant request" form with the franchise tax report or with an amended franchise tax report filed within the refund statute of limitations for the taxable year in which the taxpayer claims the grant. The grant request form is available in the forms section of our Web site. Do not confuse the grant request form with the notice of intent. See R.C. 122.172(B)(2).

Qualifying purchase period ending date. The qualifying purchase period for the grant ended on June 30, 2005. So, taxpayers may claim neither a credit nor a grant for new manufacturing machinery and equipment purchased after June 30, 2005. (Under prior law the qualifying purchase period would have ended on Dec. 31, 2015.) See R.C. 5733.33(A)(4) and 122.173(A)(4).

Installation date. New manufacturing machinery and equipment for which a taxpayer claims the grant must have been installed by June 30, 2006. (Prior law required installation by Dec. 31, 2016.) **The June 30, 2006 installation date applies to all 1/7 grant amounts claimed on franchise tax reports for 2006 and thereafter.** So, for franchise tax years 2006 and thereafter, taxpayers may claim neither a credit nor a grant for equipment not installed by June 30, 2006 regardless of when that equipment was purchased. See R.C. 5733.33(B)(1) and 122.173(B)(1).

The grant also applies to taxpayers that have an interest in pass-through entities (limited liability companies and partnerships) that during the same period purchased new manufacturing machinery and equipment provided that the pass-through entity is a manufacturer and the pass-through entity installs the machinery and equipment in Ohio by June 30, 2006.

Order of grant recovery. Taxpayers claiming the grant must do so after all nonrefundable credits but before all refundable credits. See R.C. 5733.98 and 122.172(A).

Notice of intent. As a requirement for taxpayers' claiming the credit/grant, the purchaser of qualifying new manufacturing machinery and equipment during a particular year of the qualifying purchase period was required to file a notice of intent with the Ohio Department of Development. A notice of intent was required for each county for each qualifying period during which the manufacturer purchased qualifying equipment for which the taxpayer claims the credit/grant. Each such notice was required to have been filed by the due date of a timely filed return, including extensions, for the taxable year that includes Sept. 30, 2005.

Because the taxable year that included Sept. 30, 2005 varied depending on the ending date of taxpayer's taxable year and because the extended due date of the tax report depends on the taxpayer's taxable year and on whether the taxpayer has valid federal and Ohio extensions, the filing deadline for the notice of intent varied from July 15, 2006 to June 15, 2007. See the tax commissioner's Sept. 2006 information release CFT 2006-01 entitled "Questions Regarding Ohio's Manufacturing Machinery and Equipment Tax Credit and Subsequent Grant." If the purchaser of qualifying equipment properly filed a notice of intent to claim the credit pursuant to R.C. 5733.33(E), then that notice is also considered a notice of intent to claim the grant.

The notice of intent filing deadline established the date by which the purchaser of qualifying equipment was required to file **all** previously unfiled notices of intent. If by the deadline the purchaser of qualifying equipment did not file a notice of intent with respect to its purchases of qualifying equipment for a particular purchase year, **then after that deadline has passed the taxpayer is not entitled to (and the department will deny) any 1/7th credit/grant amounts with respect to purchases during that year when claimed on any tax return or report not closed by the statute of limitations. Denial of the credit/grant is not limited to the grant claimed on the report for the taxable year that includes Sept. 30, 2005.**

"New manufacturing machinery and equipment means manufacturing machinery and equipment, the original use in this state of which commences with the taxpayer or with a partnership of which the taxpayer is a partner. . ." (see R.C. 5733.33(A)(2)). Thus, for purposes of this grant, **used equipment is "new" if the taxpayer or pass-through entity is the first to use the equipment in Ohio.** Furthermore, although the taxpayer must have purchased the equipment during the qualifying purchase period and the equipment's original use in Ohio must have begun with the taxpayer, the original use in Ohio is not limited to the qualifying purchase period. Accordingly, manufacturing machinery and equipment that the taxpayer purchased during the qualifying purchase period upon exercising an option in a lease agreement is new manufacturing machinery and equipment for purposes of the grant even though the original use of the equipment in Ohio began with the taxpayer-manufacturer prior to the qualifying purchase period as a lessee under an operating lease. See *Duramed Pharmaceuticals, Inc. v. Zaino*, BTA No. 2002-V-164 (3-7-03), discussed below.

In *Duramed* the Department of Taxation argued that Duramed, a pharmaceuticals manufacturer, was not entitled to the credit on manufacturing equipment which Duramed began using as a lessee under an operating lease in 1994 (before the qualifying purchase period) and upon exercising an option in the lease agreement in 1997 (during the qualifying purchase period) Duramed purchased from the lessor, Ortho-McNeil Pharmaceutical Corporation. According to the department, Duramed was not entitled to the credit on such equipment because the equipment, when purchased in 1997, was not "new manufacturing machinery and equipment," as defined in R.C. 5733.33(A)(2).

Finding no evidence to suggest that the lease was in substance a purchase in 1994 and noting that "the evidence also establishes that **the original use of the machinery and equipment in Ohio was by Duramed in 1994**," the board agreed with Duramed and held that Duramed was entitled to the credit on the equipment purchased from the lessor, Ortho-McNeil, in 1997 because Duramed purchased "new manufacturing machinery and equipment" during the qualifying purchase period. According to the board, "the definition of 'new machinery' under R.C. 5733.33(A)(2) is unambiguous and requires only that the original use in Ohio is by Duramed, and such original use is not restricted or limited to the qualifying period."

The *Duramed* decision lends support to the following position: **The grant does not apply to a lessor that purchases new manufacturing machinery and equipment and leases that equipment to a manufacturer** (other than a manufacturer which is a member of the lessor's qualifying controlled group – see the consolidated grant provision in R.C. 5733.33(I) and 122.173(I)). Reason: *The original use in this state* can begin with only one person. Because the Board of Tax Appeals held that the original use in Ohio of equipment that Ortho-McNeil purchased and leased to Duramed began with Duramed, the original use of the equipment in Ohio could not have begun with Ortho-McNeil, the original purchaser and lessor. As such, the equipment was not "new" as to Ortho-McNeil. Accordingly, a lessor that purchases manufacturing machinery and equipment and leases the equipment to a manufacturer, other than to a member of the lessor's qualifying controlled group, is not entitled to the grant because, as to the lessor, the manufacturing machinery and equipment is not "new manufacturing machinery and equipment" as defined in R.C. 5733.33(A)(2) and 122.173(A)(2).

Conversely, if the lessor, Ortho-McNeil, had been the original user of the equipment in Ohio, then Duramed would have been a subsequent user. And, as a subsequent user, Duramed would not have been entitled to the grant because Duramed would not have purchased "new" equipment. In any event, Ortho-McNeil's entitlement to the credit was not an issue in *Duramed,* and under the facts of the case Ortho-McNeil was not entitled to the credit because Ortho-McNeil purchased the equipment in 1994, prior to the beginning of the qualifying purchase period.

Correction to information release. The Department of Taxation has issued a correction to its Sept. 22, 1995 information release regarding the "Second Credit for Purchases of New Manufacturing Machinery and Equipment." Specifically, the department removed from page 3 under "Purchase" the following language indicated with strikeover:

> If for federal income tax purposes ~~or if under generally accepted accounting principles~~ a "lease" of qualifying equipment is considered a purchase of the equipment, the lease is also considered a purchase for purposes of the credit.

Date of purchase. New manufacturing machinery and equipment not manufactured or assembled primarily by the taxpayer is deemed to have been purchased on the date which the agreement to acquire the property becomes binding. New manufacturing equipment manufactured or assembled primarily by the taxpayer for the taxpayer's own use is deemed to have been purchased on the date the taxpayer places the property in service in the county for which the taxpayer will calculate the grant.

Grant is separately determined for each county and each purchase period. A taxpayer must separately determine the grant for each Ohio county with respect to the qualifying equipment the taxpayer (or a pass-through entity in which the taxpayer has an interest) purchased for use in the county during each of 11 separate qualifying purchase periods comprising the period July 1, 1995 to June 30, 2005. The 11 separate qualifying purchase periods are the six-month period July 1, 1995 to Dec. 31, 1995, each of the calendar years 1996 through 2004, and the six month period Jan. 1, 2005 to June 30, 2005. The grant is based on purchases made during each of the above periods even if the taxpayer (or pass-through entity in which the taxpayer has an interest) has a fiscal year end.

Grant rate and computation: For those Ohio counties not designated as “eligible areas” the grant equals 7.5% of the amount by which the cost of qualifying equipment purchased during a qualifying period for use in an Ohio county exceeds the “base investment” for the county. “Eligible areas” are those Ohio counties and municipalities annually designated and certified by the Ohio Department of Development based upon the economic criteria set forth in the law. For those Ohio counties designated as eligible areas, the grant equals 13.5% of the amount by which the cost of qualifying equipment purchased during a qualifying period for use in the county exceeds the base investment for the county.

For those Ohio counties not designated as eligible areas but contain eligible areas within their boundaries, the grant equals the sum of the following:

- 13.5% of the lesser of: (a) the cost of qualifying equipment purchased during the calendar year for use in the eligible areas of the county, or (b) the county excess (the cost of qualifying equipment purchased during the calendar year for use in the entire county minus the taxpayer's base investment for the county) and
- 7.5% of the amount by which the county excess is greater than the cost of the new manufacturing machinery and equipment purchased during the calendar year for use in the eligible areas in the county.

Eligible areas: To determine whether a county or area is an “eligible area” please call the Ohio Department of Development at (800)-848-1300. The Department of Development has also prepared a map of “eligible areas,” which is available on their Web site: www.odod.state.oh.us. Click on: (1) Forms, (2) Manufacturer’s Credit – Notice of Intent 1997- Present, and (3) Priority Investment Area Maps for the applicable year.

Base investment. The “base investment” for a county is determined by adding the cost of new manufacturing machinery and equipment purchased for use in the county during each of three “base years” and dividing the total by three. The base years, like the purchase years, are calendar years – regardless of whether the taxpayer has a fiscal year end.

The purchase periods along with their corresponding base years are as follows:

Calendar Year of Purchase	Base Years
7/1/95 – 12/31/95	1992, 1993, 1994
1996	1992, 1993, 1994
1997	1992, 1993, 1994
1998	1992, 1993, 1994
1999	1993, 1994, 1995
2000	1994, 1995, 1996
2001	1995, 1996, 1997
2002	1996, 1997, 1998
2003	1997, 1998, 1999
2004	1998, 1999, 2000
1/1/2005 –6/30/2005	1999, 2000, 2001

Grant for equipment purchased by a pass-through entity that is a manufacturer. The grant for qualifying equipment purchased by a pass-through entity is <u>not</u> computed at the pass-through entity level and then passed through to the taxpayers having an interest in the pass-through entity. Instead, each taxpayer having an interest in a pass-through entity during a qualifying period in which the pass-through entity purchased qualifying equipment must claim the taxpayer’s proportionate share of the cost of such equipment and a proportionate share of the pass-through entity’s base investment in the county for which the qualifying equipment was purchased. For each qualifying period and for each county the proportionate share amounts are then added to the proportionate share amounts from other pass-through entities in which the taxpayer has an interest and to the taxpayer’s own purchases of qualifying equipment and base investment. Each taxpayer then computes the grant after aggregating its proportionate share amounts with the taxpayer’s own purchases and the taxpayer’s own base investment.

Qualifying controlled group must compute consolidated grant. For new machinery and equipment purchased <u>after</u> Dec. 31, 2000 a “qualifying controlled group” (a group of corporations related by more than 50% direct or indirect stock ownership – see R.C. 5733.04(M) and 5733.052(A)) <u>must</u> compute the grant **for each county** as if all taxpayers of the group were a consolidated, single taxpayer in that county. (**The consolidation provision does not eliminate the requirement to determine the grant on a county-by-county basis.)** The consolidation provision applies both to the equipment purchased after Dec. 31, 2000 on which the taxpayer will claim the grant and to base year purchases that determine the thresh-old above which the grant applies. The qualifying controlled group may allocate the consolidated grant in any manner the group chooses and the group may amend that allocation anytime before the refund statute of limitations expires. See R.C. 5733.33(I) and 122.173(I).

For new machinery and equipment purchased <u>before</u> Jan. 1, 2001 a qualifying controlled group may <u>elect</u> to compute the grant as if the group were a consolidated, single taxpayer. The election can be made by filing an amended report and an application for refund anytime before the statute of limitations expires. Also, the election can be made by timely filing a petition for reassessment. The election, if made, applies to the grant computation for each county for <u>all</u> purchases of machinery and equipment made before Jan. 1, 2001 and to all base years used to determine the threshold above which the grant applies for each county. That is, if a qualifying controlled group makes this election, the “consolidated, single taxpayer” computation also applies to all purchases of machinery and equipment made in earlier calendar years with respect to which the taxpayer has already filed tax reports. The election is irrevocable. The group is not required to allocate the remaining 1/7 grant amounts (the 1/7 grant amounts that must be claimed in future years) at the time the group makes the election. Rather, the group can allocate the unused 1/7 grant amounts in the tax years the group must use the grant.

The Department of Taxation maintains that for purposes of the consolidated grant calculation the members of a qualifying controlled group of corporations are determined as of <u>Jan. 1 of the tax year immediately following the calendar year in which the taxpayers purchased the equipment</u> for which they claim the grant. That is, **for equipment purchased after Dec. 31, 2000 the members of the qualifying controlled group as of Jan. 1 of the tax year immediately following the purchase year must compute the grant on a consolidated basis regardless of whether those same corporations were members of the qualifying controlled group during the baseline years, during the purchase year, or during the remaining tax years over which the taxpayers will claim the grant.**

Claiming the 1/7 grant amounts. A taxpayer must claim 1/7 of the grant in each of the seven tax years following the calendar year in which the taxpayer purchased the equipment. However, for qualifying equipment purchased during the period July 1, 1995 to Dec. 31, 1995 a taxpayer could not begin to claim the 1/7 credit amounts until tax year 1997. Each 1/7 grant amount not used in the year in which it otherwise could have been claimed may be carried forward for three years. The unused carryforward amount is used before the 1/7 amount for the subsequent year. See the table on page 43 which for each purchase year shows the related base years and tax years in which the 1/7 grant amounts are claimed.

Grant on equipment that is sold or moved from the county. If the taxpayer either sells equipment purchased prior to Jan. 1, 2001 or moves such equipment from the county for which the grant was originally computed, the taxpayer is not allowed any remaining 1/7 grant amounts on the equipment sold or moved. If the taxpayer either sells equipment purchased after Dec. 31, 2000 or moves such equipment from the county for which the grant was originally computed, the taxpayer is not allowed any remaining 1/7 grant amounts on the equipment sold or moved unless the equipment is fully depreciated for federal income tax purposes at the time the equipment is sold or moved. However, under certain limited circumstances, the purchaser of a "large manufacturing facility" may claim the unused grants of the seller of the manufacturing equipment located at that manufacturing facility. See R.C. 5733.33(C)(5)(b) and 122.173(C)(5)(b).

Additional information. For additional information please see R.C. 5733.33, 122.172, 122.173 and the Ohio Department of Taxation's Sept. 22, 1995, May 6, 1996, May 7, 1996 and June 18, 1996 information releases available on the department's Web site.

Line 25 – Overpayment carryforward from 2008 plus 2009 estimated payments made on FT 1120E, ER and EX
Enter the sum of the following amounts:

1. The overpayment carryforward that the taxpayer showed on its originally filed 2008 franchise tax report and which the taxpayer credited toward estimated tax payments for tax year 2009. **Note:** An overpayment shown on an **amended** report may not be credited toward a payment for another year. If an amended report reflects an overpayment, the taxpayer must also submit form FT REF, Application for Corporation Franchise Tax Refund, or a statement that sets forth the full and complete reason for the overpayment (see *Abitibi-Price Corporation and Subsidiaries v. Tracy*, BTA No. 98-N-401 (3-12-01), and refer to general instruction #27), and
2. Estimated payments paid during tax year 2009 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 26 – Refundable credits:
Refundable new jobs credit
Note: Although the statute and the Department of Taxation refer to this credit as the new jobs credit, the Ohio Department of Development, which administers the credit, refers to it as the Jobs Creation Tax Credit or JCTC.

For those taxpayers that are subject to the franchise tax phase-out and the CAT phase-in, the last franchise tax report year for which the R.C. 5733.0610(A) refundable new jobs credit applied was the 2008 report. The franchise tax credit automatically converted to a refundable credit against the CAT for the remaining years of the taxpayer's agreement with the Tax Credit Authority. As noted in the Department of Development's December 29, 2006 letter to credit recipients: for those taxpayers that are transitioning from the franchise tax to the CAT, **credit certificates issued on or before May 31, 2008 are to be claimed against the franchise tax and credit certificates issued after May 31, 2008 are to be claimed against the CAT. This is so regardless of the taxable year or tax period to which the credit certificate relates.**

For those franchise taxpayers not subject to the franchise tax phase-out and the CAT phase-in, the new jobs credit continues under the franchise tax. See R.C. 122.17 and 5751.50.

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 refundable new jobs credit is treated as a payment made on Jan. 1 of the tax year.

The term "new employee" means a full-time employee first employed by the taxpayer in the project that is the subject of the tax credit agreement after the taxpayer enters into the agreement. New employees include employees hired after the Tax Credit Authority approves the taxpayer's project but before the taxpayer signs the tax credit agreement with the Tax Credit Authority as long as the taxpayer signs the agreement within 60 days after receiving the agreement from the Department of Development. If the authority determines it appropriate, a "new employee" also may include an employee rehired or called back from lay-off to work in a new facility or on a new product or service.

Taxpayers claiming the new jobs credit must submit a copy of the director of development's certificate of verification with the taxpayer's tax report for the taxable year. However, the law also provides that failure to submit a copy of the certificate with the report does not invalidate a claim for the credit if the taxpayer submits a copy of the certificate to the commissioner within sixty days after the commissioner requests it. See R.C. 122.17(H) as amended by House Bill 530, 126th Ohio General Assembly.

If a taxpayer claims the refundable new jobs credit with respect to an employee, the taxpayer may not claim the nonrefundable R.C. 5709.66 enterprise zone new employee credit with respect to the same employee.

The Tax Credit Authority and the Ohio Department of Development administer this credit. Tax Credit Agreement application forms are available from the Ohio Department of Development, Economic Development Division, Office of Tax Incentives, P.O. Box 1001, Columbus, Ohio 43216-1001 or call (614) 466-4551 or (800) 848-1300. The street address for the Ohio Department of Development is 77 S. High Street, 28th floor, Columbus, Ohio 43215.

Refundable credit for tax withheld by the Ohio Lottery Commission
Enter the amounts the Ohio Lottery Commission withheld from its payments to the taxpayer pursuant to R.C. 5747.062(B)(2). See R.C. sections 3770.072(B), 5747.062(B)(2) and 5733.98(A)(27) for more information.

Refundable credit for losses on loans made to the Ohio Venture Capital (OVC) Program
The refundable credit for losses on loans made to the Ohio Venture Capital (OVC) Program does not appear on the 2009 Ohio franchise tax report (or on the 2008 individual income tax return) because no credit certificates were issued for the tax year. The purpose of the credit is to provide OVC lenders and investors some security against losses on their loans to the program. See R.C. 150.01 to 150.10, 5733.49, 5733.98, 5747.80 and 5747.98.

Substitute Senate Bill 321, 126th Ohio General Assembly. made the credit for losses on loans made to the Ohio Venture Capital Program refundable. Under prior law the taxpayer had a choice of taking this credit as a refundable credit or as a nonrefundable credit.

Refundable Ohio historic preservation credit (R.C. 149.311)
Administered by the Ohio Department of Development (ODOD), the refundable historic preservation credit applies to owners of certain historic Ohio buildings for the expenditures paid or incurred to rehabilitate such buildings provided that ODOD approves the proposed rehabilitation project. If ODOD approves the project, the credit equals 25% of the owner's "qualified rehabilitation expenditures" (QREs) paid or incurred during the 24- or 60-month rehabilitation period shown on the taxpayer's tax credit certificate is-

sued by ODOD. The historic building's owners can claim the credit against their franchise tax, dealer in intangibles tax or income tax liability. Franchise taxpayers to which ODOD issues a credit certificate may claim the credit even if the taxpayer is no longer subject to the franchise tax (because of the franchise tax phase-out).

As originally enacted, the law provided for two credit application periods: one beginning July 1, 2007 and ending June 30, 2008, the other beginning July 1, 2008 and ending June 30, 2009. However, on March 13, 2008, ODOD suspended further consideration of pending applications for the application period that began July 1, 2007 after the potential credits for the 41 rehabilitation projects that ODOD had already approved exceeded the amount that had been budgeted for the credit. Following suspension of the review and approval process, the Ohio General Assembly amended the law.

New law: Amended Substitute House Bill 554, 127th General Assembly, effective Sept. 11, 2008, substantially amended the credit as summarized below. The new law:

1. Eliminates the credit application period July 1, 2008 through June 30, 2009, and creates two new application periods: one beginning July 1, 2009, the other beginning July 1, 2010.
2. Eliminates the cost-benefit analysis from the application review and approval process. Prior law required a cost benefit analysis showing that the rehabilitation project would yield a net revenue gain in state and local taxes. In place of the cost-benefit analysis, the new law requires consideration of the proposed project's "potential economic impact and a regional distributive balance of credits throughout the state."
3. Eliminates the first-come-first-serve order of reviewing and approving credit applications.
4. Limits the credit per project to the lesser of (a) $5 million or (b) 25% of estimated QREs shown on the application. Prior law did not limit the amount of the credit per project and prior law did not limit the credit to 25% of estimated QREs.
5. Limits the total aggregate credit divided-up among all applicants to $60 million for each of application periods beginning July 1, 2009 and July 1, 2010. Prior law did not limit the aggregate credit per application period.
6. Earmarks $45 million of the $60 million total aggregate credit for each of the application periods beginning July 1, 2009 and July 1, 2010 to applications that were filed during the period beginning July 1, 2007 but had not been approved by March 1, 2008.
7. Eliminates the provision under prior law that limited to 100 the total number of projects that could be approved with respect to an application period. That is, the new law does not limit the number of projects that can be approved for the credit for each application period (but as noted above, the new law limits the credit per project to $5 million and the total aggregate credit to $60 million), and
8. Specifically provides that the owner of a historic building may not include the state, a state agency, or any political subdivision (which has been ODOD's position since the credit's enactment).

Note 1: ODOD will apply prior law to those applications that as of March 1, 2008 ODOD had approved for the credit. Thus, for the 41 credit applications that ODOD had approved by that date, the credit is not limited to $5 million per application, and the aggregate limit of $60 million does not apply. ODOD will apply the new law (see #1 through #7 above) to those completed applications that as of March 13, 2008 ODOD had not approved for the credit. ODOD refers to such applications as "in queue" or "round two" applications.

Note 2: While the franchise tax historic building preservation credit continues to be entirely refundable under the new law, such is not the case for the income tax credit and the dealer in intangibles credit. The new law provides that if any amount of the income tax credit or dealer in intangibles tax credit is refunded, then the sum of the amount refunded and the amount applied to reduce the tax otherwise due in that year may not exceed $3 million. The unused credit balance can be carried forward for five years.

Additional information is available on ODOD's Web site at www.odod.state.oh.us/edd/OHPTC. Please direct your questions and comments regarding the Ohio Historic Preservation Tax Credit to the Ohio Department of Development's Urban Development Division at (614) 995-2292 or by e-mail addressed to shptc@odod.state.oh.us.

Line 29 – Interest and penalty
Enter any interest and penalty as explained in general instructions #12, #13 and #14.

Lines 32 and 33 – Overpayment
Note: Because the 2009 report is the last franchise tax report for those franchise taxpayers that are subject to the franchise tax phase-out and because the great majority of taxpayers are subject to the franchise tax phase-out, all overpayments shown on the 2009 report will be refunded whether or not the taxpayer is actually subject to the phase-out. 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, the taxpayer must also submit form FT REF, Application for Corporation Franchise Tax Refund, or a statement which explains the reason for the overpayment. See *Abitibi-Price Corporation and Subsidiaries v. Tracy*, BTA No. 98-N-401 (3-12-01) and refer to general instruction #27).

Schedule B
Adjustments to Federal Taxable Income

Note 1: The "aggregate" (conduit) theory of taxation applies to the franchise tax. That is, the character of all income and deductions (and adjustments to income and deductions) realized by a partnership or other pass-through entity in which the taxpayer has a direct or indirect interest retains that character for purposes of the franchise tax when recognized by the investor in the pass-through entity. For example, a partner's distributive share of partnership net interest income from exempt federal obligations is considered net interest income from exempt federal obligations when recognized by the partner and is therefore deductible. Furthermore, the taxpayer-partner's proportionate share of partnership property, payroll and sales must be included in the taxpayer-partner's apportionment formula. See R.C. 5733.057.

Note 2: Ohio may not tax a foreign corporation's non-unitary interest income from short-term investments acquired, managed and controlled outside of Ohio. The taxpayer has the burden of showing that the income is non-unitary. See *American Home Products Corp. v. Limbach* (1990), 49 Ohio St.3d 158.

Note 3: The corporation franchise tax on gains from the sale of interest bearing federal obligations is not prohibited by either section 3124, Title 31, U.S. Code or the constitutional doctrine of intergovernmental immunity. Furthermore, the franchise tax does not impermissibly discriminate against federal obligations in favor of state obligations. See *NACCO Industries, Inc. v. Tracy* (1997), 79 Ohio St.3d 314.

Note 4: If the taxpayer is an electric company or a combined electric company as defined in R.C. 5727.01 (see R.C. 5733.04(P)), please complete **supplemental** Schedule B. **The supplemental schedule and instructions are available on the Department of Taxation's Web site.** An electric company is any person engaged in the business of generating, transmitting, or distributing electricity within Ohio for use by others. However, the term "electric company" as used in Chapter 5733 of the Ohio Revised Code does not include a rural electric company, as defined in R.C. 5727.01(C).

Lines 1(a) and 2(b) – Valuation limitation on gains and losses from capital assets and 1231 assets

A taxpayer must add any loss and deduct any gain resulting from the sale or other disposal of a capital asset, or an asset described in section 1231 of the Internal Revenue Code, to the extent such loss or gain occurred before the beginning of the first day of the taxpayer's Ohio corporation franchise tax taxable year which ended on or after Dec. 20, 1971 on which the tax provided for in R.C. 5733.06 is computed on the taxpayer's net income. The taxpayer can choose one of two methods for determining the amount of such prior loss or gain (valuation limitation):

- The amount of such prior gain or loss is the difference between the original cost or other basis of the asset and its fair market value as of the beginning of the first taxable year on which the tax provided for in R.C. 5733.06 is computed on the corporation's net income. However, such prior period gain or loss calculated under this method may not exceed the gain or loss reported on the federal return.
- Alternatively, the amount of such prior period gain or loss is determined by multiplying the gain or loss by a fraction, the numerator of which is the number of months from the acquisition of the asset to the beginning of the first taxable year on which the tax provided in R.C. 5733.06 is computed on the corporation's net income, and the denominator of which is the number of months from the acquisition of the asset to the sale or other disposal of such asset.

Taxpayers required to make this adjustment must file form FT 1120VL which applies only to gains and losses to which the valuation limitation applies.

Lines 1(b) and 2(f) – Losses from the sale of Ohio public obligations; Interest on public obligations and purchase obligations and gains from the sale of Ohio public obligations

A corporation must add any loss resulting from the disposition of public obligations to the extent such losses have been deducted in determining federal taxable income. The term "public obligation" is defined below.

A corporation may deduct interest income from both purchase obligations and public obligations to the extent such amounts are included in federal taxable income. The terms "purchase obligations" and "public obligations" are defined below.

A taxpayer may deduct gains from the disposition of public obligations to the extent such gains are included in federal taxable income.

For purposes of these adjustments the following definitions apply:

"Purchase obligations" means interest-bearing obligations of the state of Ohio and local public or governmental entities in the state of Ohio where these obligations require payments under installment sale, lease, lease purchase, or similar agreements.

"Public obligations" means:

- Public securities such as bonds, notes, certificates of indebtedness and commercial paper issued by the state of Ohio and local public or governmental entities in Ohio which evidence the obligation of the state or local public or governmental entity to repay borrowed money.
- Fractionalized interests in purchase obligations, i.e., shares or participations evidencing ownership of interests in purchase obligations. Fractionalized interests in purchase obligations are separate from purchase obligations themselves and do not include interests or shares in a unit trust, investment trust, grantor trust or regulated investment company.
- Any obligation to pay interest on public securities or on fractionalized interests in purchase obligations.

Public obligations do not include purchase obligations.

"Interest" means payments representing consideration for forbearing the collection of money, or for deferring the receipt of payment of money to a future time as determined for federal income tax purposes. Interest includes those portions of a qualified investment trust's distributions to its shareholders or beneficial owners that are attributable to the trust's receipt of interest or interest equivalent.

"Qualified investment trust" or "trust" means a unit investment trust, grantor trust or a regulated investment company if at all times at least 50% of the value of the total assets of the trust consists of public securities or purchase obligations, or similar obligations of other states or their local public or governmental entities.

For more specific information see R.C. 5709.76.

Line 1(c) – Amounts claimed as a credit for taxes paid by a qualifying pass-through entity

A taxpayer that claims the franchise tax credit for taxes paid by a qualifying pass-through entity in which the corporation is an investor must add to the corporation's federal taxable income the amount claimed as a credit to the extent the amount was deducted or excluded from the corporation's federal taxable income. See R.C. 5733.04(I)(14). For an explanation of the tax on qualifying pass-through entities see the instructions for form IT 1140, Ohio Pass-Through Entity Tax Return. For an explanation of the credit for taxes paid by a qualifying pass-through entity, see page 37 of these instructions.

Lines 1(d) and 2(h) – Net loss from an "exempted investment" in a public utility and net income from an "exempted investment" in a public utility

A franchise taxpayer must adjust its net income or loss to the extent the taxpayer's income or loss would include, were it not for this law, the taxpayer's proportionate share of such income or loss attributable to the taxpayer's direct or indirect ownership interest in an "exempted investment." Similarly, a taxpayer must adjust its apportionment factors and its credits to the extent the taxpayer's apportionment factors and credits would include, were it not for this law, the taxpayer's proportionate share of such amounts attributable to the taxpayer's direct or indirect ownership interest in an "exempted investment."

An exempted investment is the taxpayer's direct or indirect investment in a pass-through entity or a "disregarded entity" (a single member LLC treated as a division of its owner) that is a public utility subject to the Ohio public utility excise tax on its gross receipts.

The exempted investment adjustments apply only if the taxpayer-investor in the public utility directly or indirectly owns the investment in the public utility for the public utility's entire taxable year ending with or within the taxpayer's taxable year ending immediately prior to the taxpayer's tax year. Furthermore, the adjustments apply only to the extent the adjustments <u>directly</u> relate to owning and operating a public utility in Ohio by a pass-through entity subject to the Ohio public utility gross receipts tax or a disregarded entity subject to the Ohio public utility gross receipts tax. See R.C. 5733.058.

Lines 1(e) and 2(i) – Depreciation expense adjustment from Schedule B-4 and miscellaneous federal adjustments

Lines 1(e) and 2(i) apply to two separate adjustments: (1) miscellaneous federal adjustments and (2) depreciation expense adjustments.

Miscellaneous federal adjustments reverse the effects of Internal Revenue Code (IRC) amendments that the Ohio General Assembly has not yet adopted. Each time the Ohio General Assembly amends R.C. 5701.11 the General Assembly adopts the version of the IRC existing on the effective date of the R.C. 5701.11 amendment, and that version of the IRC, despite subsequent IRC amendments, applies for Ohio tax purposes until the General Assembly subsequently adopts a more current version of the IRC by amending R.C. 5701.11 once again. That is, IRC amendments do not automatically apply for Ohio tax purposes. If Ohio were to apply the federal amendments without the General Assembly first adopting those changes (by amending R.C 5701.11 subsequent to the IRC amendment), Ohio would be unconstitutionally delegating its legislative authority to the U.S. Congress.

Substitute House Bill 458, 127th Ohio General Assembly, effective December 30, 2008 amended the R.C. 5701.11 definition of "Internal Revenue Code as amended" and thereby adopted all the changes to the Internal Revenue Code enacted by Congress from Dec. 21, 2007, through Dec. 30, 2008. The effects of the amendment are as follows:

Miscellaneous federal adjustments

1. If the taxpayer's taxable year ending in 2008 ended on or after Dec. 30, 2008 and if after that date Congress enacted legislation affecting the taxpayer's federal taxable income before net operating loss deduction and special deductions (line 28 of IRS form 1120) for that taxable year, then for Ohio franchise tax purposes the taxpayer must adjust its line 28 federal taxable income by reversing the effects of the IRC amendments enacted after Dec. 30, 2008.
2. If the taxpayer's taxable year ending in 2008 ended on or after Dec. 30, 2008 and if after Dec. 30, 2008 Congress enacted no legislation affecting the taxpayer's line 28 federal taxable income for that taxable year, then the taxpayer should make no adjustment to line 28 federal taxable income.
3. If the taxpayer's taxable year ending in 2008 ended before Dec. 30, 2008, then for franchise tax purposes the **taxpayer can make an irrevocable election to apply the IRC in effect for that taxable year to the extent the IRC amendments applicable to the taxable year were enacted on or before Dec. 30, 2008.**

Note 1: A taxpayer makes the irrevocable election by filing a report that (i) incorporates the provisions of the IRC applicable for federal income tax purposes to the taxpayer's taxable year ending before Dec. 30, 2008 and (ii) does not include any adjustments to reverse the effects of any differences between those provisions and the provisions that would otherwise apply (that is, the provisions of the IRC existing on Dec. 21, 2007). See R.C. 5701.11 as amended by House Bill 458.

Note 2: The election does not apply to IRC amendments enacted after Dec. 30, 2008. That is, if after Dec. 30, 2008 Congress enacted IRC amendments that affect the taxpayer's taxable year ending before Dec. 30, 2008 and if the taxpayer makes the irrevocable election, then the taxpayer must still adjust its line 28 federal taxable income to reverse the effects of the IRC amendments enacted after Dec. 30, 2008.

4. If the taxpayer's taxable year ending in 2008 ended before Dec. 30, 2008 and if the **taxpayer does not make the election described in #3 above, then for franchise tax purposes the taxpayer must adjust its line 28 federal taxable income to reverse the effects of all changes to the IRC enacted after Dec. 21, 2007.**

Bonus depreciation and section 179 expense adjustments

If on the taxpayer's federal income tax return for the taxable year ending in 2008 the taxpayer claimed bonus depreciation and/or IRC section 179 expense, then the taxpayer must make the 5/6 bonus depreciation and/or section 179 add-back described below. **The bonus depreciation and section 179 expense adjustments apply to the 2009 franchise tax report regardless of the taxpayer's taxable year end, regardless of the amendment to R.C. 5701.11, and regardless of the election set forth in R.C. 5701.11(B)**. See R.C. 5733.04(I)(17).

Caution: The taxpayer must compute its bonus depreciation adjustment and/or its section 179 adjustment after making any applicable "miscellaneous federal adjustments" described above in #1 and #4 relating to bonus depreciation expense and/or section 179. For example, if the taxpayer's taxable year ended Dec. 31, 2008 and if after Dec. 30, 2008 Congress were to enact amendments to IRC section 179 along with other IRC amendments affecting the taxpayer's federal taxable income before net operating loss deduction and special deductions (line 28 of IRS form 1120) for the taxable year ending Dec. 31, 2008, then as noted in #1 under "miscellaneous federal adjustments", for 2009 Ohio franchise tax purposes the taxpayer must adjust its federal taxable income to reverse the effects of all such IRC amendments. Such reversing adjustments, including the adjustment reversing the effects of the section 179 amendment constitute "miscellaneous federal adjustments" required by R.C. 5701.11.

In addition to the miscellaneous federal adjustments, the taxpayer must make the section 179 adjustment required by R.C. 5733.04(I)(17) by adding back 5/6 of the taxpayer's "qualifying section 179 depreciation expense." In this example, the taxpayer's "qualifying section 179 depreciation expense" is the difference between (i) the taxpayer's section 179 expense after reversing the effects of the amendment to IRC section 179 enacted after Dec. 30, 2008 and (ii) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the IRC as that section existed on Dec. 31, 2002.

Include on line 1(e) the sum of (i) miscellaneous federal adjustments which increase the taxpayer's Ohio taxable income, (ii) 5/6 of the IRC section 168(k) bonus depreciation amount deductible in determining federal taxable income (after making any "miscellaneous federal adjustments" applicable to IRC section 168(k) bonus depreciation expense, if applicable) and (iii) 5/6 of the "qualifying section 179 depreciation expense." "Qualifying section 179 depreciation expense" means the difference between (a) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the IRC (after making any "miscellaneous federal adjustments" applicable to IRC section 179 depreciation expense) and (b) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the IRC as that section existed on Dec. 31, 2002. See R.C. 5733.04(I)(17)(a)(ii).

Include on line 2(i) the sum of the taxpayer's (i) miscellaneous federal adjustments which decrease Ohio taxable income and (ii) the amount shown on line 19 of Schedule B-4 – Bonus Depreciation and Section 179 Adjustment.

Note 1: The Schedule B depreciation expense adjustment applies whether or not the depreciation expense relates to allocable nonbusiness income or to apportionable business income. To the extent the bonus depreciation adjustment or qualifying section 179 adjustment relates to income allocated in Schedule C, the taxpayer must also make the same adjustments in Schedule C as are made in Schedule B. See Schedule B-4 – Bonus Depreciation and section 179 Adjustment.

Note 2: The depreciation add-back and deductions have **no effect on the basis of the assets** being depreciated. Thus, upon the sale of an asset on which the taxpayer claimed bonus depreciation or additional 179 expense, the gain or loss for Ohio purposes will equal the gain or loss for federal purposes whether or not at the time of sale the 5/6 add-back has been fully recovered. In addition, if at the time of sale the taxpayer has not fully recovered the 5/6 add-back, then after the sale the taxpayer can continue to make the depreciation deduction.

Note 3: The depreciation adjustment applies not only to assets the taxpayer owns but also to depreciable assets owned by the taxpayer's disregarded entities and to depreciable assets owned by pass-through entities in which the taxpayer holds an ownership interest. However, the tax commissioner, under the authority granted in R.C. 5733.04(I)(17)(a)(ii), has waived the add-back if the investor owns less than 5% of the pass-through entity.

Note 4: If the taxpayer is an equity investor in a pass-through entity which has claimed I.R.C. section 168(k) bonus depreciation or qualifying I.R.C. section 179 expense and if, because of the federal passive activity loss limitation rules or the at-risk limitation rules, the taxpayer is unable to fully deduct a loss passing through from the pass-through entity, then to the extent the taxpayer does not recognize the loss the taxpayer can defer making the "5/6 add-back" until the taxable year or years for which the taxpayer deducts the pass-through entity loss and receives a federal tax benefit from the bonus depreciation or qualifying 179 amount claimed by the pass-through entity. Of course, the corporation cannot begin claiming the related deductions until the first taxable year immediately following the taxable year for which the corporation makes the 5/6 add-back.

For further information please see the following: (i) the Department of Taxation's July 2002 information release entitled "Recently Enacted Ohio Legislation Affects Depreciation Deductions for Taxable Years Ending in 2001 and Thereafter" Revised July 2005 (ii) the department's November 2002 information release entitled "Ohio Bonus Depreciation Adjustment and the Internal Revenue Code's Passive Activity Loss, Basis Limitation and At-Risk Rules," (iii) R.C. 5733.04(I)(17) & (18) and (iv) section 4 of Senate Bill 261, 124th, General Assembly.

Line 1(f) – Distributive or proportionate share of pass-through entity expenses paid to, losses incurred from transactions with, and excess inventory costs paid to related members for taxable years ending on or after June 30, 2005
In determining Ohio taxable income for taxable years ending on or after June 30, 2005 each franchise taxpayer having an interest in a qualifying pass-through entity must add to the taxpayer's federal taxable income the taxpayer's proportionate share of expenses and losses the pass-through entity incurred with respect to the pass-through entity's direct or indirect transactions with the pass-through entity's 40% or more related members. This provision does not apply to the pass-through entity's sales of inventory to such related members to the extent those losses are calculated in accordance with I.R.C. section 482. See R.C. 5733.40.

Lines 1(g) and 2(j) – Deductible temporary differences in connection with the commercial activity tax credit for corporation franchise tax net operating losses and taxable temporary differences in connection with the commercial activity tax credit for corporation franchise tax net operating losses
If the taxpayer is a "qualifying taxpayer" (defined below) that elected (by filing with the tax commissioner before July 1, 2006 a report setting forth the taxpayer's "amortizable amount") to claim against its CAT liability a tax credit based on (i) the taxpayer's Ohio franchise tax NOL carryforwards in excess of $50 million and (ii) the taxpayer's other net deferred tax items apportioned to Ohio, then the portion of the taxpayer's NOL carryforward upon which it claims the CAT credit cannot be claimed as an NOL deduction on the taxpayer's franchise tax report **and the taxpayer must adjust its net income as follows**:

1. For a taxable year in which for federal income tax purposes the taxpayer recognizes a taxable temporary difference, the taxpayer must deduct on Schedule B, line 2(j) the taxable temporary difference. See R.C. 5751.53(H)(3) and CAT information release 2006-06 – Commercial Activity Tax Credit for Unused Franchise Tax Net Operating Losses – Issued April, 2006.
2. For a taxable year in which for federal income tax purposes the taxpayer recognizes a deductible temporary difference, the taxpayer must add on Schedule B, line 1(g) the deductible temporary difference. See R.C. 5751.53(H)(2) and CAT information release 2006-06 - Commercial Activity Tax Credit for Unused Franchise Tax Net Operating Losses – Issued April, 2006.

Nevertheless, the deduction required by the first adjustment may not exceed the add-back required by the second.

A "qualifying taxpayer" is a CAT taxpayer that after filing its 2005 franchise tax report on a separate company basis (or after filing an amended 2005 franchise tax report before July 1, 2006 on a separate company basis) has accumulated Ohio franchise tax NOL carryforwards of at least $50 million. Qualifying taxpayers also include CAT taxpayers that were members of a combined franchise tax group for report year 2005 if after filing their 2005 franchise tax reports (or after filing amended 2005 franchise tax reports before July 1, 2006), the sum of the accumulated Ohio franchise tax NOL carryforwards for all members of the combined group is at least $50 million. See R.C. 5751.53.

Line 2(c) – Dividends received
Enter the sum of the following: (1) the dividend deduction provided by I.R.C. section 243, and (2) to the extent not otherwise allowed by the I.R.C. section 243 dividends received deduction: (a) dividends received from an insurance company if the taxpayer owns at least 80% of the outstanding common stock of the insurance company and (b) dividends received from a public utility, except an electric company, a combined electric company, and for tax years 2005 and thereafter a local exchange telephone company, if the taxpayer owns at least 80% of the outstanding common stock of the electric company, combined electric company, or telephone company. See R.C. 5733.04(I)(4), (I)(7) and (I)(8).

Line 2(d) – Adjustment for targeted jobs tax credit or work opportunity tax credit
Deduct the wage and salary expense not otherwise deducted for federal tax purposes because of the targeted jobs tax credit and/or the work opportunity tax credit. See R.C. 5733.04(I)(10).

Line 2(e) – Net interest income from exempt U.S. obligations
Deduct net interest on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States. "Net federal interest" is defined as federal interest less any expenses claimed on the federal tax return that would not have been allowed under I.R.C. section 265 if such interest were exempt from federal income tax. See R.C. 5733.04(I)(11).

The department's Jan. 9, 1992 information release lists federal obligations, the interest from which is deductible. The information release is available on the department's Web site. Interest income from a federal income tax refund is not deductible. Generally interest income generated from repurchase agreements secured by federal obligations is not interest from federal obligations and therefore is not deductible. See *Nebraska Department of Revenue v. Lowenstein,* 513 U.S. 123 (1994), 115 S. Ct. 557, 1994 US Lexis 8802. Also see *Associated Estates Corp., AEC Management Co.* and *Hirsch Electric Co. v. Limbach*, BTA Case Nos. 87-H-743, 87-G-774 and 87-D-756, May 11, 1990.

Line 2(g) – Contributions to an individual development account program
Deduct the amount the taxpayer contributed during the taxable year to an individual development account program established by a county Department of Human Services pursuant to R.C. sections 329.11 to 329.14 for the purpose of matching funds deposited by program participants. The individual development account program applies to low income residents of a county who enter an agreement with the fiduciary organization selected to administer the program. Program participants must follow the terms and conditions of the agreement and may use money in an individual development account only with the approval of the fiduciary organization. See R.C. 5733.04(I)(15).

Schedule B-2
Foreign Source Income Deduction
R.C. 5733.04(I)(2)

Deductible foreign source income other than dividends, I.R.C. section 78 income and I.R.C. section 951 subpart F income must generally be reduced by certain percentages (set out below) which are deemed to be the expenses attributable to the foreign income. However, to the extent the taxpayer shows by clear and convincing evidence a lesser amount of actual expenses attributable to deductible gross foreign source income, the taxpayer may deduct a greater amount. To the extent the tax commissioner shows by clear and convincing evidence more actual expenses attributable to deductible gross foreign source income, the tax commissioner may reduce the deduction.

Line 1 – I.R.C. section 78 and 951 income
Enter the I.R.C. section 78 foreign dividend gross-up and I.R.C. section 951 subpart F income. This income is fully deductible.

Line 2 – Foreign dividends
Enter dividends received from a subsidiary, associate, or affiliated corporation that neither transacts any substantial portion of its business nor regularly maintains any substantial portion of its assets within the United States. This income is fully deductible. See *Emerson Elec. Co. v. Tracy* (2000), 90 Ohio St.3d 157 and R.C. 5733.04(I)(2).

Line 3 – Foreign royalties
Multiply by 90% the royalties received from sources outside the United States. Royalties are received from sources outside the United States to the extent the property that generated the royalty was used outside the United States.

Line 4(a) – Income from technical and other services
Enter amounts received for mechanical, industrial, scientific, practical and other services performed outside the United States. Income from technical services performed in the United States for a foreign customer does not qualify for the foreign source income deduction. The situs of the service performed determines the source of service income. See *Rio Indal, Inc. v. Lindley* (1980), 62 Ohio St.2d 283. If technical service on a project is performed both within and without the United States, income from the project must be reasonably allocated within and without the United States.

Line 4(b) – Reimbursed expenses for personal services performed for subsidiaries
Enter the amount of any reimbursed expenses for technical or other services performed by employees of the taxpayer for its subsidiary, associate or affiliated corporations.

To the extent the taxpayer shows by clear and convincing evidence a lesser amount of actual expenses attributable to deductible gross foreign source income, the taxpayer may deduct a greater amount. To the extent the tax commissioner shows by clear and convincing evidence more actual expenses attributable to deductible foreign source income, the tax commissioner may reduce the deduction.

The instructions for Schedule B-3 – RELATED ENTITY AND RELATED MEMBER ADJUSTMENTS begin on page 37 of these instructions.

The instructions for Schedule B-4 – BONUS DEPRECIATION AND SECTION 179 ADJUSTMENT are included on that schedule.

Schedule C
Allocable Income
R.C. 5733.051

Caution: For taxable years ending on or after June 26, 2003, Ohio franchise tax law distinguishes business income from nonbusiness income and only nonbusiness income is allocated. Furthermore, for taxable years ending on or after June 26, 2003, all income, gain, loss and expense is presumed to be apportionable business income. A taxpayer reporting any allocable income (other than amounts from Schedule B-4, lines 21 and 23) must include with the report (i) a detailed statement setting forth support that rebuts the presumption, (ii) a list of the states for which the taxpayer treats the income as business income, and (iii) the reasons for such treatment in the other state(s).

"'*Business income*' means income arising from transactions, activities and sources in the regular course of a trade or business and includes income from real property, tangible personal property and intangible personal property if the acquisition, rental, management and disposition of the property constitute integral parts of the regular course of a trade or business operation. 'Business income' includes income, including gain or loss, from a partial or complete liquidation of a business, including, but not limited to, gain or loss from the sale or other disposition of goodwill." See R.C. 5733.04(Q).

"'*Nonbusiness income*' means all income other than business income." See R.C. 5733.04(R).

Note 1: The "aggregate" (conduit) theory of taxation applies to the corporation franchise tax. That is, the character of all income and deductions (and adjustments to income and deductions) realized by a pass-through entity retains that character for purposes of the franchise tax when recognized by the investor in the pass-through entity. For example, a partner's distributive share of partnership net rental income is considered rental income when recognized by the partner. See R.C. 5733.057 and *Mead Properties, Inc. v. Limbach*, BTA Case Nos. 85-D-791, 85-E-792, 85-C-793, 85-B-794, April 21, 1989.

Note 2: If the taxpayer is an electric company or a combined electric company, as those terms are defined in R.C. 5733.04(P), please complete supplemental Schedule C for electric companies. An "electric company" is any person engaged in the business of generating, transmitting, or distributing electricity within Ohio for use by others. However, the term "electric company" as used in Chapter 5733 does not include a "rural electric company," as defined in R.C. 5727.01(C).

Note 3: If for federal income tax purposes the taxpayer carries back or carries forward a net capital loss, then for franchise tax purposes the taxpayer must carry back and/or carry forward the loss to the same taxable year or years the taxpayer carries the loss for federal purposes.

For taxable years ending on or after June 26, 2003, franchise tax law distinguishes "business income" from "nonbusiness income." A business income (as opposed to a nonbusiness income) net capital loss generated in a taxable year for which the franchise tax law distinguishes business income from nonbusiness income can be carried back to a franchise tax taxable year for which that distinction does not apply. Conversely, a business income net capital loss generated in a taxable year for which the franchise law does not distinguish business income from nonbusiness income can be carried forward to a franchise tax taxable year in which the law does distinguish business income from nonbusiness income.

In determining whether a net capital loss carryback or carryforward is allocable or apportionable for the year to which the loss is carried and used to offset capital gains, taxpayers must apply the franchise tax law as it existed for the year to which the taxpayer carries and uses the loss. For example, if a business income net capital loss generated in a taxable year ending in 2004 (a year in which business income is apportionable) is carried back and used (to offset capital gain) in a taxable year in which the law does not distinguish business income from nonbusiness income and if such net capital loss would have been allocable if the loss were generated in the year to which the loss was carried, then the net capital loss carried back is allocable in the carryback year.

Line 1 – Bonus depreciation adjustment
In the Ohio column enter the amount from Schedule B-4, line 21. In the everywhere column enter the amount from Schedule B-4, line 23. The instructions for Schedule B-4 are included on that schedule.

Note: To the extent the bonus depreciation and qualifying section 179 add-back and deduction adjustments made in Schedule B relate to nonbusiness income allocated within or without Ohio, the taxpayer must make the same adjustments in Schedule C (see R.C. 5733.04(I)(17)(c) and (I)(18)(b)).

If on the 2004, 2005, 2006, 2007 and/or 2008 franchise tax reports the taxpayer made a 5/6 bonus depreciation add-back and allocated that add-back to Ohio in Schedule C (because, the depreciation add-back was attributed to property generating income which the taxpayer allocated to Ohio), then in the five years following each of the add back years the taxpayer is entitled to allocate to Ohio the bonus depreciation deductions related to the 2004, 2005, 2006, 2007 and 2008 add-backs on that same equipment. This is so, even if that same rental property generates apportionable business income on the 2009 report.

Similarly, if on the 2004, 2005, 2006, 2007 and/or 2008 franchise tax reports the taxpayer made a 5/6 bonus depreciation add-back and allocated that add-back outside Ohio in Schedule C (for example, because the depreciation add-back was attributed to property generating income which the taxpayer allocated outside Ohio), then in the five years following each of the add back years the taxpayer is required to allocate outside Ohio the bonus depreciation deductions related to the 2004, 2005, 2006, 2007 and 2008 add backs on that same equipment. This is so, even if that same property generates apportionable business income on the 2009 report.

Line 2 – Nonbusiness income
Allocate within and without Ohio the sum of the following amounts when nonbusiness income.

(A) **Nonbusiness net rents.** Nonbusiness net rents from real property located in Ohio are allocable to Ohio. Nonbusiness net rents from tangible personal property are allocable to Ohio to the extent such property is utilized in Ohio.

(B) **Nonbusiness net royalties.** Nonbusiness net royalties from real property located in Ohio are allocable to Ohio. Nonbusiness net royalties from tangible personal property are allocable to Ohio to the extent such property is utilized in Ohio.

(C) **Nonbusiness capital gains and losses and depreciation recapture.** Nonbusiness capital gains and losses and 1231 gains and losses from the sale or other disposition of real property located in Ohio are allocable to Ohio.

Nonbusiness capital gains and losses and 1231 gains and losses from the sale or other disposition of tangible personal property are allocable to Ohio to the extent the property was used in Ohio before the sale.

Gains from the sale or other disposition of depreciable real property and depreciable tangible personal property, taxed as ordinary (recapture) income for federal income tax purposes, are considered capital gains and capital losses for purposes of allocation. See *Borden, Inc. v. Limbach* (1990), 49 Ohio St.3d 240. Upon the sale of a depreciable asset, the amount of recapture income allocable to Ohio is not limited to the accumulated depreciation expense (on the asset sold) that the taxpayer had apportioned to Ohio in previous years because the statute contains no overt language which would serve to limit depreciation recapture in such a manner. See *Harsco Corp. v. Tracy* (1999), 85 Ohio St.3d 382.

Nonbusiness capital gains and losses from the sale or other disposition of intangible property which may produce dividend income are allocated on the same basis as set forth in the section below dealing with dividends but substituting *the day of the sale or disposition* for *the day on which the payor pays the dividend or makes the distribution.* However, if the location of the physical assets described in the section below addressing dividends is not available to the taxpayer, such gains and losses are apportionable. Nonbusiness capital gains and capital losses from the sale or other disposition of all other intangible personal property are apportioned.

(D) **Nonbusiness dividends (not otherwise deducted and not apportionable).** As used below, the term *payor's year* means the payor's fiscal or calendar year ending immediately before the payor pays the dividend or makes the distribution. For taxable years ending on or after June 26, 2003, nonbusiness dividends, other than dividends or distributions from a domestic international sales corporation, are allocated to Ohio by multiplying the dividend by a fraction. The denominator of the fraction is the sum of the amounts described in #1 and #2 below:

1. The book value of the dividend payor's physical assets everywhere at the end of the payor's calendar or fiscal year ending before the payor made payment.

   a. If on the last day of the payor's year the payor or any member(s) of the qualifying controlled group of which the payor is a member, separately or cumulatively own, directly or indirectly, more than 50% of the equity of a pass-through entity, then the payor is deemed to own its proportionate share of the physical assets that the pass-through entity directly or indirectly owns. The book value of the pass-through entity's physical assets is determined on the last day of the pass-through entity's fiscal or calendar year ending with or within the payor's year.

   b. The statute and these instructions refer to a pass-through entity owning an interest in another pass-through entity as an upper-level pass-through entity, and to the upper-level pass-through entity's investee as the lower level pass-through entity. For purposes of #1 and #1(a.), if an upper-level pass-through entity, a portion of whose physical assets the payor's subsidiary is deemed to own as set out in #1(a.) above, owns an interest in a lower-level pass-through entity on the last day of the upper level pass through entity's fiscal or calendar year ending with or within the payor's year, then the upper-level pass-through entity is deemed to own its proportionate share of the physical assets of the lower level pass-through entity on the last day of the lower level pass-through entity's fiscal or calendar year ending within or with the last day of the upper level pass-through entity's fiscal or calendar year ending with or within the payor's year.

However, if on each day of the upper-level pass-through entity's fiscal or calendar year in which or with which ends the fiscal or calendar year of the lower-level pass-through entity the upper-level pass-through entity directly and indirectly owns less than 50% of the equity of the lower-level pass-through entity and if, based upon clear and convincing evidence, complete information about the location and cost of the physical assets of the lower-level pass-through entity is not available to the upper-level pass-through entity, then for purposes of #1 and #1(a.), the upper level pass-through entity is deemed as owning no equity of the lower-level pass-through entity for each day during the upper-level pass-through entity's calendar or fiscal year in which or with which ends the lower level pass-through entity's fiscal or calendar year.

2. The book value of the physical assets of each corporation more than 50% of whose capital stock with voting rights the dividend payor directly or indirectly owns on the last day of the payor's year (whether or not those corporations are taxpayers and whether or not those corporations are included in a combined Ohio franchise tax report with the payor). These instructions refer to a corporation more than 50% of whose capital stock with voting rights the dividend payor directly or indirectly owns on the last day of the payor's year as the payor's subsidiaries; the statute refers to the payor along with its direct and indirect subsidiaries as a "modified qualifying controlled group." The book value of each such subsidiary's physical assets is determined on the last day of the subsidiary's calendar year or fiscal year ending with or within the payor's year.

   a. For purposes of #2, if on the last day of the payor's year the payor or any member(s) of the qualifying controlled group of which the payor is a member, separately or cumulatively own, directly or indirectly, more than 50% of the equity of a pass-through entity, then in determining the book value of physical assets, each subsidiary of the payor is deemed to own its proportionate share of the physical assets that the pass-through entity directly or indirectly owns. The book value of the pass-through entity's physical assets is determined on the last day of the pass through entity's fiscal or calendar year ending with or within the payor's year.

   b. For purposes of #2 and #2(a.), if an upper-level pass-through entity, a portion of whose physical assets the payor's subsidiary is deemed to own as set out in #2(a.) above, owns an interest in a lower-level pass-through entity on the last day of the upper level pass-through entity's fiscal or calendar year ending with or within the payor's year, then the upper-level pass-through entity is deemed to own its proportionate share of the physical assets of the lower level pass-through entity on the last day of the lower level pass-through entity's fiscal or calendar year ending within or with the last day of the upper level pass-through entity's fiscal or calendar year ending with or within the payor's year.

   However, if on each day of the upper-level pass-through entity's fiscal or calendar year in which or with which ends the fiscal or calendar year of the lower-level pass-through entity the upper-level pass-through entity directly and indirectly owns less than 50% of the equity of the lower-level pass-through entity and if, based upon clear and convincing evidence, complete information about the location and cost of the physical assets of the lower-level pass-through entity is not available to the upper-level pass-through entity, then for purposes of #2 and #2(a.), the upper level pass-through entity is deemed as owning no equity of the lower-level pass-through entity for each day during the upper-level pass-through entity's calendar or fiscal year in which or with which ends the lower level pass-through entity's fiscal or calendar year.

   The numerator of the fraction is the sum of the within Ohio book value amounts determined in the same manner.

   Note: If the book values of physical assets necessary to determine the within Ohio to total everywhere fraction are not "available" to the taxpayer, then the nonbusiness dividends and the nonbusiness capital gains and losses from the sale or other disposition of dividend producing property described above are apportionable. The term "available," as used here, means information is such that a person is able to learn of the information by the due date plus extensions, if any, for filing the report for the tax year immediately following the last day of the taxable year.

(E) **Nonbusiness net patent and copyright royalties and technical assistance fees.** Nonbusiness net technical assistance fees along with nonbusiness net rents and royalties from intangible property are allocable to Ohio to the extent the activity of the payor thereof giving rise to the payment takes place in Ohio.

A "technical assistance fee" is defined as "payment for mechanical, industrial, scientific or practical aid, expertise or services." See *Holiday Inns, Inc. v. Limbach* (1990), 48 Ohio St.3d 34 and *Stanley Steamer International, Inc. v. Tracy*, BTA Case No. 91-K-1650, August 20, 1993.

(F) **Nonbusiness state lottery income.** The following amounts are allocable to Ohio when that income is nonbusiness income: (i) amounts paid by the Ohio lottery commission to a prize winner, and (ii) a *transferee's* "earnings, profit, income and gain from the sale, exchange or other disposition of lottery prize awards" earned as a result of a *transfer* from a transferor/winner the right to receive the future installments of an Ohio lottery prize.

A "'*transfer*' means any form of sale, assignment or redirection of payment of all or any part of a lottery prize award for consideration" (R.C. 3770.10(E)). A transfer agreement between the "transferor" (the prize winner) and the "transferee" (the purchaser of the winner's right to future lottery payments) must contain a statement signed by the transferee irrevocably agreeing that the transferee corporation is subject to the franchise tax with respect to gain or income which the transferee will recognize as a result of the transfer. A transferee having no nexus with Ohio other than as a party to the transfer agreement is subject to the franchise tax on the income the transferee will recognize as a result of the transfer even if the transferee is exempt from franchise tax under R.C. 5733.09 and even if the transferee is otherwise exempt from the net income base. The Ohio lottery commission is required to withhold 3½% from the amounts it pays to the transferee and such withholding may be claimed as a refundable credit on the transferee's franchise tax report. See R.C. 3770.072(B), 5747.062(B)(2) and 5733.98(A)(27).

(G) **Other nonbusiness income.** Allocate entirely to Ohio all nonbusiness income from sources other than those listed in A through F except to the extent the allocation of any such item of net nonbusiness income entirely to Ohio is not within the taxing power of this state under the Constitution of the United States. To the extent such allocation entirely to Ohio is not within the taxing power of this state under the Constitution of the United States, any such items of nonbusiness income are apportionable.

Schedules D and D-2
Apportionment Ratio
R.C. 5733.05(B)(2)

Schedules D and D-2 apply as follows:

- **Schedule D** applies to apportioning **net income.**
- **Schedule D** applies to apportioning **net worth if the taxpayer does not have nonbusiness income.**
- **Schedule D-2** applies to apportioning **net worth** only if **the taxpayer has nonbusiness income.**

Net income apportionment. For taxable years ending on or after June 26, 2003, Ohio franchise tax law distinguishes business income from nonbusiness income and **the net income base property, payroll and sales factors specifically exclude that portion of property, payroll and sales to the extent the portion relates to, or is used in connection with, the production of nonbusiness income allocable under R.C. 5733.051.** For example, for taxable years ending on or after June 26, 2003, real property generating allocable nonbusiness rental income is excluded from the numerator and the denominator of the net income base property factor. See R.C. 5733.05(B)(2). **In apportioning net income for taxable years ending before June 26, 2003, prior law and case law apply.**

Net worth base apportionment. For taxable years ending on or after June 26, 2003, the net worth base property, payroll and sales factors specifically include that nonbusiness property, payroll and sales excluded from the net income base factors under the above paragraph. If the taxpayer had nonbusiness income, then in apportioning net worth for taxable years ending on or after June 26, 2003 see the following: R.C. 5733.05(C)(2), Schedule D-2, and the instructions for Schedule D-2 on page 31 of these instructions.

In apportioning net worth for taxable years ending on or after June 26, 2003, use the net income apportionment ratio without adjustment if the taxpayer does not have nonbusiness income. Complete the form FT 1120 Schedule D apportionment ratio on a separate company basis. The separate company apportionment ratio applies to the net worth base even if the taxpayer is a member of a combined report, form FT 1120C. See R.C. 5733.05(D)(3) which states that the taxpayer's net worth is multiplied by the net income base apportionment formula computed ". . . without regard to section 5733.052 of the Revised Code." The taxpayer's apportionment ratio on the combined report (Schedule D - combined) applies only to the net income base, not to the net worth base.

Note 1: The "aggregate" (conduit) theory of taxation applies to the franchise tax. That is, the character of all income and deductions (and adjustments to income and deductions) realized by a pass-through entity retains that character when recognized by the investor in the pass-through entity. Furthermore, the investor's proportionate share of the pass-through entity's property, payroll and sales must be included in the investor's apportionment formula. See R.C. 5733.057 and *Mead Properties, Inc. v. Limbach*, BTA Case Nos. 85-D-791, 85-E-792, 85-C-793, 85-B-794, April 21, 1989.

Note 2: A taxpayer must adjust its net income (or loss), its apportionment factors and its credits to the extent the taxpayer's income (loss), apportionment factors and credits would otherwise include (were it not for R.C. 5733.058) the taxpayer's proportionate share of such amounts attributable to the taxpayer's direct or indirect ownership interest in an "exempted investment." An exempted investment is the taxpayer's direct or indirect investment in a pass-through entity or a "disregarded entity" (a single member LLC treated as a division of its owner) which is a public utility subject to the Ohio public utility excise tax on its gross receipts.

Note 3: Deviation from standard allocation and apportionment. A taxpayer may request deviation from the statutory allocation and apportionment provisions on an original report, on an amended report filed within the statute of limitations, or on a timely filed petition for reassessment. The request for deviation must be in writing. An alternative method will be effective only with approval by the tax commissioner. See R.C. 5733.05(B)(2)(d).

Note 4: Factors weighted. The apportionment ratio's property, payroll and sales factors are weighted 20%, 20% and 60%, respectively. The 20%, 20%, 60% weighting does not apply to financial institutions. See R.C. 5733.05(B)(2).

Note 5: The term **"qualified research"** as used below in the property and payroll factors means laboratory research, experimental research and other similar types of research; research in developing or improving a product; or research in developing or improving the means of producing a product. Qualified research does not include market research, historical research, literary research, consumer surveys, efficiency surveys, management studies and ordinary testing or inspection of materials and products for quality control. "Product" as used in this paragraph does not include services or intangible property.

Note 6: If the taxpayer is an electric company or combined electric company, see the supplemental franchise tax schedules and instructions available on the Department of Taxation's Web site. Sales of electricity and sales of electricity transmission and distribution services are sitused in accordance with R.C. 5733.059.

Schedule D Property Factor

The property factor is a fraction the numerator of which is the average value of the corporation's includable real and tangible personal property owned or rented and used in the trade or business in this state during the taxable year, and the denominator of which is the average value of all the corporation's includable real and tangible personal property owned or rented, and used in the trade or business everywhere during such year.

Property owned by the corporation is valued at its original cost average value. Average value is determined by adding the cost values at the beginning and at the end of the taxable

year and dividing the total by two. The tax commissioner may require the use of monthly values during the taxable year if such values more reasonably reflect the average value of the corporation's property.

In determining average value do not include in either column 1 (within Ohio) or in column 2 (total everywhere) the following:

- Construction in progress.
- Property relating to, or used in connection with, the production of nonbusiness income allocable under R.C. 5733.051. See R.C. 5733.05(B)(2).
- The original cost of property within Ohio with respect to which the state of Ohio has issued an Air Pollution, Noise Pollution or an Industrial Water Pollution Control Certificate. See R.C. 5733.05(B)(2)(a).
- The original cost of real property and tangible property (or in the case of property which the corporation is renting from others, eight times its net annual rental rate) within Ohio that is used exclusively during the taxable year for qualified research.

For taxable years ending on or after June 26, 2003, the property factor specifically **includes** real property and tangible personal property the corporation rents, subrents, leases, or subleases to others if the income or loss from such rentals, subrentals, leases, or subleases is business income.

Do not include in column 1 but do include in column 2 the original cost of qualifying improvements to land or tangible personal property in an enterprise zone for which the taxpayer holds a Tax Incentive Qualification Certificate issued by the Department of Development. See general instruction #25.

Line 1(a), column 1 – Owned property within Ohio
Enter the average value of the corporation's real property and tangible personal property, including leasehold improvements, owned and used in the trade or business in Ohio during the taxable year.

Line 1(a), column 2 – Owned property – total everywhere
Enter the average value of all the corporation's real property and tangible personal property, including leasehold improvements, owned and used in the trade or business everywhere during the taxable year.

Line 1(b) – Rented property
Enter the value of the corporation's real property and tangible personal property rented and used in the trade or business in Ohio (column 1) and everywhere (column 2) during the taxable year. Property rented by the corporation is valued at eight times the annual rental rate (annual rental expense less subrental receipts).

Line 1(c) – Total property within Ohio and everywhere
Add lines 1(a) and 1(b) for column 1, (within Ohio) and for column 2 (total everywhere).

Line 1(c), column 3 – Property ratio
Enter the ratio of property within Ohio to total everywhere by dividing column 1 by column 2.

Line 1(c), column 5 – Weighted property ratio
Multiply the property ratio on line 1(c), column 3 by the property factor weighting of 20%.

Schedule D Payroll Factor

The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer, and the denominator of which is the total compensation paid both within and without this state during the taxable year by the taxpayer. As used below, the term "compensation" means any form of remuneration paid to an employee for personal services. Do not include in column 1 (within Ohio) or in column 2 (total everywhere) the following:

- Compensation paid in Ohio to employees who are primarily engaged in qualified research.
- For taxable years ending on or after June 26, 2003, **compensation paid to employees to the extent the compensation relates to the production of nonbusiness income allocable under R.C. 5733.051. See R.C. 5733.05(B)(2).**

Do not include in column 1 but do include in column 2 compensation paid in Ohio to certain specified new employees at an urban job and enterprise zone facility for which the taxpayer has received a Tax Incentive Qualification Certificate issued by the Department of Development (see general instruction #25).

Line 2, column 1 – Payroll within Ohio
Enter the total amount of the corporation's compensation paid in Ohio during the taxable year. Compensation is paid in Ohio if any of the following apply:

- The recipient's service is performed entirely within Ohio; or
- The recipient's service is performed both within and without Ohio, but the service performed without Ohio is incidental to the recipient's service within Ohio; or
- Some of the recipient's service is performed within Ohio and either the recipient's base of operations, or if there is no base of operations, the place from which the recipient's service is directed or controlled is within Ohio, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the recipient's residence is in Ohio.

Compensation is paid in Ohio to any employee of a common or contract motor carrier corporation who performs his regularly assigned duties on a motor vehicle in more than one state in the same ratio by which the mileage traveled by such employee within Ohio bears to the total mileage traveled by such employee everywhere during the taxable year. The statutorily required mileage ratio applies only to contract or common carriers. Thus, without approval by the tax commissioner a manufacturer or merchant who operates its own fleet of delivery trucks may not situs driver payroll based upon the ratio of miles traveled in Ohio to miles traveled everywhere. See *Cooper Tire and Rubber Co. v. Limbach* (1994), 70 Ohio St.3d 347.

Line 2, column 2 – Payroll total everywhere
Enter the total amount of the corporation's compensation paid everywhere during the taxable year.

Line 2, column 3 – Payroll ratio
Enter the ratio of payroll within Ohio to total everywhere by dividing column 1 by column 2.

Line 2, column 5 – Weighted payroll ratio
Multiply the property ratio on line 2, column 3 by the payroll factor weighting of 20%.

Schedule D Sales Factor

The sales factor is a fraction whose numerator is the taxpayer's includable business income receipts in Ohio during the taxable year and whose denominator is the sum of the taxpayer's within Ohio and without Ohio includable business income receipts during the taxable year. For taxable years ending on or after June 26, 2003, **the sales factor specifically excludes receipts attributable to nonbusiness income allocable under R.C. 5733.051** (see R.C. 5733.05(B)(2) and the tax commissioner's April 2004 information release entitled "Sales Factor Situsing Revisions").

The following receipts are not includable in either the numerator or the denominator of the sales factor even if the receipts arise from transactions, activities and sources in the regular course of a trade or business (see R.C. 5733.05(B)(2)(c)):

- Interest or similar amounts received for the use of, or for the forbearance of the use of, money;
- Dividends;
- Receipts along with any related gains or losses from the sale or other disposal of intangible property other than trademarks, trade names, patents, copyrights and similar intellectual property;
- Receipts along with any related gains and losses from the sale or other disposal of tangible personal property or real property where that property is a capital asset or an asset described in I.R.C. section 1231. For purposes of this provision the determination of whether or not an asset is a capital asset or a 1231 asset is made without regard to the holding period specified in the I.R.C.; and
- Receipts from sales to: (a) an at-least 80% owned public utility other than an electric company, combined electric company, or telephone company, (b) an at-least 80% owned insurance company, or (c) an at-least 25% owned financial institution.

Note: Income from receipts excluded from the sales factor is not presumed to be nonbusiness income. For taxable years ending on or after June 26, 2003, all income, gain, loss and expense is presumed to be apportionable business income – even if the related receipts are excluded from the sales factor.

For taxable years ending on or after Dec. 11, 2003, the law specifically **includes** in the sales factor the following amounts when arising from transactions, activities and sources in the regular course of a trade or business: (1) receipts from sales of tangible personal property, (2) receipts from the sale of real property inventory (such as lots developed and sold by a real estate developer), (3) rents and royalties from tangible personal property, (4) rents and royalties from real property, (5) receipts from the sale, exchange, disposition, or other grant of the right to use trademarks, trade names, patents, copyrights and similar intellectual property, (6) receipt from the sale of services and other receipts not expressly excluded from the factor. These amounts are situsable to Ohio as set out below.

Line 3, column 1 – Sales within Ohio

Enter the total gross receipts less returns and allowances from sales not excludable from the sales factor, to the extent the receipts reflect Ohio sales. Receipts from Ohio sales include the following:

- **Receipts from sales of tangible personal property, less returns and allowances, received by the purchaser in Ohio.** In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed is considered as the place at which such property is received by the purchaser. Direct delivery in Ohio, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in Ohio, and direct delivery outside Ohio to a person or firm designated by a purchaser does not constitute delivery to the purchaser in Ohio, regardless of where title passes or other conditions of sale. Customer pick-up sales are situsable to the final destination after all transportation (including customer transportation) has been completed. See *Dupps Co. v. Lindley* (1980), 62 Ohio St.2d 305.

  Revenue from servicing, processing or modifying tangible personal property is sitused to the destination state as a sale of tangible personal property. See *Custom Deco, Inc. v. Limbach*, BTA Case No. 86-C-1024, June 2, 1989.

- **Receipts from sales of real property inventory in Ohio.**
- **Rents and royalties from tangible personal property to the extent the property was used in Ohio.**
- **Rents and royalties from real property located in Ohio.**
- **Receipts from the sale, exchange, disposition or other grant of the right to use trademarks, trade names, patents, copyrights and similar intellectual property are sitused to Ohio to the extent the receipts are based on the amount of use of that property in Ohio.** If the receipts are not based on the amount of use of the property, but rather on the right to use the property and the payor has the right to use the property in Ohio, then the receipts from the sale, exchange, disposition, or other grant of the right to use such property are sitused to Ohio to the extent the receipts are based on the right to use the property in Ohio.
- **Receipts from the performance of services and receipts from any other sales not excluded from the sales factor** and not otherwise sitused within or without Ohio under the above situsing provisions are situsable to Ohio in the proportion to the purchaser's benefit, with respect to the sale, in Ohio to the purchaser's benefit, with respect to the sale, everywhere. The physical location where the purchaser ultimately uses or receives the benefit of what was purchased is paramount in determining the proportion of the benefit in Ohio to the benefit everywhere. **For taxable years ending on or after Dec. 11, 2003, the "cost of performance" provision is no longer the law.**

Line 3, column 2 – Sales everywhere

Enter the total of such includable gross receipts less returns and allowances from sales everywhere.

Line 3, column 3 – Sales ratio

Enter the ratio of sales within Ohio to total everywhere by dividing column 1 by column 2.

Line 3, column 5 – Weighted sales ratio

Multiply the sales ratio on line 3, column 3 by the sales factor weighting of 60%.

Schedule D-2
Net Worth Base Apportionment Ratio
R.C. 5733.05(C)(2)

Schedule D-2 applies in apportioning net worth only if the taxpayer had nonbusiness income.

Net worth base apportionment. For taxable years ending on or after June 26, 2003 for purposes of net worth apportionment, the numerator and the denominator of the net income base property, payroll and sales factors must be adjusted to include the portion of any real property and tangible personal property, payroll and sales, respectively, relating to, or used in connection with, the production of nonbusiness income allocated under R.C. 5733.051. That is, for purposes of net worth apportionment the net income base factors must be adjusted to include property, payroll and sales relating to nonbusiness income which property, payroll and sales have been excluded from the net income basis factors. See R.C. 5733.05(C)(2).

Example: Real property generating nonbusiness rental income allocated to Ohio is excluded from the numerator and the denominator of the Schedule D net income base property factor. However, for net worth base apportionment the numerator and denominator of the property factor must be adjusted to include such property. Furthermore, rental receipts from real property generating nonbusiness rental income allocated to Ohio is excluded from the numerator and the denominator of the Schedule D net income base sales factor. However, for net worth base apportionment the numerator and denominator of the sales factor must be adjusted to include such rental receipts.

Note: Complete the form FT 1120 Schedule D-2 apportionment ratio on a separate company basis. The separate company apportionment ratio applies to the net worth base even if the taxpayer is a member of a combined report, form FT 1120C. See R.C. 5733.05(D)(3), which states that the taxpayer's net worth is multiplied by the net income base apportionment formula computed ". . . without regard to 5733.052 of the Revised Code." The taxpayer's apportionment ratio on the combined report (Schedule D – combined) applies only to the net income base, not to the net worth base.

On Schedule D-2, lines 1(a), 1(c), 2(a) and 3(a) enter the property, payroll and sales amounts from Schedule D, lines 1(a), 1(b), 2 and 3, respectively. On Schedule D-2 lines 1(b), 1(d), 2(b) and 3(b), add the portion of property, payroll and sales, respectively, that the taxpayer excluded from the net income base apportionment factors because it was related to the production of nonbusiness income allocated in Schedule C.

Enter on line 1(e) the sum of lines 1(a) through 1(d), on line 2(c) the sum of lines 2(a) and 2(b), and on line 3(c) the sum lines 3(a) and 3(b).

Schedule E
Balance Sheet

Include with the franchise tax report a balance sheet reflecting the books of the taxpayer on a separate company basis as of the beginning and the end of the taxpayer's taxable year.

A 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 principles, the value of the taxpayer's issued and outstanding shares of stock under the net worth base (R.C. 5733.05(C)) is based upon those books kept in accordance with generally accepted accounting principles. See tax commissioner rule 5703-5-08.

Schedule F
Computation of Taxable Value
R.C. 5733.05(C)

The net worth base value of issued and outstanding shares of stock is determined from the books of the corporation as of the beginning of the taxpayer's annual accounting period that includes the first day of Jan. of the tax year. See R.C. 5733.05. For example, assume that an Ohio franchise taxpayer has a taxable year beginning July 1, 2007 and ending June 30, 2008. For tax year 2009 the taxpayer's franchise tax net value of stock for purposes of the net worth base is determined as of July 1, 2008 which is the beginning of the taxpayer's annual accounting period that includes the first day of Jan. of the 2009 tax year. Generally, the net worth base value at the beginning of the taxpayer's annual accounting period that includes the first day of Jan. of the tax year (in this example, July 1, 2008) will be the same as the net worth base value at the end of the taxable year concluding prior to Jan. 1 of the tax year (in this example, June 30, 2008).

For taxpayers other than financial institutions the net worth base equals assets minus liabilities adjusted by the "qualifying amount" less exempted assets (discussed below). "Reserves," except for those reserves considered appropriations of retained earnings under generally accepted accounting principles, are not included in the net worth computation. Thus, accounts such as unearned income and deferred federal income tax are not added to (or deducted from) net worth.

For taxpayers other than financial institutions the tax rate on the net worth base is 4 mills (.004) and the net worth base tax is limited to $150,000 per taxpayer prior to applying the franchise tax phase-out factor. The $150,000 limit applies separately to each member of a combined report (there is not an overall net worth base limit for a combined group of taxpayers). At the net worth tax rate of four mills a "taxable value" of $37,500,000 will result in the maximum net worth tax of $150,000.

Note: The net worth base exemption for high-tech start-up companies does not apply to the 2009 report. That exemption expired with the 2007 report.

Qualifying holding company (QHC). A corporation that meets the requirements to be treated as a qualifying holding company, as defined in R.C. 5733.04(L), <u>and</u> elects to be treated as a QHC by filing form FT QHC, Qualifying Holding Company Election, is not subject to the franchise tax on the net worth base and is not required to complete Schedule F. (A QHC is subject to the franchise tax on the net income base.) A corporation electing to be treated as a qualifying holding company must include form FT QHC with its franchise tax report and must check the box at the top of the front page of the franchise tax report indicating the corporation has elected to be treated as a qualifying holding company. For further information see general instruction #23, R.C. 5733.04(L), 5733.05(C)(2) and 5733.06(C) and form FT QHC, Qualifying Holding Company Election.

Line 1 – Net worth (assets minus liabilities)
Enter the taxpayer's net worth (assets minus liabilities) as reflected on the taxpayer's books.

Line 2 – Qualifying amount (if the taxpayer is a related member to a qualifying holding company) R.C. 5733.05
If the taxpayer is a related member to a qualifying holding company (see above), the taxpayer must adjust its net worth and debt by the "qualifying amount."

The **qualifying amount** is the amount that, when added to the taxpayer's net worth (assets minus liabilities) and subtracted from the taxpayer's liabilities or when subtracted from the taxpayer's net worth and added to the taxpayer's liabilities, will result in the taxpayer's debt-to-equity ratio equaling the consolidated debt-to-equity ratio of the **qualifying controlled group** of which the taxpayer is a member. The consolidated debt-to-equity ratio is computed in accordance with generally accepted accounting principles on the last day of the taxpayer's taxable year ending prior to the first day of the tax year. The qualifying amount added to the taxpayer's net worth and subtracted from the taxpayer's liabilities may not exceed the amount of the taxpayer's liabilities owed to related members. Furthermore, the taxpayer's net worth after adjustment by the qualifying amount may not exceed the net book value of the corporation's assets. If the qualifying amount will be subtracted from the taxpayer's net worth, enter the qualifying amount in parenthesis. See R.C. 5733.05(C)(2).

The term **"qualifying controlled group"** means two or more corporations that meet the R.C. 5733.052(A) ownership and control requirements to file a combined franchise tax report (whether or not the corporations actually file a combined report and whether or not the corporations are subject to the franchise tax). See R.C. 5733.04(M).

The term **"related member"** is defined in the instructions for Schedule B-3, line 6.

Line 4 – Exempted assets
Enter on line 4(a) the net book value of civil defense shelters within Ohio for which the state of Ohio has issued a civil defense certificate. See R.C. 5502.49.

Enter on line 4(b) the net book value of "land devoted exclusively to agricultural use as of the first Monday of June in the corporation's taxable year as determined by the county auditor of the county in which the land is located pursuant to 5713.31 of the Revised Code."

Note: The net worth exempted assets deduction no longer applies to air, noise and water pollution control facilities for which the state of Ohio has issued an exemption certificate or to coal gasification facilities, coal conversion demonstration facilities, energy conversion facilities, solid waste energy conversion facilities or thermal efficiency improvements facilities for which the state of Ohio has issued an exemption certificate. See R.C. 5709.25(B)(3) and 5709.20.

Line 6 – Ohio apportionment ratio
If the taxpayer does not have nonbusiness income, enter the taxpayer's Ohio apportionment ratio determined on a separate company basis from Schedule D, line 4.

If the taxpayer does have nonbusiness income, enter the taxpayer's Ohio apportionment ratio determined on a separate company basis from Schedule D-2, line 4.

Schedule G
Tax Computation

Tier One Litter Tax (R.C. 5733.066) – All taxpayers except minimum fee taxpayers and family farm corporations, as defined in R.C. 4123.01, are subject to the tier one litter tax. The maximum tier one tax a corporation (or a group of corporations filing a combined franchise tax report) must pay is $5,000.

Tier Two Litter Tax (R.C. 5733.065) – Corporations that manufacture or sell litter stream products in Ohio are subject to the second tier of the litter tax with the following limitations:

a. If a corporation manufactures "litter stream products," the corporation is subject to the second tier litter tax only if the corporation's sales of litter stream products in Ohio during the taxable year exceed 5% of its total sales in Ohio during the taxable year or if its sales of litter stream products in Ohio during the taxable year exceed $10 million.

b. If a corporation sells litter stream products in the same form the corporation obtains the products, the corporation is subject to the second tier litter tax only if its sales of litter stream products in Ohio during the taxable year exceed 5% of its total sales in Ohio during the taxable year.

c. If a corporation sells food or beverages which are prepared at the premises where sold for consumption off the premises and transfers possession of litter stream products in the form of sacks, bags, lids, straws, plates, wrappings, boxes or containers that contain the food or beverages, the corporation is subject to the second tier litter tax only if such sales for off premises consumption exceed 5% of the corporation's total sales during the taxable year.

d. The maximum tier-two tax a corporation (or a group of corporations filing a combined franchise tax report) must pay is $5,000.

Litter stream products are defined as follows:

a. Intoxicating liquor, beer, malt beverages, wine, mixed beverages or spirituous liquor;

b. Soft drinks;

c. Glass, metal, plastic or fiber containers with a capacity of less than two gallons sold for the purpose of containing the beverages listed in sections a. and b. above;

d. Container crowns and caps sold for the purpose of capping the containers in section c. above;

e. Packaging materials used to pack or contain the beverages in sections a. and b. above when they are sold at retail;

f. Packaging or serving materials used or received when obtaining food to carryout, such as sacks, bags, cups, lids, straws, plates, wrappings, boxes or containers of any type. The food or beverages which are for take-out must have been prepared for human consumption by a restaurant or take-out food outlet at the premises where sold at retail, and delivered to the purchaser for consumption off the premises where such food or beverages are sold;

g. Cigarettes, cigars, tobacco, matches, candy and gum.

Schedule A-1
Nonrefundable Credits

Each of the credits available to franchise taxpayers is summarized below. The credits are listed in the order in which taxpayers must claim them as set forth in R.C. 5733.98. In addition, the table on page 42 lists (i) nonrefundable credits in the order in which taxpayers must claim them, (ii) the carryforward period of each credit and (iii) the sections of the Ohio Revised Code that authorize the credits.

A lower-numbered credit must be used before any higher-numbered credit is used. The order is important if the corporation is entitled to more than one nonrefundable credit <u>and</u> the corporation is unable to use some portion of the total credit amount in the year the corporation generated the credits (because the total credit amount exceeds the tax due before credits). Nonrefundable credits 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. After the carryforward period for a particular credit has expired any credit amount remaining unused is lost. The unused amount of a particular credit carried forward to a later year must be used after any lower numbered credit listed in R.C. 5733.98 but prior to the same credit generated in the later year and prior to any higher numbered credit listed.

A nonrefundable credit may be used to reduce the tax liability (before considering any payments) to the minimum fee but a nonrefundable credit may not reduce the tax liability (before considering any payments) below the minimum fee.

Note 1: The new jobs credit, the credit for tax withheld by the Ohio Lottery Commission, the historical building preservation tax credit and the credit for losses on loans made to the Ohio Venture Capital (OVC) Program are not included below because these credits are refundable credits which are considered payments of the tax. See the line instructions for Schedule A, line 26.

Note 2: Unless otherwise stated, **all credit computations under Chapter 5733 must include the taxpayer's proportionate share amounts from any pass-through entity in which the taxpayer has a direct or indirect interest**. See R.C. 5733.057.

Note 3: The refundable credit for losses on loans made to the Ohio Venture Capital (OVC) Program does not appear on the 2009 Ohio franchise tax report (or on the 2008 individual income tax return) because no credit certificates were issued for the tax year. The purpose of the credit is to provide OVC lenders and investors some security against losses on their loans to the program. See R.C. 150.01 to 150.10, 5733.49, 5733.98, 5747.80 and 5747.98.

Substitute Senate Bill 321, 126th Ohio General Assembly. made the credit for losses on loans made to the Ohio Venture Capital Program refundable. Under prior law the taxpayer had a choice of taking this credit as a refundable credit or as a nonrefundable credit.

Note 4: For report years 2006, 2007, 2008, 2009 and 2010 franchise taxpayers subject to the phase-out must pay 80%, 60%, 40%, 20% and 0% respectively of the franchise tax after nonrefundable credits that they would otherwise pay were it not for the phase-out. So, **as the franchise tax phases out the benefits of the nonrefundable credits also phase out**. Nevertheless, the nonrefundable credit for tax paid by a qualifying pass-through entity is not subject to the phase-out factor; rather, the credit for tax paid by a qualifying pass-through entity is recoverable at 100% over the course of the phase-out.

The franchise tax phase-out factor does not apply in computing the amount of unused credit carried forward to a subsequent year in the phase-out period. That is, in computing the credit carried forward to a subsequent year, the credit is utilized against the tax to the extent the credit applies against the tax before multiplying by the phase-out factor. See R.C. 5733.01(G)(2)(c).

Note 5: The credits available under the franchise tax are generally not available under the CAT, and taxpayers that are subject to the franchise tax phase-out may generally not apply their unused nonrefundable franchise tax credits as a credit against their CAT liability. Exceptions to that general rule include the following nonrefundable credits: the job retention credit, the credit for qualified research expense and the research and development loan repayment credit. For taxpayers that are subject to the franchise tax phase-out and the CAT phase-in, the 2008 franchise tax report was the last report for claiming the above listed credits against the franchise tax. Such taxpayers can begin claiming the three listed credits against their CAT liability for CAT periods beginning on or after Jan. 1, 2008. But, for purposes of making payments, taxpayers cannot apply the credits against their CAT liability for periods beginning before July 1, 2008. Taxpayers not subject to the franchise tax phase-out can continue claiming the three credits against the franchise tax.

In addition, for those taxpayers that are subject to the franchise tax phase-out and the CAT phase-in, the 2008 report was the last franchise tax report year for which R.C. 5733.0610(A) refundable new jobs credit applied. The franchise tax credit then automatically converts to a refundable credit against the CAT for the remaining years of the taxpayer's agreement with the Tax Credit Authority. For those franchise taxpayers not subject to the franchise tax phase-out and the CAT phase-in, the new jobs credit continues under the franchise tax. For additional information on the new jobs credit see page 21 of these instructions and R.C. sections 122.17 and 5751.50.

Note 6: For taxable years ending on or after July 1, 2005 the R.C. 5733.33 second credit for purchases of new manufacturing machinery and equipment (the 7.5%-13.5% manufacturer's credit) converts to a nonrefundable grant administered by the Ohio Department of Development. Thus, **for franchise report year 2009, (taxable year ending in 2008) taxpayers must claim the grant** – not the credit. This is so even for the 1/7 amounts from 2004 and earlier qualifying purchases for which the taxpayer claimed a credit on earlier reports). See (i) the instructions for Schedule A, line 23 – 7.5%-13.5% grant for purchases of new manufacturing M&E beginning on page 18 of these instruction and (ii) R.C. 5733.33(B)(1) and 122.172(B)(1).

Note 7: Electric companies and local exchange telephone companies are entitled to certain credits not available to other taxpayers. For additional information see the supplemental schedules and instructions for electric companies and telephone companies in a separate file in the forms section of our Web site.

Nonrefundable Credits:

1. **Credit for Qualifying Affiliated Group** (R.C. 5733.068) – If, as a result of the related entity and related member adjustments (see Schedule B-3), an affiliated group will pay more than $3.5 million more franchise tax than the members of the group otherwise would have paid had the members of the group not made the related entity and related member adjustment, then the members of the affiliated group may claim a credit equal to the difference between the additional tax and $3.5 million. However, the credit is limited to $1.5 million for the affiliated group (even if the additional tax exceeds $5 million).

2. **Credit for Recycling and Litter Prevention Donations** (R.C. 5733.064) – A taxpayer may claim a credit for the taxpayer's cash donations made during the taxable year to: (a) municipal corporations, counties, townships, park districts and boards of education that have received litter control and recycling grants from the Division of Recycling and Litter Prevention under R.C. 1502.05 and (b) Ohio corporations organized prior to Jan. 1, 1987 that have been determined to be nonprofit corporations by the IRS and whose sole purpose is to promote and encourage recycling. The credit equals the lesser of 1/2 of the amount of the cash donation or 1/2 of the sum of the tier one and tier two litter taxes. For information on the litter tax see the line instructions for Schedule G.

3. **Credit for Maintaining Railroad Crossing Warning Devices** (R.C. 5733.43) – Railroad companies can claim a credit for maintaining signs, signals, gates and other electrical warning devices at public highway-railway crossings in Ohio at common grade. The credit equals 10% of the sum of the annual maintenance expenditures for each active grade crossing warning device in Ohio for which such expenditures were made during the taxable year. The credit may not exceed $200 for each device in Ohio for which such expenditures were made during the taxable year. Unused credit amounts may not be carried forward.

4. **Job Retention Credit** (R.C. 5733.0610(B) and 122.171) – **Note:** For those taxpayers that are subject to the franchise tax phase-out and the CAT phase-in, the last franchise report year for which the R.C. 5733.0610(B) nonrefundable job retention credit applied was the 2008 report. The credit automatically converted to a nonrefundable credit against the CAT for tax periods beginning on or after July 1, 2008 for the remaining years of the taxpayer's agreement with the Ohio Tax Credit Authority. Furthermore, unused franchise tax job retention credit carryforward amounts may be applied against the CAT provided that the total number of carryforward years under the franchise tax and the CAT does not exceed three. For those franchise taxpayers not subject to the franchise tax phase-out and the CAT phase-in, the nonrefundable job retention credit continues under the franchise tax.

   The purpose of this nonrefundable credit is to encourage large Ohio manufacturers to retain jobs in Ohio. The credit applies to eligible businesses. A business is an "eligible business" if the business:

- Employed an average of 1,000 full-time employees at the Ohio project site during each of the 12 months preceding the business' job retention credit application,
- Is engaged at the project site primarily as a manufacturer or provides significant administrative functions from the site, and
- During a period of three consecutive calendar years after 2001 makes a capital investment at the Ohio project site of at least (a) $200 million, or (b) $100 million provided that the average wage of all full-time employment positions at the project site is greater than 400% of the federal minimum wage.

Credit applicants must apply to the Ohio Tax Credit Authority for approval of the capital investment project. If the project is approved, the amount of the credit equals a percentage (as set forth in the agreement between the taxpayer and the Ohio Tax Credit Authority) of the Ohio income tax withheld from the taxpayer's employees at the project site. However, the credit percentage may not exceed 75% and the credit is limited to a term of 15 years.

Taxpayers claiming the job retention credit must retain at least 1,000 full-time employees at the project site for the entire term of the credit agreement and are required to submit a copy of the Ohio Department of Development's certificate of verification with the taxpayer's tax report for each taxable year the taxpayer claims the credit. However, failure to submit a copy of the certificate with the report does not invalidate a claim for the credit if the taxpayer submits a copy of the certificate to the commissioner within 60 days after the commissioner requests it.

The Ohio Tax Credit Authority and the Ohio Department of Development administer this credit. For additional information please contact the Ohio Department of Development's Office of Tax Incentives at (614) 466-4551 or (800) 848-1300.

5. **Credit for selling alternative fuel in Ohio** - (R.C. 5733.48 and 5747.77). For tax years 2008 and 2009 retail service stations in Ohio may claim a nonrefundable credit for selling E85 blend fuel or blended biodiesel. For tax year 2008 the credit equals 15 cents per gallon of alternative fuel sold at a retail dealer's Ohio service station during any part of calendar year 2007 that is included in the dealer's taxable year ending in 2007. For tax year 2009 the credit equals 15 cents per gallon of alternative fuel sold at a retail dealer's Ohio service station during any part of calendar year 2007 that is included in the dealer's taxable year ending in 2008, plus 13 cents per gallon of alternative fuel sold and dispensed during any part of calendar year 2008 that is included in that taxable year.

   Dealers must calculate the credit separately for each Ohio retail service station owned or operated by the retail dealer. Alternative fuel sales are credit eligible only when sold and dispensed from a metered pump. The credit may also be claimed against the individual income tax.

   Definitions:

   - "Alternative fuel" means E85 blend fuel or blended biodiesel.
   - "E85 blend fuel" means fuel containing 85% or more ethanol, or containing any other percentage of not less than 70% ethanol if the United States department of energy determines, by rule, that the lower percentage is necessary to provide for the requirements of cold start, safety or other vehicle functions, and that meets the American society for testing and materials specification for E85 blend fuel.
   - "Blended biodiesel" means a blend of biodiesel with petroleum based diesel fuel in which the resultant product contains not less than 20% biodiesel and meets the American society for testing and materials specification for blended diesel fuel.
   - "Biodiesel" means a mono-alkyl ester combustible liquid fuel that is derived from vegetable oils or animal fats, or any combination of those reagents that meets the American society for testing and materials specification for biodiesel fuel (B100) blend stock distillate fuels.
   - "Diesel fuel" means any liquid fuel that is capable of use in discrete form or as a blend component in the operation of engines of the diesel type.

6. **Job Training Credit** (R.C. 5733.42) – With the exception of credit carryforward amounts from earlier years this credit no longer applies. Taxpayers may carry forward unused credit amounts for three tax years following the tax year for which the credit was computed.

7. **Credit for Qualified Research Expense** (R.C. 5733.351) – **Note:** For those franchise taxpayers that are subject to the franchise tax phase-out and the CAT phase-in, the 2008 franchise tax report was the last franchise tax report year for which R.C. 5733.351 nonrefundable credit for qualified research expense applied. The franchise tax credit automatically converted to a nonrefundable credit against the CAT and any unused franchise tax credit carryforward amounts can be applied toward the CAT provided that the total number of carryforward years under the franchise tax and the CAT does not exceed seven. See R.C. 5733.351 and R.C. 5751.51.

   For those taxpayers not subject to the phase-out the credit equals 7% of the amount by which the taxpayer's "qualified research expense" incurred in Ohio during the taxable year exceeds the taxpayer's average annual qualified research expenses incurred in Ohio for the three preceding taxable years. The term "qualified research expense" has the same meaning as in I.R.C. section 41.

8. **Credit for Eligible New Employees in an Enterprise Zone** (R.C. 5709.66) – A taxpayer may apply to the director of the Ohio Department of Development for an "employee tax credit certificate" for each eligible new employee the enterprise hires after June 30, 1994 at a facility located in a "central city of a metropolitan statistical area" (as defined by the United States Office of Management and Budget) or located in the "Appalachian region" (as defined by the Appalachian Regional Development Act of 1965) to which an enterprise zone agreement applies provided that the taxpayer is complying with the 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 holding 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 taxpayer employed the eligible employee. An "eligible employee" is a new employee who at the time the employee was hired to work at the facility resided for at least one year in the county in which the facility is located and was a recipient of aid to dependent children or general assistance.

   If a taxpayer claims an enterprise zone new employee tax credit with respect to an employee, the taxpayer may not claim the R.C. 122.17 new jobs credit with respect to the employee. Credit application forms are available from the Ohio Department of Development, Economic Development Division, Office of Tax Incentives, P.O. Box 1001, Columbus, Ohio 43216-1001 or call (614) 466-4551 or (800) 848-1300. The street address for the Ohio Department of Development is 77 S. High Street, 28th floor, Columbus, Ohio 43215.

9. **Ethanol plant investment credit** (R.C. 5733.46 and 901.13) – This nonrefundable franchise tax and individual income tax credit equals 50% of the amount of money the taxpayer invests in R.C. 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.

10. **Credit for Grape Production Property** (R.C. 5733.32) – Grape producers may claim a credit equal to 10% of the cost of qualifying property purchased on or after Jan. 1, 1994. Qualifying property is any property, plant or equipment used in growing, harvesting or producing grapes in Ohio. Unused credit amounts may be carried forward for seven tax years. The credit is subject to recapture if the taxpayer disposes of the property or ceases to use it as qualifying property within seven years after placing it in operation.

11. **Technology Investment Credit** (R.C. 5733.35) – **The Department of Taxation previously referred to this credit as the Edison Center Credit for Research and Development Investors**. **The Department of Development, which administers this credit, refers to the credit as the "Technology Investment Tax Credit." In order to avoid confusion and for the sake of consistency we have renamed the credit consistent with the name given by the Department of Development.**

    Investors providing capital to certain qualifying small, Ohio-based research and development or technology transfer companies may be eligible for a nonrefundable credit equal to 25% of the taxpayer's at-risk investment. An investor or investor group proposing to invest in a qualifying small, Ohio-based research and development company or technology transfer company and seeking to claim the credit must apply to one of the state's seven Edison Centers for recommendation of the proposed investment. The credit application fee for a single investor is $200 and for an investor group is $800. The credit is evidenced by a tax credit certificate.

    Note: House Bill 1, 125th General Assembly (effective July 9, 2003) amended this credit by increasing the credit percentage to 30% in the case of investments in qualifying companies in distressed areas of the state and in EDGE business enterprises. An "EDGE business enterprise" is an "Ohio entity" certified by the director of administrative services as a participant in the encouraging diversity, growth and equity program established by the governor's executive order 2002-17T.

    For additional information please see R.C. 122.15, 122.151, 122.152, 122.153 and 122.154 and contact the Ohio Department of Development, Technology Division, 77 S. High Street, P.O. Box 1001, Columbus, OH 43216-1001, or call (614) 466-3887 or (800) 848-1300. The street address for the Ohio Department of Development is 77 S. High Street, 28th floor, Columbus, Ohio 43215.

12. **Enterprise Zone Day-Care Credit** (R.C. 5709.65(A)) – If a taxpayer holds a Tax Incentive Qualification Certificate issued by the Ohio Department of Development and if the taxpayer reimburses certain new employees (see general instruction #25 and R.C. 5709.64(A)(2)(a) to (e)) for all or part of the cost of day-care services necessary to enable the employees to be employed at the facility for which the certificate is issued, the taxpayer may claim a credit equal to the amount so reimbursed up to a maximum of $300 for each child or dependent receiving the day-care services. The taxpayer may claim the credit for the taxable year in which the taxpayer makes the reimbursement.

    Enterprise Zone Training Credit (R.C. 5709.65(A)) – If a taxpayer holds a Tax Incentive Qualification Certificate issued by the Ohio Department of Development and if the taxpayer pays or reimburses all or part of the cost of a qualified training program for certain new employees (see general instruction #25 and R.C. 5709.64(A)(2)(a) to (e)) the taxpayer may claim for each new employee a credit equal to the amount paid or reimbursed or $1,000, whichever is less. The taxpayer may claim the credit in the taxable year in which the new employee completes 90 days of subsequent employment.

13. **Research and Development Loan Repayment Credit** (R.C. 5733.352, 5747.331 and 166.17 through 166.21) –
    Note 1: Prior law provides that a taxpayer is not entitled to claim the research and development loan repayment credit unless the taxpayer obtained a certificate issued by the director of development under R.C. 166.21. The law now requires that the taxpayer submit a copy of the credit certificate with its report for the taxable year. The law also provides that failure to submit a copy of the certificate with the report does not invalidate a claim for a credit if the taxpayer submits a copy of the certificate within 60 days after the tax commissioner requests it.

    Note 2: For taxpayers subject to the franchise tax phase-out and the CAT phase-in, the 2008 report was the last franchise tax report year for which the R.C. 5733.352 nonrefundable research and development loan repayment credit applied. The franchise tax credit automatically converted to a nonrefundable credit against the CAT, and the taxpayer can apply any unused credit carryforward toward the taxpayer's CAT liability as provided in R.C. 5751.52. For taxpayers not subject to the franchise tax phase-out and the CAT phase-in, the credit continues under the franchise tax. See R.C. 5733.352 and 5751.52.

    The credit equals the borrower's qualified research and development loan payments during the calendar year immediately preceding the tax year (regardless of whether the taxpayer's taxable year is a calendar year or a fiscal year). The term *qualified research and development loan payments* means payments of principal and interest on a loan made to the borrower from Ohio's research and development fund administered by the Ohio Department of Development.

    The borrower's credit generated as a result of its qualified research and development loan payments made during a calendar year may not exceed $150,000 per loan. The credit not used in the tax year immediately following the calendar year in which the credit was generated can be carried forward until fully used. A borrower is eligible for the tax credit regardless of whether the borrower is subject to the franchise or income tax. Furthermore, the borrower, whether or not subject to the franchise tax, can assign the tax credit to any of the following: (i) the borrower's related member, (ii) the owner or lessee of the eligible research and development project, or (iii) a related member of the owner or lessee of the eligible research and development project. If the borrower is a pass-through entity and the taxpayer is a partner or member of the pass-through entity-borrower, the taxpayer can claim a proportionate share of the pass-through entity-borrower's credit.

14. **Credit for Taxes Paid by a Qualifying Pass-Through Entity** (R.C. 5733.0611) – **Caution: Do not claim this credit as a refundable credit or as a payment.** A corporation that is a qualifying investor 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. However, in determining Ohio taxable income, a corporation claiming this franchise tax credit must add to net income the amount claimed as a credit to the extent that the amount was deducted or excluded from the corporation's federal taxable income. In order to claim this credit the qualifying investor must include with its franchise tax report a copy of the IRS form K-1, which indicates 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.

    Note: For tax years 2006 and thereafter the credit for tax paid by a qualifying pass-through entity is deductible after all other nonrefundable credits (see the credit order in R.C. 5733.98). Furthermore, the credit for tax paid by a qualifying pass-through entity, unlike other nonrefundable credits, is not subject to the R.C. 5733.01(G)(2) phase-out factor; rather, the credit for tax paid by a qualifying pass-through entity is recoverable at 100% over the course of the phase-out whether or not the taxpayer is subject to the franchise tax phase-out. However, consistent with the franchise tax phase-out, the tax that a pass-through entity must pay on the distributive share of its Ohio income passing through to qualifying investors that are subject to the franchise tax phase-out also phases out.

Pass-Through Entity's Taxable Year Ending in:	Pass-Through Entity's Tax Rate on its Ohio Income Passing Through to Qualifying Investors Subject to the Franchise Tax Phase-Out
2005	**6.8% (80% ´ 8.5%)**
2006	**5.1% (60% ´ 8.5%)**
2007	**3.4% (40% ´ 8.5%)**
2008	**1.7% (20% ´ 8.5%)**
2009 and thereafter	**0% (0% ´ 8.5%)**

Schedule B-3
Related Entity Adjustments and Related Member Adjustments
R.C. 5733.04(I)(12) & (I)(13), 5733.042, 5733.054 and 5733.055

Note: If the taxpayer is included in a combined franchise tax report, complete Schedule B-3 (Combined) on form FT 1120C (rather than Schedule B-3 on form FT 1120). Nonbusiness capital gains and capital losses attributed to a member of a combined report from a related entity's sale or other disposition of dividend producing property are separately allocable by each member. All other related entity and related member adjustments are apportionable and are computed on a combined basis. See the May 6, 1992, franchise tax information release "Schedule B-3 (Combined) – Related Entity and Related Member Adjustments for Corporations Included in a Combined Franchise Tax Report." The information release is available on the department's Web site.

Related Entity Adjustments

Line 1 – Related entity gains (losses) from sale of investments
A taxpayer must add to (and deduct from) federal taxable income, line 28 of IRS form 1120, the taxpayer's proportionate share of a nontaxpayer related entity's gains (and losses) from sales, exchanges or other dispositions of investments in the stock or debt of another entity if at any time during the 24-month period commencing 12 months prior to the date of sale, exchange or other disposition and ending 12 months after the date of sale, exchange or other disposition the taxpayer and its related entities owned in the aggregate at least 50% of the stock or debt of the entity whose stock or debt was sold.

The term "related entity" means any of the following:
- An individual stockholder, or a member of the stockholder's family enumerated in I.R.C. section 318, if the stockholder and the members of the stockholder's family own directly or indirectly, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock;
- A stockholder, or stockholder's partnership, estate, trust or corporation, if the stockholder and the stockholder's partnerships, estates, trusts and corporations own directly or indirectly, beneficially or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock;
- A corporation, or a party related to the corporation in a manner that would require I.R.C. section 318 attribution of stock from the corporation to the party or from the party to the corporation, if the taxpayer owns directly or indirectly, in the aggregate, at least 50% of the value of the corporation's outstanding stock.

The I.R.C. section 318 attribution rules apply to the above.

A "taxpayer" is a corporation subject to the Ohio corporation franchise tax. A "nontaxpayer" is an entity not subject to the Ohio corporation franchise tax.

Upon audit you may be asked to provide a schedule containing the following information for each gain and each loss attributed to the taxpayer and recognized by a nontaxpayer related entity from the related entity's sale, exchange or other disposition of stock or debt described above:

a. The name of the related entity which sold, exchanged or otherwise disposed of the stock or debt;
b. The name of the entity whose stock or debt was sold, exchanged or otherwise disposed of by the related entity and a description of the property sold;
c. The amount of gain or loss recognized for federal income tax purposes by the related entity from each sale, exchange or other disposition;
d. The amount of the taxpayer's proportionate share of the related entity's gain or loss from the sale, exchange or other disposition of stock or debt based upon the taxpayer's direct, indirect, beneficial or constructive ownership of the outstanding stock of the related entity immediately prior to the direct or indirect sale, exchang, or other disposition; and
e. A description of the ownership relationship between the taxpayer and the related entity which sold the stock or debt and a description of the ownership relationship between the related entity and the entity whose stock or debt was sold by the related entity.

Enter on line 1 the total net gain or net loss from all transactions described above.

Line 2 – Related entity gains (losses) from sale of other intangible property
A taxpayer must add to (and deduct from) federal taxable income, line 28 of IRS form 1120, the taxpayer's proportionate share of

a nontaxpayer related entity's gains (and losses) from sales, exchanges, or other disposals of intangible property other than stock, securities and debt if the intangible property was owned or used at any time prior to the sale by either the taxpayer or by a related entity that was a taxpayer at any time during the related entity's ownership or use of the property.

Enter on line 2 the total net gain or net loss from all transactions described above. Upon audit you may be asked to provide a schedule containing information similar to that described in line 1 for each gain and each loss attributed to the taxpayer and recognized by a nontaxpayer related entity from the related entity's sale, exchange, or other disposition of intangible property other than stock, securities and debt.

Line 4 – Allocable portion of total related entity gains (losses)
Enter on line 4 the total related entity gain or loss that is attributed to the taxpayer and allocable nonbusiness income.

Note: For taxable years ending on or after June 26, 2003, gains and losses attributed to the taxpayer from a related entity's sale, exchange, or other disposition of intangible property are allocable within and without Ohio only if that income is nonbusiness income. If the income attributed to the taxpayer is nonbusiness income, allocate the income following the instructions for Schedule C, line 2.

Line 10 – Related entity gains (losses) allocable to Ohio
Enter on line 10 the total related entity gain or loss that is attributed to the taxpayer and nonbusiness income allocable to Ohio. See the note above.

Line 11 – Add excess related entity loss
Add each related entity loss deducted from federal taxable income on lines 1 and 2 of this schedule to the extent the loss actually allocated and apportioned to Ohio and to other states which impose a tax on or measured by net income exceeds the total loss. The addition is limited to that portion of the loss actually allocated to Ohio on line 10 or apportioned to Ohio on line 9.

A taxpayer claiming a deduction for related entity losses on lines 1 or 2 of Schedule B-3 and making the addition required on line 11 may be required upon audit to furnish a schedule containing the following information for **each** loss for which an addition is made:

a. The name of each state in which the loss was deducted for purposes of computing a tax on or measured by net income;
b. The apportionment ratio in each state in which the loss was deducted;
c. The amount of the loss actually allocated or apportioned to each state which imposes a tax on or measured by net income;
d. The amount of the loss actually allocated or apportioned to Ohio;
e. The amount by which the loss allocated and/or apportioned to Ohio and to other states exceeds the total loss; and
f. The smaller of the amount from line **d** or line **e** above.

Enter on Line 11 as a positive number the sum of the amounts from **f** above.

Line 12 – Deduct excess related entity gain
Line 12 grants relief in those circumstances where the related entity gain subjected to tax by Ohio and by other states exceeds the total gain. On line 12 a taxpayer may deduct each gain added to federal taxable income on lines 1 and 2 of this schedule to the extent the gain actually taxed by Ohio and by other states that impose a tax on or measured by net income exceeds the total gain. The deduction is further limited to the portion of the gain actually allocated to Ohio on line 10 or apportioned to Ohio on line 9.

A taxpayer claiming a deduction on line 12 may be required upon audit to furnish a schedule containing the following information for **each** gain for which the deduction is claimed:

a. The name of each state that imposed on the gain a tax on or measured by net income;
b. The apportionment ratio in each state that imposed a tax on the gain;
c. The amount of the gain actually allocated or apportioned to each state that imposed tax on the gain;
d. The amount of the gain actually allocated or apportioned to Ohio;
e. The amount by which the gain allocated and/or apportioned to Ohio and to other states exceeds the total gain; and
f. The smaller of the amount from line **d** or line **e** above.

Enter on line 12 the sum of the amounts from line **f** above.

Related Member Adjustments

Line 6 – Interest expense and intangible expense paid to related members
Enter on line 6 the sum of (i) interest expense paid or accrued to all related members described in A. through F. below, (ii) intangible expenses paid or accrued to all related members described in A. through F. below and (iii) excess interest paid or accrued to related members described in G. below.

Definitions for purposes of this adjustment

- "**Related member**" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is any of the following: (i) a "related entity" as defined in division (I)(12)(c) of R.C. 5733.04 (summarized in the instructions for line 1 above), (ii) a "component member" as defined in IRC section 1563(b) or (iii) a person to whom or from whom there is attribution of stock ownership in accordance with I.R.C. section 1563(e) except that "20%" shall be substituted for "5%" wherever "5%" appears in I.R.C. section 1563(e).
- "**Interest expense**" includes but is not limited to amounts deducted under I.R.C. section 163.
- "**Intangible expenses**" are expenses and costs for the use of intangible property. Such expenses include but are not limited to losses from factoring transactions and discounting transactions and royalty, patent, technical and copyright fees, licensing fees and other similar expenses deducted for purposes of determining taxable income under the Internal Revenue Code.
- An "**excess interest rate"** is an interest rate that exceeds by more than 3% the greater of (i) the annual interest rate prescribed by R.C. 5703.47 in effect at the time of the origination of the indebtedness or (ii) the annual interest rate prescribed by R.C. 5703.47 in effect at the time the taxpayer paid, accrued, or incurred the interest expense.

A taxpayer must add to its federal taxable income the following: (i) all interest expense and intangible expenses which the taxpayer paid or accrued to related members described in A. through F. below and (ii) excess interest paid to related members described in G below:

A. A related member whose activities in any one state are primarily limited to the maintenance and management of (i) intangible investments or (ii) intangible investments of corporations, business trusts, or other similar entities;
B. A related member that is a personal holding company as defined in IRC section 542 without regard to the stock ownership requirements set forth in IRC section 542(a)(2);
C. A noncorporate related member that is directly or indirectly owned in whole or in part by a personal holding company as defined in IRC section 542 without regard to the stock ownership requirements set forth in IRC section 542(a)(2);

D. A related member that is an IRC section 552 foreign personal holding company;
E. A noncorporate related member that is directly or indirectly owned in whole or in part by an IRC section 552 foreign personal holding company; and
F. A related member if that related member or another related member directly or indirectly paid or accrued interest expenses or intangible expenses. However, this portion of the law is applicable only if within a 120-month period commencing three years before the beginning of the tax year and ending seven years after the beginning of the tax year the related member directly or indirectly paid or accrued such amounts to one of the five related members listed in A through E directly above.
G. Any related member other than those described in A. through F. above, to which the taxpayer paid interest at an "excess interest rate."

Example: The annual rate prescribed by R.C. 5703.47 for 2009 is 5%. If during 2009 a taxpayer paid or accrued interest expense to a related member not described in A. through F. above, at the rate of 12% on indebtedness that originated in 2009, the excess interest rate is 4% (the 12% actual rate minus the sum of the 5% R.C. 5703.47 rate and the 3% R.C. 5733.042 allowance). The taxpayer must add to federal taxable income only the excess interest expense. In this example the excess interest expense is the difference between the interest paid or accrued to the related member at the actual 12% rate and the interest that would have been paid or accrued had the rate been 8%.

The interest expense and intangible expense adjustments do not apply to the extent the taxpayer's increased tax would have been avoided by filing a combined franchise tax report with the related member to which the taxpayer paid the interest expense or intangible expense. In addition, the interest expense and intangible expense adjustments do not apply where both of the following conditions are met: (i) the transaction did not have as a principal purpose the avoidance of Ohio franchise tax and (ii) the related member to whom the taxpayer paid interest expense and/or intangible expense, during the same taxable year directly or indirectly paid, accrued or incurred such amounts to persons who were not related members.

If the taxpayer's additional franchise tax attributable to the related member adjustments is not paid within one year after the date the report is filed, the tax commissioner may charge a penalty equal to twice the interest charged. However, the penalty does not apply if the additional tax (i) is less than 10% of the total franchise tax and (ii) is less than $50,000. This penalty is in addition to any other applicable penalties and charges.

If the taxpayer is required to enter an amount on line 6, the taxpayer may be required upon audit to provide a schedule containing the following information with respect to each related member to which the taxpayer paid or accrued intangible expense or interest expense:

- Whether the related member is (i) a related member described in A. through F. or (ii) a related member described in G.;
- For related members described in A. through F. to which the taxpayer paid intangible expense, (i) the amount paid and (ii) a description of the intangible property that the taxpayer paid the related member to use;
- For related members described in A. through F. to which the taxpayer paid interest expense, (i) the amount paid, (ii) the amount of the taxpayer's indebtedness to the related member at the beginning and at the end of the taxpayer's taxable year, (iii) the interest rate on the indebtedness and (iv) the date the indebtedness originated;
- For related members described in G. to which the taxpayer paid excess interest expense, (i) the excess interest paid, (ii) the total interest paid, (iii) the actual interest rate on the indebtedness, (iv) the amount of the taxpayer's indebtedness to the related member at the beginning and at the end of the taxpayer's taxable year and (v) the date the indebtedness originated.

Line 13 – Deduct related members' net interest income and net intangible income taxed by other states

A taxpayer may deduct an amount equal to the sum of each related member's "net interest income" (defined below) and "net intangible income" (defined below) actually allocated and apportioned to other states that impose a tax on or measured by income. The deduction is limited to the increase in Ohio taxable income resulting from the adjustments required by Schedule B-3, line 6.

Net interest income is the excess of interest received by a related member from the taxpayer over interest expenses and costs paid or accrued by the related member to another related member described in A through G above (see instructions for line 6).

Net intangible income is the excess of income received by a related member from the taxpayer for the taxpayer's use of intangible property over intangible expenses paid or accrued by the related member to another related member described in A through G above.

For purposes of this deduction, related members receiving such income from the taxpayer and paying such expenses are limited to those related members described in A through G above.

Taxpayers who are claiming a deduction on line 13 may be required upon audit to furnish a schedule containing the following additional information for each related member that received from the taxpayer interest income or income for the use of intangible property:

a. The names of all other states which imposed on the related member a tax on or measured by income. For purposes of this deduction the term "other states" does not include those states under whose laws the taxpayer files or could have elected to file with the related member, or the related member files or could have elected to file with another related member, a combined income tax report or return, a consolidated income tax report or return, or any other report or return where such report or return is due because of the imposition of a tax measured on or by income and such report or return results in the elimination of the tax effects from transactions directly or indirectly between either the taxpayer and the related member or between the related member and another corporation if such other corporation, during a 120-month period commencing three years prior to the beginning of the tax year and ending seven years after the beginning of the tax year, directly or indirectly paid, accrued or incurred intangible expenses and costs or interest expenses and costs to an entity described in A through E above. See instructions for line 6;
b. the related member's interest expense which it paid or accrued to other related members described in Athrough G above;
c. the related member's intangible expenses which it paid or accrued to other related members described in A through G above;
d. the related member's net interest income (defined above);
e. the related member's net intangible income (defined above);
f. the related member's apportionment ratio in each state listed in (a.) above; and
g. the related member's net interest income and net intangible income which it actually allocated or apportioned to each state which imposed tax on the income.

Enter on line 13 the smaller of the following:

- The sum of all related members' net interest income and net intangible income actually allocated and apportioned to other states that imposed a tax on or measured by income, or

- The taxpayer's increase in Ohio taxable income resulting from the adjustments required by R.C. 5733.042 (that is, the amount on line 6 of this schedule multiplied by the taxpayer's Schedule D Ohio apportionment ratio.)

For further information regarding the related entity and related member adjustments, please contact the Department of Taxation, Corporation Franchise Tax, Attn: Related Entity/Related Member, P.O. Box 2476, Columbus, Ohio 43216-2476.

Administrative Code
Tax Commissioner Rules
Applicable to the Ohio Corporation Franchise Tax

5703-1-12	Requests for an opinion of the tax commissioner
5703-5-01	Definitions applicable to Rules 5703-5-01 to 5703-5-05 of the Administrative Code
5703-5-02	Date as of which the value of a taxpayer's issued and outstanding stock is determined
5703-5-03	Dates on which a taxpayer's taxable year begins and ends
5703-5-04	Changes of a taxpayer's annual accounting period **Note:** Effective for tax years 2005 and thereafter the Department of Taxation amended Rule 5703-5-04 to clarify when a taxpayer's annual accounting period changes and to eliminate income proration for franchise taxable years that exceed one year in length.
5703-5-06	Combined reporting of the corporation franchise tax
8-8-08	Books from which the value of issued and outstanding shares of stock is determined under the net worth basis of the corporation franchise tax
8-8-09	Allocating and apportioning income of airlines **Note:** Rule 5703-5-09 was rescinded effective March 21, 2002 as a result of the Board of Tax Appeals decision in *Delta Airlines, Inc. v. Tracy,* BTA No. 96-T-471 & 96-T-472 (1-12-2001).
5703-5-10	Corporate franchise tax; accounts maintained under Statement of Financial Accounting Standards No. 106

Information Releases

Since 1991 the Ohio Department of Taxation has issued the following corporation franchise tax information releases:
- Questions Regarding Ohio's Manufacturing Machinery and Equipment Tax Credit and Subsequent Grant, Sept. 2006.
- Income and Franchise Tax Updates, December 2004
- Questions Regarding Ohio's New Manufacturing Machinery and Equipment Tax Credit – R.C. 5733.33 & 5747.31, Sept. 2004 – Revised Feb. 2005
- The Franchise Tax Effects of the IRC Section 338(h)(10) Election, June 2004
- Sales Factor Situsing Revisions, April 2004
- Ohio Bonus Depreciation Adjustment and the Internal Revenue Code's Passive Activity Loss, Basis Limitation and At-Risk Rules, Nov. 2002
- Recently Enacted Ohio Legislation Affects Depreciation Deductions for Taxable Years Ending in 2001 and Thereafter, July 2002 – Revised July 2005
- Pass-Through Entity Tax: Certain Estimated Tax Payments Due Sept. 16, 2002, July 3, 2002
- Corporation Franchise Tax – Nexus Standards, Sept. 2001 –Revised May 19, 2003
- Corporation Franchise Tax Nexus for Nonresident Limited Partners Following the UCOM Decision, March 15, 2001
- I.R.C. Section 482 Study: Taxpayers seeking to Avoid Ohio Corporate Franchise Tax Report Required or Expanded Combinations, June 23, 2000 – Revised Jan. 2005
- Withdrawal of Special Instructions, Oct. 31, 1997
- Am. Sub. H.B. No. 215, 122nd General Assembly (Budget Bill), Summary of Franchise Tax & Income Tax Provisions, Sept. 18, 1997
- IRS 'Check the Box' Entity Selection Regulations, Aug. 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, Sept. 22, 1995
- 20% Threshold Test Credit for Purchases of New Manufacturing Machinery and Equipment, Sept. 21, 1995
- Newly Enacted Investment Tax Credit Law, Oct. 14, 1994
- Taxation of S Corporations and Their Shareholders, July 31, 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, Oct. 29, 1993
- Safe Harbor Leases: Franchise Tax Policy Change, Nov. 10, 1992
- Application of Ohio Revised Code Section 5733.053 (Transferor Statute) to the Merger of a C Corporation into an S Corporation, Sept. 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, Jan. 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 R.C. 5703.35. Nevertheless, the releases do reflect the Department of Taxation's interpretation of the law. Information releases are available on the department's Web site.

Ohio Franchise Tax Forms Many of the Department of Taxation's forms are available on the Department's Web site at: http://www.tax.ohio.gov.		Latest Revision Date
FT COM	Request for Permission to File or to Amend a Combined Corporation Franchise Tax Report	03/06
FT 1120E	Declaration of Estimated Corporation Franchise Tax	12/08
FT 1120ER	Application for Automatic Extension	12/08
FT 1120EX	Request for an Additional Extension of Time for Filing Corporation Franchise Tax Report	12/08
FT 1120	Corporation Franchise Tax Report	12/08
FT 1120VL	Valuation Limitation on Gains and Losses from Sales or Exchanges of Property	10/06
FT 1120C	Corporation Franchise Tax (Combined Report)	05/08
FT OTAS	Ohio Taxpayers' Affiliation Schedule	10/06
FT 1120FI	Corporation Franchise Tax Report for Financial Institutions	04/08
FT 1120S	Notice of S Corporation Status	06/08
FT REF	Application for Corporation Franchise Tax Refund	06/08
PR	Petition for Reassessment	06/07
FT HELP	Special Handling Notice	10/06
FT QHC	Qualifying Holding Company Election	06/08
FT ELECTRIC	Supplemental Schedules for Electric Companies	10/08
FT TEL	Supplemental Schedule for Local Exchange Telephone Companies	0708
	Grant Request Form	10/08

Bonus Depreciation and/or IRC Section 179 Add-Back Years and Deduction Years

***Add-Back Tax Year**	**Franchise Tax Years (Report Years) During Which 1/5 of the Bonus Depreciation and/or IRC Section 179 Add-Back Is Deducted**									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
2004	1/5	1/5	1/5	1/5	1/5					
2005		1/5	1/5	1/5	1/5	1/5				
2006			1/5	1/5	1/5	1/5	1/5			
2007				1/5	1/5	1/5	1/5	1/5		
2008					1/5	1/5	1/5	1/5	1/5	
2009						1/5	1/5	1/5	1/5	1/5

* The "add-back tax year" is the franchise tax report in which the taxpayer added back 5/6 of the I.R.C. section 168(k) bonus depreciation amount and/or 5/6 of the taxpayer's "qualifying section 179 depreciation expense."

For those taxpayers that are subject to the franchise tax phase-out, both the add-back and the deduction will end with the 2009 franchise tax report.

The Order in Which Taxpayers Must Claim Nonrefundable Franchise Tax Credits[1] (R.C. 5733.98)

Credit No.	Nonrefundable Credit	Carryforward Period	R.C. Section
1.	Credit Allowed to Financial Institutions for Dealer in Intangibles Tax Paid by a Member of the Financial Institution's Qualifying Controlled Group[2]		5733.45
2.	Credit for Qualifying Affiliated Groups (due to Related Entity and Related Member Adjustments)	Not Applicable	5733.068
3.	Credit for Savings and Loan Association Fees[2]	None	5733.063
4.	Credit for Recycling and Litter Prevention Donations	None	5733.064
5.	Credit for Maintaining Railroad Crossing Warning Devices	None	5733.43
6.	Job Retention Credit	Three years	5733.0610(B) &122.171
7.	Credit for Selling Alternative Fuel	None	5733.48
8.	Job Training Credit (carryforward amount only)	Three years	5733.42
9.	Credit for Qualified Research Expense	Seven years	5733.351
10.	Credit for Eligible New Employees in an Enterprise Zone	Three years	5709.66
11.	Ethanol Plant Investment Credit	Three years	5733.46 and 901.13
12.	Credit for Grape Production Property	Seven years	5733.32
13.	Technology Investment Credit	Fifteen years	5733.35, 122.15, 122.151, 122.152, 122.153, & 122.154
14.	Enterprise Zone Day Care and Training Credits	Unlimited*	5709.65(A)
15.	Electric Company Credit for Using Ohio Coal[4]	Three years	5733.39
16.	Credit for Small Telephone Companies	None	5733.57
17.	Telephone Company Credit for Eligible Nonrecurring 9-1-1 Charges[5]	Unlimited*	5733.55
18.	Credit for Providing Programs to Aid the Communicatively Inpaired[5] (carryforward amount from 2005 only)	Unlimited*	5733.56
19.	Research and Development Loan Repayment Credit[3]	Unlimited*	5733.352 and 166.17 thru 166.21
20.	Credit for Taxes Paid by a Qualifying Pass-through Entity	Unlimited*	5733.0611

*__Unlimited__ – Unused credit amounts may be carried forward until fully utilized

Note 1: Several nonrefundable credits listed in R.C. 5733.98 are not included in the table above because (i) the credit has expired, or (ii) the credit was converted to a refundable credit, or (iii) the credit was converted to a grant.

- Expired credits listed in R.C. 5733.98 but not included in the table are: (i) the subsidiary corporation credit, (ii) the credit for employers that enter into agreements with child day-care centers, (iii) the credit for employers that reimburse employee child day-care expenses, (iv) the credit for employers that establish on-site child day-care centers, (v) the credit for purchases of lights and reflectors for tractors, (vi) the credit for eligible costs associated with a voluntary and (vii) the export sales credit.
- The credit for losses on loans to the Ohio venture capital program is not included in the table because Substitute Senate Bill 321, 126th Ohio General Assembly effective June 5, 2006 made this credit refundable. Furthermore, this credit does not appear and cannot be claimed on the 2009 franchise tax return because no credit certificates were issued for the tax year. For refundable credits applicable to general taxpayers see page 21 of these instructions. For refundable credits applicable to financial institutions see page 8 of the instructions for form FT 1120FI.
- The R.C. 5733.33 second credit for purchases of new manufacturing machinery and equipment (7.5%-13.5% credit) is not included in the table because for taxable years ending after June 30, 2005 the 7.5%-13.5% credit converted to a nonrefundable grant. The grant is claimed af-ter all nonrefundable credits and before all refundable credits. See the instructions for Schedule A, line 23 on page 18 of these instructions.

Note 2: Credits #1 and #3 apply only to financial institutions.

Note 3: For taxpayers subject to the franchise tax phase-out and the CAT phase-in, the 2008 franchise tax report was the last report for claiming the following credits (i) the nonrefundable job retention credit, (ii) the nonrefundable credit for qualified research expense and (iii) the nonrefundable research and development loan repayment credit and (iv) the refundable new jobs credit. Taxpayers that are subject to the franchise tax phase-out and the CAT phase-in can begin claiming the above listed credits against their CAT liability for CAT periods beginning on or after 01/01/08. But, for purposes of making payments, taxpayers cannot apply the credits against their CAT liability for periods beginning before 07/01/08. Tax-payers that are not subject to the franchise tax phase-out (such as financial institutions) can continue claiming the credits against the franchise tax.

Note 4: Credit #15, the credit for using Ohio coal, applies only to electric companies. See the supplemental instructions for electric companies.

Note 5: Credits #16, 17 and 18 apply only to telephone companies. See the supplemental instructions for telephone companies.

Grant for Purchases of New Manufacturing Machinery and Equipment (R.C. 122.172 & 122.173)

Purchase Year	Franchise tax years (report years) in which 1/7 grant amounts are claimed															
	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
7/1/95 to 12/31/95	1/7	1/7	1/7	1/7	1/7	1/7	1/7									
1996	1/7	1/7	1/7	1/7	1/7	1/7	1/7									
1997		1/7	1/7	1/7	1/7	1/7	1/7	1/7								
1998			1/7	1/7	1/7	1/7	1/7	1/7	1/7							
1999				1/7	1/7	1/7	1/7	1/7	1/7	1/7						
2000					1/7	1/7	1/7	1/7	1/7	1/7	1/7					
2001						1/7	1/7	1/7	1/7	1/7	1/7	1/7				
2002							1/7	1/7	1/7	1/7	1/7	1/7	1/7			
2003								1/7	1/7	1/7	1/7	1/7	1/7	1/7		
2004									1/7	1/7	1/7	1/7	1/7	1/7	1/7	
1/1/05 to 6/30/05										1/7	1/7	1/7	1/7	1/7	1/7	1/7

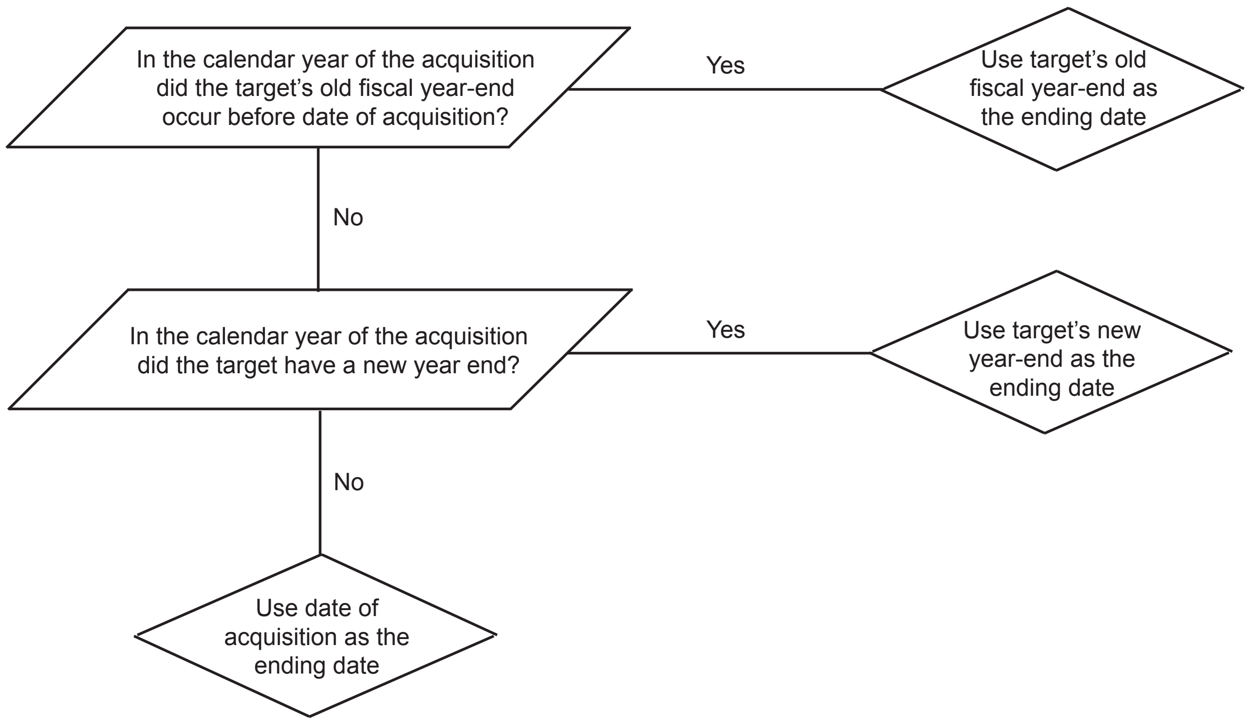
The R.C. 5733.33 credit applies to the taxpayer's taxable years ending on or before June 30, 2005; the R.C. 122.173 grant applies to the taxpayer's taxable years ending after June 30, 2005. See R.C. 5733.33, 122.172 and 122.173.

Purchase Year	Base Years
7/1/95 - 12/31/95	1992, 1993, 1994
1996	1992, 1993, 1994
1997	1992, 1993, 1994
1998	1992, 1993, 1994
1999	1993, 1994, 1995
2000	1994, 1995, 1996
2001	1995, 1996, 1997
2002	1996, 1997, 1998
2003	1997, 1998, 1999
2004	1998, 1999, 2000
1/1/05 - 6/30/05	1999, 2000, 2001

Note: In *DiamlerChrysler Corp. v. Cuno* 547 U.S. (2006). The United States Supreme Court held that the plaintiffs had not established their standing to challenge the 7.5%-13.5% credit (now the 7.5%-13.5% grant). Because the plaintiffs had no standing to challenge the credit, the lower courts erred by considering the plaintiffs' claims on the merits. Because of this decision, taxpayers can continue to claim the grant as provided by Ohio law.

- The taxpayer must claim 1/7 of the grant in each of the seven years following the purchase year. Each 1/7 amount that cannot be used in the year in which it otherwise could have been claimed may be carried forward for three years. The amount carried forward is used before the 1/7 amount for the subsequent year.
- The grant is separately computed for each Ohio county for each purchase year.
- The grant is based upon purchases of qualifying equipment during a calendar year (the purchase year) even if the taxpayer has a fiscal year end.
- For purchases after 12/31/00 a "qualifying controlled group" must compute the grant on a consolidated basis for each county. For purchases on or before 12/31/00 a qualifying controlled group can elect to compute a consolidated grant for each county.
- If before the end of the seven-year period over which the taxpayer claims the grant the taxpayer sells the equipment or moves it out of the county for which it claims the grant and the equipment is not fully depreciated, the remaining 1/7 amounts are lost.
- A pass-through entity (PTE) does not compute the grant. Instead, a PTEs qualifying purchases and base investment flow through to the PTE's investors, each of whom computes the grant.
- Taxpayers claiming the grant must file a grant request form with the taxpayer's franchise tax report or with an amended report filed within the refund statute of limitations.

Decision chart for determining the franchise tax taxable year end of a corporation that changed its annual accounting period as the result of a change in ownership during the calendar year immediately preceding the tax year. Tax Commissioner Rule 5703-5-04, paragraph (B)(2).



Example 1. Prior to Target's 10/01/08 acquisition by New Parent, Target had a 03/31 fiscal year end. Following Target's acquisition by New Parent, Target adopted a calendar year end consistent with that of New Parent. Target is not subject to the franchise tax phase-out. What is Target's franchise tax taxable year for each of the tax years (report years) 2009 and 2010?

Answer 1. In the calendar year of acquisition (2008) Target's old fiscal year end (03/31/08) occurred before the date acquired (10/01/08). Therefore, Target's taxable year for report year 2009 ends on 03/31/08. Target's franchise tax taxable year for the 2009 report is the period 04/01/2007 through 03/31/08. Target's taxable year for the 2010 report is the period 04/01/2008 through 12/31/09.

Example 2. Prior to Target's 03/31/08 acquisition by New Parent, Target had a 10/31 fiscal year end. Following its acquisition by New Parent, Target adopted a calendar year end consistent with that of New Parent. Target is not subject to the franchise tax phase-out. What is Target's franchise tax taxable year for each of the report years 2009 and 2010?

Answer 2. In the calendar year of acquisition (2008) Target's old fiscal year end (10/31/08) did not occur before the date acquired (03/31/08) and in the 2008 year of acquisition the Target did have a new year-end (12/31/08). Therefore, Target's taxable year for report year 2009 ends on 12/31/08. Target's taxable year for the 2009 report is the period 11/01/2007 through 12/31/08. Target's taxable year for the 2010 report is the calendar year 2009.

Example 3. Prior to Target's 08/31/08 acquisition by New Parent, Target had a 11/30 fiscal year end. Following its acquisition by New Parent, Target adopted a 06/30 fiscal year end consistent with that of New Parent. Target is not subject to the franchise tax phase-out. What is Target's franchise tax taxable year for each of the report years 2009 and 2010?

Answer 3. In the calendar year of acquisition (2008) Target's old fiscal year end (11/30/08) did not occur before the date acquired (08/31/08) and in the calendar year of acquisition Target did not have a new year-end (06/30/08). Therefore, Target's taxable year for report year 2009 ends on the 08/31/08 date of acquisition. Target's taxable year for the 2009 report is the period 12/01/2007 through 08/31/08. Target's taxable year for the 2010 report is the period 09/01/08 through 06/30/09.