



**Department of
Taxation**

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

2010



Ohio Corporation Franchise Tax Report Instructions for Financial Institutions

**Ohio Corporation Franchise Tax Instructions for
Financial Institutions Tax Year (Report Year) 2010
Taxable Year Ending in 2009
Ohio Form FT 1120FI**

Note: Payment of the 2009 franchise tax and filing of the 2009 franchise report (based on the corporation's taxable year ending in 2008) marked the completion of the franchise tax phase-out and ended the franchise tax payment and filing obligations for corporations other than financial institutions and certain other corporations described in R.C. 5733.01(G) and 5751.01(E). As such, most corporations are not subject to the franchise tax for tax years (report years) 2010 and thereafter. Corporations that are not subject to the 2010 franchise tax (based on the taxable year ending in 2009) are not subject to the minimum fee and have no report year 2010 franchise tax or exit tax payment or filing obligation.

Financial institutions along with certain corporations described in R.C. 5733.01(G) and 5751.01(E) continue to be subject to the franchise tax and must file a 2010 franchise tax report because financial institutions and certain corporations described in R.C. 5733.01(G) and 5751.01(E) are not subject to the franchise tax phase-out and the commercial activity tax (CAT) phase-in. Financial institutions must file Ohio form FT 1120FI. Other corporations remaining subject to the franchise tax must file Ohio form FT 1120. The franchise tax instructions that follow apply only to financial institutions (defined below). The 2010 franchise tax instructions for other corporations that remain subject to the franchise tax are included in a separate file on our Web site.

In our continuing effort to serve Ohio taxpayers in a cost-effective manner the **Department of Taxation did not mail the 2010 franchise tax instruction booklet or the 2010 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 forms and printed instructions by calling us toll free at 1-800-282-1782.

A financial institution is any of the following:

- A national bank organized and existing as a national bank association pursuant to the "National Bank Act," 12 U.S.C. 21;
- A federal savings association or federal savings bank that is chartered under 12 U.S.C. 1464;
- A bank, banking association, trust company, savings and loan association, savings bank or other banking institution that is incorporated or organized under the laws of any state;
- Any corporation organized under 12 U.S.C. 611 to 631;
- Any agency or branch of a foreign depository as defined in 12 U.S.C. 3101;
- A company licensed as a small business investment company under the "Small Business Investment Act of 1958," 72 Stat. 689, 15 U.S.C. 661, as amended; or
- A company chartered under the "Farm Credit Act of 1933," 48 Stat. 257, 12 U.S.C. 1131(d), as amended.

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

Recent Legislation

Amended Substitute House Bill 1 (HB 1 – the budget bill), 128th General Assembly. Among other provisions HB 1 enacted two new franchise tax credits: a refundable motion picture credit and a non-refundable new markets credit (similar to the federal new markets credit). In addition, HB 1 amended the refundable jobs creation tax credit, the nonrefundable job retention credit, the refundable historic building preservation credit as well as other lesser used credits. For a summary of all except the new markets credit see "Recent Legislation" on page 1 of the 2010 franchise tax instructions for corporations that are not financial institutions (available in a separate file on our Web site). The summary of the new markets credit is included below because the new markets credit is available only to insurance companies and financial institutions.

New Markets Tax Credit (R.C. 5725.33, 5729.16 and 5733.58). The Ohio new markets credit is similar in concept and definition to the federal new markets credit (IRC section 45D). However, the Ohio credit applies only to financial institutions as a nonrefundable credit against the franchise tax and to insurance companies as a credit against the premiums tax. In addition, the Ohio new markets credit applies only to the extent that the *community development entity* (in which the financial institution or insurance company holds an equity investment) invests in *qualified active low-income community businesses* in Ohio. The aggregate total Ohio credit is limited to \$10 million per year. Credits not used in the year that they otherwise could have been claimed can be carried forward for four years. (Terms in *italics* are defined in R.C. 5725.33 and/or in IRC section 45D.)

Specifically, the Ohio new markets credit applies to taxpayer financial institutions and insurance companies that purchase and hold on the *credit allowance date* a *qualified equity investment* in an IRC section 45D community development entity (CDE) whose service area includes (at least some portion of) Ohio. The financial institution or insurance company must acquire for cash after Oct. 16, 2009 (the effective date of R.C. 5725.33 as enacted by HB 1) a qualified equity investment in a CDE at its original issuance. The CDE in turn must use at least 85% of the taxpayer's equity investment purchase price to make capital investments in or loans to businesses in *low-income communities* and at least a portion of the CDE's investments must be in active businesses located in Ohio low-income communities.

In order to claim the credit for a particular tax year, a financial institution must hold a qualified equity investment on the credit allowance date occurring in the calendar year immediately preceding the tax year. On the other hand, insurance companies must hold a qualified equity investment on the credit allowance date occurring in the calendar year for which the tax is due. For qualified equity investments made after Oct. 16, 2009 and before Jan. 1, 2010, the taxpayer's credit allowance dates are Jan. 1, 2010 and Jan. 1 of the six following years. For qualified equity investments made on or after Jan. 1, 2010, the taxpayer's credit allowance dates are the date on which the taxpayer made the qualified equity investment and the anniversary of that date in each of the six following years.

The Ohio new markets credit is computed by multiplying the *adjusted purchase price* of the taxpayer's qualified equity investment in the qualified community development entity by the *applicable percentage* on the credit allowance date. See the formulas below. The applicable percentage is 0% for each of the first two credit allowance dates, 7% for the third credit allowance date, and 8% for each of the four following credit allowance dates. Thus, the total Ohio credit over the seven credit allowance dates equals 39% of the adjusted purchase price.

The adjusted purchase price of the taxpayer's qualified equity investment is equal to the amount that the taxpayer paid for the quali-

fied equity investment in the CDE multiplied by a fraction the numerator of which is qualified low-income community investments made by the CDE in projects located in Ohio on the credit allowance date and the denominator of which is the total amount of qualified low-income community investments made by the CDE in projects located in all states on the credit allowance date. However, the qualified low-income community investments made by the issuer in projects located in Ohio is equal to the sum of the qualified low-income community investments in each qualified active low-income community business in Ohio and the amount included in the numerator for each such investment is limited to \$2,564,000 million.

$$\text{Credit} = \frac{\text{Adjusted purchase price}}{\text{Adjusted purchase price}} \times \frac{\text{Applicable \% on credit allowance date}}{\text{Applicable \% on credit allowance date}}$$

$$\text{Adjusted purchase price} = \frac{\text{Amount paid for qualified equity investments} \times \text{Issuer's QLIC investments in Ohio on credit allowance date}^1}{\text{Issuer's QLIC investments in all states on credit allowance date}}$$

¹ The issuing qualified community development entity's qualified low-income community (QLIC) investments in Ohio projects is limited to investments in qualified active low-income community businesses in Ohio and each such investment is not to exceed \$2,564,000 million.

Note: The new markets credit does not appear on the 2010 franchise tax report for financial institutions, Ohio form FT 1120FI, because the credit cannot be claimed for 2010. As noted above, the credit percentage for the taxpayer's first two "credit allowance dates" is zero.

For additional information visit the Ohio Department of Development's Web site at <http://development.ohio.gov/UD/ONM/> or call 614-995-2292.

Decisions Ohio Supreme Court

Nestle R&D Ctr., Inc. v. Levin Slip Opinion No. 2009-Ohio-1929. Reversing the Board of Tax Appeals and agreeing with the taxpayer, the court held that Nestle's 2001 franchise tax refund claim filed Jan. 6, 2005, based on a jobs creation tax credit (JCTC) certificate issued by the Ohio Department of Development (ODOD) on Dec. 6, 2004, was timely filed within the R.C. 5733.12 refund statute of limitations period. According to the court, the refund claim was timely because the three-year refund statute of limitations with respect to Nestle's JCTC for tax year 2001 began to run on Dec. 6, 2004, the date that ODOD issued the tax credit certificate substantiating the credit amount. (The Department of Taxation argued that the R.C. 5733.12 refund statute of limitations began to run on Oct. 15, 2001, the extended due date of the taxpayer's 2001 franchise tax report. So according to the department, the three-year refund statute of limitations period expired on Oct. 15, 2004.)

The court stated that "... the issuance on Dec. 6, 2004 of the certificate for taxable year 2000 retroactively established the illegal and excessive character of payments attributable to the tax year 2001 up to the amount of the credit (and also that the taxpayer would be entitled to collect the excess of credit over payments, if any). At that point the refund claim accrued for purposes of the limitations period and, as a result, the filing of the refund claim in January 2005 was timely."

Although *Nestle* specifically addressed the R.C. 122.17 refundable jobs creation tax credit, the department will apply *Nestle* to franchise

tax refund claims filed with respect to any franchise tax credit, whether refundable or nonrefundable, that, when claimed, must be accompanied by a tax credit certificate substantiating the credit amount. So, for any franchise tax overpayment that is based on a credit that cannot be claimed until the taxpayer has received a tax credit certificate, the refund statute of limitations begins to run on the date that the credit certificate is issued.

Nestle also affects the interest calculation on such overpayments. Specifically, with respect to franchise tax credits that must be substantiated by a tax credit certificate before the taxpayer can claim the credit, the Department will compute interest on the overpayment from the date that the Ohio Department of Development issued the tax credit certificate – not from the date that the taxpayer paid the tax.

Reason: R.C. 5733.12 requires the payment of interest "as provided by section 5733.26 of the Revised Code." R.C. 5733.26 states that interest is paid from *the date of the illegal, erroneous, or excessive payment* – the same term used in R.C. 5733.12 upon which the *Nestle* Court relied in determining that Nestle's refund claim was timely filed. That is, because *the date of the illegal, erroneous or excessive payment* with respect to the refund statute of limitations is the date on which the tax credit authority issues a tax credit certificate for the amount of the credit, interest on the overpayment with respect to the credit must be computed from the same date.

General Instructions and Information

The Ohio corporation franchise tax is an excise tax imposed on certain 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. Those corporations to which the franchise tax phase-out does not apply are subject to the franchise tax for each calendar year (tax year) for which on the first day of January of that calendar year the corporation holds an Ohio charter, does business in Ohio, owns or uses a part or all of its capital or property in Ohio, holds a certificate of compliance authorizing the corporation to do business in Ohio, or otherwise has nexus with Ohio under the Constitution of the United States.

The franchise tax is levied on the value of a corporation's issued and outstanding shares of stock. The value of issued and outstanding shares of stock is determined from the books of the taxpayer as of the beginning of the taxpayer's annual accounting period that includes the first day of January of the tax year. See R.C. 5733.056(B). Corporations remaining subject to the franchise tax after the phase-out, other than financial institutions, must determine the value of their issued and outstanding shares of stock under both the net income base and the net worth base and pay the tax on the base that produces the greater tax. Financial institutions are not subject to the tax on the net income base but are subject to the tax on the net worth base at a higher rate than other taxpayers. Financial institutions must file Ohio form FT 1120FI. Other corporations remaining subject to the franchise tax must file Ohio form FT 1120.

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 2010 is paid for the privilege of doing business in Ohio during the calendar year 2010.

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 corporation's franchise tax 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 2010 is based upon the taxpayer's activity during its taxable year ending in 2009.** See R.C. 5733.031(A), 5733.04(E) and general instruction #7. Unless otherwise stated, all references are to the Ohio Revised Code (R.C.).

1. Who Must File

Unless an exemption applies (see general instruction #2), a financial institution is subject to the franchise tax for each calendar year (tax year) that on the first day of January of that calendar year the corporation holds an Ohio charter, does business in Ohio, owns or uses a part or all of its capital or property in Ohio, holds a certificate of compliance authorizing the corporation to do business in Ohio, or otherwise has nexus with Ohio under the Constitution of the United States.

Each financial institution that is subject to the franchise tax must file an Ohio corporation franchise tax report. Financial institutions must file Ohio form FT 1120FI; all other C corporations that remain subject to the franchise tax after the phase-out must file Ohio form FT 1120.

2. Entities Generally Not Subject to Franchise Tax

A. Financial Institutions That Are S Corporations

If a financial institution is an S corporation, it generally is not subject to the franchise tax. However, if the S corporation financial institution was a C corporation during any portion of a taxable year ending in 2009, the S corporation is subject to the franchise tax for tax year 2010 and must file an Ohio corporation franchise tax report (form FT 1120FI). See *First National Bank of Lebanon v Zaino*, B.T.A. Case No. 2003 M-627, March 19, 2004 and *Sanders Health & Fitness Inc. v. Limbach*, B.T.A. Case No. 88-E-559, June 21, 1991.

Although an S corporation financial institution is generally not subject to the franchise tax, the S corporation may be subject to the tax on pass-through entities. An S corporation that has nexus with Ohio is subject to the tax on pass-through entities if one or more shareholders of the S corporation are nonresidents for any portion of the S corporation's taxable year and the S corporation does not file a composite Ohio income tax return on behalf of the nonresident shareholders. For a further explanation of the tax on pass-through entities see the instructions for Ohio form IT 1140, Pass-Through Entity and Trust Withholding Tax Return.

B. Qualified Subchapter S Subsidiaries

A financial institution that is a "qualified Subchapter S subsidiary" (QSSS) is exempt from the franchise tax that is based on the taxable year for which the parent S corporation makes the election under Internal Revenue Code (I.R.C.) section 1361(b)(3)(B)(ii). A QSSS is exempt because its separate legal existence is ignored for purposes of the franchise tax.

C. Corporations in Bankruptcy

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

D. Corporations Exempt Under Federal Law

Certain corporations are exempt from state tax because Congress has expressly granted them immunity as a "federally chartered instrumentality." For example, federal land bank associations are exempt from state taxes under 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. Other exceptions to the franchise tax phase-out.

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

4. Nexus

Unless an exemption applies, a financial institution that has nexus in or with Ohio under the Constitution of the United States is subject to the franchise tax. A corporate investor in a pass-through entity that does business in Ohio or otherwise has nexus in or with Ohio under the Constitution of the United States is itself doing business in Ohio and has nexus with Ohio. Accordingly, a financial institution organized in a state other than Ohio 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 (LLC) 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, LLC 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 September 2001 information release describing the standards the Department of Taxation will apply to determine whether an out-of-state corporation is subject to the franchise tax, and (3) the department's March 15, 2001 information release entitled "Corporation Franchise Tax Nexus for Nonresident Limited Partners Following the UCOM Decision." The Ohio Revised Code and the information releases are available on the Department of Taxation's Web site.

5. Entity Classification

An entity not organized as a corporation but for federal income tax purposes treated as a corporation is also treated as a corporation for Ohio franchise tax purposes. Furthermore, an equity interest in an entity not organized as a corporation, but for federal income tax purposes treated as a corporation, is treated as an ownership of stock in a corporation. Thus, if a business trust, partnership or LLC is treated as a corporation for federal income tax purposes, it also will be treated as a corporation for Ohio franchise tax purposes. Accordingly, such entities, unless otherwise exempt, must compute the tax and file a franchise tax report. See R.C. 5733.01 and the Department of Taxation's information release entitled: "IRS 'Check-the-Box' Entity Selection Regulations" available on the department's Web site.

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 Ohio franchise tax purposes. See R.C. 5733.01(F). Accordingly, a single-member LLC treated as a division of the corporate member for federal income tax purposes is treated as a division of the corporate member for franchise tax purposes. The corporate owner-member is subject to the franchise tax as if the LLC were a division of the corporation for both federal income tax and franchise tax purposes. That is, for franchise tax purposes:

- If the disregarded entity has nexus with Ohio, then the owner has nexus with Ohio.
- An interest in a disregarded entity is treated as ownership of the assets and liabilities of the disregarded entity itself.
- A disregarded entity’s income, including gains or loss is included in the owner’s 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.
- A disregarded entity’s property, payroll and sales are included in the owner’s property, payroll and sales factor.

6. Dissolution or Surrender of License

Each corporation seeking dissolution of its charter or surrender of its license to transact business in Ohio must submit to the Secretary of State a filing fee along with various affidavits or documents evidencing that the corporation has paid or adequately guaranteed various taxes and fees. For further information regarding the requirements of dissolving a corporation's charter or surrendering a corporation's license to conduct business in Ohio, please contact the office of the Secretary of State, 180 East Broad Street, 16th Floor, Columbus, Ohio 43215 or call that office at (614) 466-3910 or toll free 1-877-767-3453. 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 January 1 of the tax year holds a charter or license to transact business in Ohio is subject to the Ohio franchise tax for that tax year even if prior to the beginning of the tax year it has ceased all business activities in Ohio and has applied for certificates showing the payment or adequate guarantee of all required taxes. See R.C. 5733.17.

7. 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 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. 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 twelve months in length. For example, a franchise tax taxable year may consist of two (or more) federal taxable years and can exceed 12 months 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 circumstances: (a) a corporation that has changed its tax-

able year for federal income tax purposes, (b) a corporation that as a result of a change of ownership has two or more short federal taxable years and (c) a new taxpayer that would otherwise not have a taxable year.

The Department of Taxation 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, Rule 5703-5-04 eliminates income proration for taxable years that exceed one year in length. (Because financial institutions are not subject to the net income base of the franchise tax, the elimination of income proration has no effect on the tax paid by financial institutions.) 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 January of the tax year.
- If a taxpayer changes its annual accounting period, there is (i) no period that is not subject to tax, and (ii) no period that is subject to tax in more than one tax year.
- A franchise tax “taxable year” under certain circumstances 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 2009, taxpayers must determine the value of their issued and outstanding shares of stock as follows:

- For report year 2010 **calendar year end taxpayers** must use the period ending Dec. 31, 2009.
- For report year 2010 **fiscal year end taxpayers** must use the fiscal period ending in 2009. However, **taxpayers filing their first report** must use the applicable period set out below.
 - A. If a taxpayer incorporated in Ohio during 2009 and adopted a fiscal year ending in 2009, then the taxpayer’s taxable year begins on the date of incorporation and ends on the last day of its fiscal period ending in 2009.
 - B. If the taxpayer is a foreign corporation and first became an Ohio taxpayer during 2009 (that is, during 2009 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 2009, 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 taxable year ends on the taxpayer's fiscal year ending in 2009.

- 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, 2009. See paragraphs (E)(2) and (E)(4) of Tax Commissioner Rule 5703-5-03.

If the corporation changed its taxable year in 2008 or 2009 or if the corporation had more than one federal taxable year ending in calendar year 2009, please see the above rules to determine the taxpayer's taxable year. See our Web site for a copy of the rules.

8. Tax Rate and Minimum Fee

A financial institution is subject to the franchise tax at the rate of 13 mills (.013) on its net value of stock apportioned to Ohio. However, the tax cannot be less than the minimum fee.

The **minimum franchise tax fee is \$1,000** if either (i) the sum of the taxpayer's gross receipts from its activities within and without Ohio during the taxable year equal or exceed \$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).

9. 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 that is not a Saturday, Sunday or legal holiday. Certain large taxpayers must pay by electronic funds transfer (see general instruction #9D).

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

The filing and payment of the Ohio franchise tax for report year 2010 is due between Jan. 1 and March 31, 2010. However, if by Jan. 31 the taxpayer does not file the report and make full payment of the tax, then by Jan. 31 the taxpayer must file Ohio 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. But, 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 Ohio form FT 1120E (see general instruction #9D).

B. Extension

The tax commissioner will grant an automatic extension of time for filing the report until May 31, 2010 if by March 31, 2010 the taxpayer submits Ohio 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 Ohio form FT 1120ER by March 31 even if no additional payment is due. But, 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 Ohio form FT 1120ER (see general instruction #9D).

Additional Extension

The tax commissioner will grant an additional automatic extension of time for filing the report beyond May 31, 2010 if the taxpayer has been granted an extension by the IRS and by May 31 the taxpayer submits Ohio 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 IRS has granted an extension for filing the corporation's federal income tax return. A copy of the federal extension must be attached to the franchise report, Ohio form FT 1120FI, when filed.

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 IRS has granted an extension for filing the corporation's federal income tax return and the taxpayer should not file Ohio form FT 1120EX (see general instruction #9D).

The table below lists the latest possible due dates for filing the franchise tax report for tax year 2010 for the various taxable years ending in 2009. The table reflects the following assumptions:

- If the taxpayer's taxable year ended on or after Aug. 31, 2009, the taxpayer has the maximum allowable federal extension,
- The taxpayer has timely filed franchise tax Ohio forms FT 1120E, FT 1120ER and, where applicable, FT 1120EX, and
- The taxpayer made a good faith effort to timely pay its estimated franchise tax.

Taxable Year Ending	Latest Possible Due Date for Filing the 2010 Franchise Tax Report
01/31/09 through 7/31/09	05/31/2010
08/31/2009	06/15/2010
09/30/2009	07/15/2010
10/31/2009	08/15/2010
11/30/2009	09/15/2010
12/31/2009	10/15/2010

Note: Payment of all franchise tax for tax year 2010 is due by May 31, 2010, even if the taxpayer has an extension to file after that date.

C. Place

File the franchise report with the **Ohio Department of Taxation, P.O. Box 27, Columbus, Ohio 43216-0027**. However, if the report is an amended report, please do not send it to the above address. If an **amended report** reflects a **balance due** or no change in liability, please send the amended report along with payment to:

**Ohio Department of Taxation
Corporation Franchise Tax
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 (Ohio form FT REF) or (ii) a complete explanation of the amendment to:

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 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 of Taxation'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.

10. Interest on Underpayments and Overpayments

During calendar year 2010 interest on underpayments and overpayments accrues at the rate of 4% per annum (based on the rounded federal short term rate of 1% plus the additional 3% prescribed by R.C. 5703.47(B)). See the tax commissioner's Oct. 15, 2009 administrative journal entry located at http://tax.ohio.gov/divisions/ohio_individual/individual/interest_rates.stm. Also see R.C. 5703.47.

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 interest 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 overpayments with respect to franchise tax credits that cannot be claimed until receipt of a tax credit certificate substantiating the credit amount is payable from the date that the tax credit certificate is issued – not from the date the taxpayer paid the tax. Examples of franchise tax credits that cannot be claimed until receipt of a credit certificate include, but are not limited to, the jobs creation tax credit, the job retention credit, the historic building preservation credit and the research and development loan repayment credit.

Reason:

- The R.C. 5733.12 franchise tax refund statute of limitations states that a refund claim must be filed within three years from *the date of the illegal, erroneous or excessive payment*.
- R.C. 5733.12 also provides for the payment of interest on overpayments "as provided by section 5733.26 of the Revised Code."

- R.C. 5733.26 states that interest on an overpayment is paid from *the date of the illegal, erroneous or excessive payment* – the same term used in R.C. 5733.12.
- In *Nestle R&D Ctr., Inc. v. Levin* Slip Opinion No. 2009-Ohio-1929 the Ohio Supreme Court held that *the date of the illegal, erroneous or excessive payment* with respect to the refund statute of limitations for the jobs creation tax credit is the date on which the tax credit authority issues a tax credit certificate for the amount of the credit.
- As such, the Department will compute interest on overpayments resulting from the jobs creation tax credit (and other franchise tax credits that when claimed must be substantiated by a tax credit certificate) from the date that the Ohio Department of Development issued the tax credit certificate – not from the date that the taxpayer paid the tax.

In *Nestle* the Ohio Supreme Court held that Nestle's 2001 franchise tax refund claim filed Jan. 6, 2005, based on a jobs creation tax credit (JCTC) certificate issued by the Ohio Department of Development on Dec. 6, 2004, was timely filed within the R.C. 5733.12 refund statute of limitations period because the three-year refund statute of limitations with respect to Nestle's JCTC for tax year 2001 began to run on the date that ODOD issued the tax credit certificate substantiating the credit amount. The court stated as follows: "... the issuance on Dec. 6, 2004 of the certificate for taxable year 2000 retroactively established the illegal and excessive character of payments attributable to the tax year 2001 up to the amount of the credit (and also that the taxpayer would be entitled to collect the excess of credit over payments, if any). At that point the refund claim accrued for purposes of the limitations period and, as a result, the filing of the refund claim in January 2005 was timely." See *Nestle R&D Ctr., Inc. v. Levin* Slip Opinion No. 2009-Ohio-1929. A summary of *Nestle* is included under "Decisions" on page 2 of these instructions.

11. 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.

12. 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 prior to the first day of June of the tax year" and (2) "any period of delinquency commencing the first day of June of the tax year and concluding on the extended due date." See 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).

13. 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.

14. Paid Practitioner'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).

15. Methods of Accounting

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

16. Rounding Off to Whole Dollar Amounts

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

17. Records Retention

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

18. Enterprise Zone Tax Benefits

Note: House Bill 1 (Budget Bill), 128th General Assembly extends through Oct. 15, 2010 the authority for local governments to enter into enterprise zone agreements. See R.C. 5709.62 as amended by HB 1.

Businesses that establish, expand, renovate or occupy a facility pursuant to an enterprise zone agreement and that create new jobs in a certified enterprise zone without reducing employment elsewhere in Ohio may be entitled to a series of franchise tax benefits. See R.C. 5709.64 and 5709.65. Among these benefits are an employee training credit, a daycare credit and treatment of the qualifying property as an exempted asset under the net worth base.

To qualify for franchise tax enterprise zone benefits, businesses must (i) hold a Tax Incentive Qualification Certificate (issued by the Department of Development) and (ii) hire new employees to fill nonretail positions at the facility. 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 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. For more information on the Credit for Eligible New Employees in an Enterprise Zone see Schedule A-1, credit #7 in the instructions booklet for corporations that are not financial institutions.

19. 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, both the assessment statute of limitations and the refund statute of limitations may be extended for an agreed-upon period if both the taxpayer and the tax commissioner consent in writing to the extension by signing Ohio 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 #22 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 is deemed a report subject to assessment. However, the amended report does not reopen those facts, figures, computations or attachments from a previously filed report no longer subject to assessment or refund that are not affected, either directly or indirectly, by the adjustment to the corporation's federal income tax return. Furthermore, once the three-year refund statute of limitations has passed, the taxpayer may not offset the additional franchise tax resulting from IRS audit adjustments against franchise tax that the taxpayer erroneously overpaid due to errors or mistakes unrelated to the federal adjustments. See *Gen. Motors Corp. v. Limbach* (1993), 67 Ohio St. 3d 90.

The statute of limitations does not 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 pre-

scribed in R.C. 5703.47 from the date the tax commissioner issues the assessment until the date the taxpayer pays the assessment.

If the taxpayer disagrees with an assessment, the taxpayer may object to the assessment by timely filing a petition for reassessment. See general instruction #20.

20. Application for Refund and Petition for Reassessment

Franchise taxpayers may request a refund by filing either prescribed Ohio form FT REF, Application for Corporation Franchise Tax Refund, or by filing an amended report accompanied by the full and complete reason for the refund claim. **Please do not file an application for refund if the claimed overpayment 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 Ohio form PR, Petition for Reassessment.

Application for Corporation Franchise Tax Refund (Ohio form FT REF) applies to claimed overpayments by a taxpayer, whether made voluntarily or as the result of the payment of an assessment issued by the Ohio Department of Taxation. If the overpayment is not the result of an IRS adjustment and the statute of limitations has not been extended by Ohio form FT WAIVER (see general instruction #19), then within three years of the date of the illegal, erroneous or excessive payment the department must receive (i) the application for refund along with an amended report or (ii) an amended report accompanied by the full and complete reason for the refund claim. See *Abitibi-Price Corporation and Subsidiaries v. Tracy*, BTA No. 98-N-401 (3-12-01).

Please mail your amended report and Ohio 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 a report is amended by checking the appropriate box on the front of the report. **Do not send the Ohio form FT REF and amended report to the address shown on the franchise tax form.**

Refund Statute of Limitations Law. For purposes of the refund statute of limitations, payment made before the due date or extended due date for filing the report to which the payment relates are deemed to have been made on the due date or extended due date. See 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 [Ohio form FT 1120E] and extension requests [Ohio 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, February 26, 1993.

If the claimed overpayment is the result of a change in federal taxable income, then the department must receive the claim for refund within the later of the following: (a) the three-year time period set forth above or (b) the one-year period set forth in general instruction #16 in

the franchise tax instruction booklet for corporations that are not financial institutions (available in a separate file on the Department of Taxation's Web site). 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 Ohio form FT WAIVER (see general instruction #19), 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 that is 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 thereof) for the taxable year in which the capital loss arose. See *Prechter v. Tracy*, BTA Case No. 95-M-1214, April 4, 1997.

A taxpayer cannot use a refund claim form (Ohio form FT REF) 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 after 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 mails 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 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 Ohio form PR, Petition for Reassessment. Ohio form PR applies only to **assessments** (not to proposed corrections) issued by the Ohio Department of Taxation.

A taxpayer must file its petition within 60 days of receipt of the assessment. If the taxpayer sends the petition by certified mail, the date of postmark is considered the date filed. If the taxpayer sends the petition by regular mail, the date the Department 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 who has timely filed a Petition for Reassessment may raise additional written objections to the assessment at any time prior to the date of the tax commissioner's final determination. If a taxpayer 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 that must be paid upon the filing of a Petition for Reassessment is as follows:

1. If the sole item objected to is the assessed penalty or interest, the assessed corporation must pay the entire assessment except for the penalty.
2. If prior to the date of issuance of the assessment the assessed corporation failed to file (i) the annual report required by R.C. 5733.02, (ii) any amended report required by R.C. section 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 that portion of the assessment representing any unpaid balance as shown on those reports together with all related interest.
4. If the assessed corporation does not dispute that it is a taxpayer, but claims the protections of section 101 of Public Law 86-272, 73 Stat. 555, 15 U.S.C.A. 381, as amended, the assessed corporation must pay only that portion of the assessment representing any unpaid balance of taxes shown due on the corporation's franchise tax report.
5. If none of the conditions specified in (1), (2), (3) and (4) above apply, or if the assessed corporation claims that it is not a taxpayer (that is, if the assessed corporation disputes that it is subject to the franchise tax), the assessed corporation is not required to pay any portion of the assessment.

However, any unpaid portion of the assessment that 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 #10 for interest on underpayments and overpayments.

Uniform petition for reassessment procedure. 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 that 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. The commissioner's corrected assessment

issued in response to the taxpayer's petition may increase the original assessment outside the assessment statute of limitations period. In addition, this law permits the commissioner to correct an assessment even if the taxpayer did not properly file a petition for reassessment or did not file a petition for reassessment. A more in-depth summary of this law is available in general instruction #26 of the franchise tax instructions for corporations that are not financial institutions. Those instructions are available in another file on the Department of Taxation's Web site.

21. Taxpayer's Bill of Rights; Requests for an Opinion

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's 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 facts of the activity or transaction for which the opinion is requested;
- Identify the parties involved in the activity or transaction about which the opinion is requested;
- Set out the specific legal question or questions for which the opinion is requested; and
- Be signed by an officer of the corporation authorized to act on its behalf.

For further information see Rule 5703-1-12, Requests for an Opinion of the Tax Commissioner, available on the Department of Taxation's Web site.

22. 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 R.C. 5703.56.

23. 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 that is 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 offset can be made only if those debts have become "final." See R.C. 5733.121.

Line Instructions Schedule A – Computation of Franchise Tax

Line 7 – Overpayment Carryforward from 2009. Enter the overpayment shown on the originally filed 2009 report that was credited to estimated tax payments for tax year 2010.

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 Ohio 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 #20.

Line 8 – Estimated payments made in 2010. Enter the estimated payment paid with Ohio form FT 1120E – Declaration of Estimated Franchise Tax; Ohio form FT 1120ER – Application for Automatic Extension; and Ohio form FT 1120EX– Request for Additional Extension.

Line 9 – Refundable credits:

Refundable jobs creation tax credit (JCTC). (R.C. 122.17.)

New law: Amended Substitute House Bill 1 (HB 1), 128th General Assembly recently amended the new jobs credit for credit agreements entered into on or after the Oct. 16, 2009 effective date of the new law. Under the new law the credit is computed as a percent of the growth in income tax withholding at the project site over the taxpayer's base year withholding at the project site as adjusted by a "pay increase factor." Under the new law withholding includes both Ohio income tax and school district income tax withheld from all employees at the project site regardless of whether the employee is full-time or part-time and regardless of whether the employee is a new employee. For additional information see R.C. 122.17 as amended by HB 1, 128th General Assembly. Also see "Recent Legislation" beginning on page 1 of the franchise tax instructions for corporations that are not financial institutions, which is available in a separate file on our Web site.

For credit agreements entered into before the new law's Oct. 16, 2009 effective date, prior law applies and the credit is computed only with respect to Ohio income tax amounts withheld from "new" full-time employees at the project site. The instructions that follow apply to credit agreements that are entered into before Oct. 16, 2009.

The refundable new jobs 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 tax-

payer 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.

Amended Substitute House Bill 699, 126th General Assembly amended the following with respect to the new jobs credit:

- The definition of the term "full-time employee." "Full-time employee now includes employees on active duty reserve or Ohio national guard service,
- The definition of the term "new employee." Under certain conditions a full-time employee may be considered a "new employee" despite having been previously employed by the taxpayer's related member, and
- The conditions under which the Department of Development can reduce the credit percentage.

Amended Substitute House Bill 119, 127th General Assembly also amended the definition of the term "full-time employee." "Full-time employee now includes an individual who is employed for consideration and who otherwise meets the definition of "full-time employee" but is on family or medical leave under the federal Family and Medical Leave Act.

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 60 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, Strategic Business Investment Division, Office of Grants and Tax Incentives, P.O. Box 1001, Columbus, Ohio 43216-1001. The street address for the Ohio Department of Development is 77 S. High Street, 28th floor, Columbus, Ohio 43215. For additional information please visit the Ohio Department of Development's Web site at <http://www.development.ohio.gov/EDD/jctc> or call (614) 466-4551 or (800) 848-1300.

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)(33) for more information.

Refundable credit for losses on loans made to the Ohio Venture Capital (OVC) Program. (R.C. 150.01 to 150.10, 5733.49, 5733.98, 5747.80 and 5747.98)

The refundable credit for losses on loans made to the Ohio Venture Capital (OVC) Program does not appear on the 2010 Ohio franchise tax report (or on the 2009 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.

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).

New law: Amended Substitute House Bill 1, 128th General Assembly amended R.C. 5733.47 and 5747.76. The new law specifically provides that if a pass-through entity (PTE) owns and restores a historic building with respect to which the Ohio Department of Development issued a preservation tax credit certificate for the PTE's "qualified rehabilitation expenditures," the PTE can allocate the credit among the PTE's equity owners in proportion to their ownership interests or in such proportions or amounts as the equity owners mutually agree. The new law applies to credits claimed with respect to certificates issued in taxable years ending on or after Oct. 16, 2009. See section 803.20 of the Bill. (While prior law did not specifically address credit allocation, the department maintained that the pass-through entity must allocate the credit to each equity investor in accordance with the investor's interest in the pass-through entity on the date that the pass-through entity filed the tax credit certificate request.)

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 issued 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.

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 (the law as it existed prior to amendment by Amended Substitute House Bill 554, 127th General Assembly, effective Sept. 11, 2008) 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 <http://development.ohio.gov/urban/OHPTC>. Please direct your questions and comments regarding the Ohio Historic Preservation Tax Credit to the Ohio Department of Development's Urban Development Division from their Web site or call (614) 995-2292.

Refundable motion picture credit.

New law: A motion picture company whose motion picture was pre-certified by the director of development as a tax credit-eligible production may apply to the director on or after July 1, 2009 for a refundable credit equal to a percentage of the motion picture company's eligible production expenditures with respect to the tax credit eligible production. For additional information see "Motion picture credit" under "Recent Legislation" on page 1 of the franchise tax instructions for corporations that are not financial institutions.

Line 12 – Interest and Penalty. Enter any interest and penalty due as explained in general instructions #10, #11 and #12.

On lines 15 and 16 enter the amount of overpayment to be refunded and/or to be credited against next year's tax liability.

Line 15 – Amount of line 14 to be credited to year 2011 estimated tax and/or

Line 16 – Amount of line 14 to be refunded.

Note: An overpayment shown on an **amended** report cannot be credited against the tax liability for any other year. If an amended report reflects an overpayment, the taxpayer must also submit Ohio 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 #20.

Schedule B – Balance Sheet

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

Schedule C – Exempted Assets (Net Book Value)

Exempted assets are determined from the books of the taxpayer as of the beginning of the taxpayer's annual accounting period that includes the first day of January of the tax year. See R.C. 5733.056(B). For example, if an Ohio franchise taxpayer has a taxable year beginning July 1, 2008 and ending June 30, 2009, the taxpayer's exempted assets for tax year 2010 are determined as of July 1, 2009, the beginning of the taxpayer's annual accounting period that includes the first day of January 2010. Generally, the figures at the beginning of the taxpayer's annual accounting period that includes the first day of January of the tax year (in this example, July 1, 2009) will be the same as the figures at the end of the taxable year that concludes prior to Jan. 1 of the tax year (in this example, June 30, 2009).

Line 1 – Goodwill. Enter the amounts that reflect goodwill as shown in the annual report to shareholders. "Goodwill" is the cost in excess of fair value of net assets acquired. An intangible asset is not goodwill if it can be separately purchased and sold and has a separate, identifiable value (see *GCC Beverages, Inc. v. Limbach*, B.T.A. Case Nos. 87-H-1278 and 87-B-1279, August 25, 1989). A taxpayer's "core deposit intangible" is not goodwill (see *Savings Bank v. Limbach*, BTA No. 87-C-733 (11-2-90)).

Line 2 – Abandoned Property. Enter the amounts that reflect abandoned property as shown in the annual report to shareholders.

Line 3 – Appreciation. Enter the amounts that reflect appreciation as shown in the annual report to shareholders. Appreciation is an increase in asset value that occurs after acquisition. A taxpayer who accounts for its investment in subsidiaries under the equity method of accounting and maintains on its books a separate investment account for each individual investee may exclude as exempt appreciation the sum of the positive appreciation amounts and is not required to net positive and negative appreciation amounts. *SHV North America Corp. v. Tracy* (1994), 70 Ohio St.3d 395. (Under the equity method of accounting the investor initially records an investment in stock of an investee at cost and increases the carrying amount of the investment to recognize the investor's share of the earnings of the investee after the date of acquisition. Likewise, the investor reduces the carrying amount of an investment by its share of the investee's losses and by dividends received from the investee.)

Following a reorganization and merger in which there has been no substantial change of ownership, a taxpayer may deduct as exempt appreciation the undistributed earnings of the merged corporation that it previously deducted before the reorganization and merger and that after the reorganization and merger are reflected in the taxpayer's investment in the new corporation. See *Sun Refining and Marketing Co. v. Limbach*, B.T.A. Case No. 90-R-464, June 30, 1993.

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

A taxpayer may not deduct as exempt appreciation the increase in the cash surrender values of whole life insurance policies of which the taxpayer was both owner and beneficiary. See *National City Bank v. Wilkins*, 111 Ohio St. 3d 485, 2006-Ohio-6110.

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

Schedule D – Apportionment Formula

Note: Terms appearing in italics are defined in the law. The definitions of the terms begin on page 16 of these instructions.

Sales Factor

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

Line 1 – Receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property. The numerator of the factor (within Ohio) includes receipts from the lease, rental or sublease of real property located in Ohio.

Line 2 – Receipts from the lease or rental of tangible personal property owned by the taxpayer. The numerator of the factor includes receipts from the lease or rental of tangible personal property other than *transportation property* if the property is located in Ohio when first placed in service by the lessee. The numerator of the factor also includes receipts from the lease or rental of transportation property owned by the taxpayer to the extent that the property is used in Ohio. The extent an aircraft is deemed to be used in Ohio and the amount of receipts included in the numerator of the factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction whose numerator is the number of landings of the aircraft in Ohio and whose denominator is the total number of landings of the aircraft. If the extent of use within Ohio of any transportation property cannot be determined, the property will be deemed to be used wholly in the state in which the property has its *principal base of operations*. A motor vehicle is deemed to be used wholly in the state in which it is registered.

Line 3 – Interest (and fees or penalties in the nature of interest) from loans secured by real property. The numerator of the factor includes interest (and fees or penalties in the nature of interest) from loans secured by real property located in Ohio. If the real property that secures the loan is located both within Ohio and one or more other states, such amounts are included in the numerator of the sales factor if more than 50% of the fair market value of the real property is located in Ohio. If more than 50% of the fair market value of the real property is not located within any one state, then such receipts are included in the numerator of the sales factor if the *borrower is located in Ohio*. The determination of whether the real property securing a loan is located in Ohio is made at the time the original loan agreement was made and all subsequent substitutions of collateral are disregarded.

Line 4 – Interest (and fees or penalties in the nature of interest) from loans not secured by real property. The numerator of the factor includes interest (and fees or penalties in the nature of interest) from loans not secured by real property if the *borrower* is *located in Ohio*.

Line 5 – Net gains from the sale of loans (including income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code) secured by real property. The amount of net gain from the sale of loans secured by real property included in the numerator of the factor is determined by multiplying such net gains by a fraction whose numerator is interest (and fees or penalties in the nature of interest) from loans secured by real property located in Ohio and whose denominator is the total amount of interest (and fees or penalties in the nature of interest) from loans secured by real property.

Line 6 – Net gains from the sale of loans (including income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code) not secured by real property. The amount of net gain from the sale of loans not secured by real property included in the numerator of the factor is determined by multiplying such net gains by a fraction whose numerator is interest from loans not secured by real property to *borrowers located in Ohio* and whose denominator is interest from loans not secured by real property to borrowers everywhere.

Line 7 – Interest (and fees or penalties in the nature of interest) from credit card receivables and receipts from fees charged to credit cardholders, such as annual fees. The numerator of the factor includes interest (and fees or penalties in the nature of interest) from credit card receivables and receipts from fees charged to credit cardholders, such as annual fees, if the *billing address* of the cardholder is in Ohio.

Line 8 – Net gains from the sale of credit card receivables. The amount of such net gains included in the numerator of the factor is determined by multiplying such net gains by a fraction whose numerator is the sum of (1) interest (and fees or penalties in the nature of interest) from credit card receivables if the *billing address* of the cardholder is in Ohio and (2) fees charged to credit cardholders, such as annual fees, if the billing address of the cardholder is in Ohio. The denominator of the fraction is the sum of such amounts for credit cardholders everywhere.

Line 9 – Credit card issuer's reimbursement fees. The amount of credit card issuer's reimbursement fees included in the numerator of the factor is determined by multiplying such fees by the fraction determined in the instructions for line #8, above.

Line 10 – Receipts from merchant discount. Such receipts are computed net of any card holder charge backs but are not reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders. The numerator of the factor includes receipts from merchant discounts if the *commercial domicile* of the merchant is in Ohio.

Line 11 – Loan-servicing fees derived from loans secured by real property. The amount of such loan servicing fees included in the numerator of the factor is determined by multiplying such fees by a fraction whose numerator is the amount included in the numerator of the sales factor pursuant to the instructions for line #3 above, and whose denominator is the total amount of interest (and fees or penalties in the nature of interest) from loans secured by real property.

Line 12 – Loan-servicing fees derived from loans not secured by real property. The amount of such loan servicing fees included in the numerator of the factor is determined by multiplying such fees by a fraction whose numerator is the amount included in the numerator of the sales factor pursuant to the instructions for line #4 above, and

whose denominator is the total amount of interest (and fees or penalties in the nature of interest) from loans not secured by real property.

Line 13 – Loan-servicing fees for servicing either the secured or unsecured loans of others. The numerator of the factor includes loan-servicing fees for servicing either the secured or unsecured loans of another if the *borrower* is *located in Ohio*.

Line 14 – Receipts from services not otherwise apportioned. The numerator of the factor includes receipts from services not otherwise apportioned if the service is performed in Ohio. If the service is performed both within and without Ohio and if a greater proportion of the income-producing activity is performed in Ohio than in any other state based on cost of performance, the numerator of the sales factor includes receipts from such service.

Line 15 – Interest, dividends, net gains and other income from investment assets and activities and from trading assets and activities. "Investment assets and activities" and "trading assets and activities" include but are not limited to: investment securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities and foreign currency transactions.

A. Components of the denominator with respect to interest, dividends, net gains and other income from investment assets and activities and from trading assets and activities:

- (i) With respect to investment assets and activities and trading assets and activities, the factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.
- (ii) With respect to trading assets and activities, the factor includes the amount by which interest, dividends, gains and other income from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

B. Average value method for determining components of the numerator with respect to interest, dividends, net gains and other income from investment assets and activities and from trading assets and activities described above. "Average value" as used below is determined by using the same rules for determining the average value of tangible personal property for purposes of the property factor.

- (i) The amount of interest and dividends (other than interest and dividends from a subsidiary corporation at least 51% of whose common stock is owned by the taxpayer) and the amount of net gains and other income from investment assets and activities in the investment account included in the numerator of the factor are determined by multiplying all such income from such assets and activities by a fraction whose numerator is the average value of such assets that are properly assigned to a *regular place of business* of the taxpayer within Ohio and whose denominator is the average value of all such assets.
- (ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements included in the numerator of the factor is determined by multiplying the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements by a fraction whose numerator is the average value of federal funds sold and se-

curities purchased under agreements to resell which are properly assigned to a **regular place of business** of the taxpayer within Ohio and whose denominator is the average value of all such funds and such securities.

- (iii) The amount of interest, dividends, gains and other income from trading assets and activities, but excluding amounts described in B(i) and B(ii) above included in the numerator of the factor is determined by multiplying the amount described in A(ii) above, by a fraction whose numerator is the average value of such trading assets that are properly assigned to a **regular place of business** of the taxpayer within Ohio and whose denominator is the average value of all such assets.
- (iv) Dividends and interest received from subsidiaries – amount included in numerator. The amount of dividends received on the capital stock of, and the amount of interest received from **loans** and advances to, subsidiary corporations at least 51% of whose common stock is owned by the taxpayer included in the numerator of the factor is determined by multiplying such dividends and interest by a fraction whose numerator is the sum of the net book value of the payor's **real property owned** in Ohio and the payor's **tangible personal property owned** in Ohio and whose denominator is the sum of the net book value of the payor's real property owned wherever located and the payor's tangible personal property owned wherever located. For purposes of determining this fraction, the taxpayer must determine net book value in accordance with generally accepted accounting principles.

C. Gross income method for determining components of the numerator with respect to interest, dividends, net gains and other income from investment assets and activities and from trading assets and activities described above. In lieu of using the average value method set forth in the instructions for item (B) above, the taxpayer may elect, or the tax commissioner may require in order to fairly represent the business activity of the taxpayer in Ohio, the following alternative method:

- (i) The amount of interest and dividends (other than interest and dividends from a subsidiary corporation at least 51% of whose common stock is owned by the taxpayer) and the amount of net gains and other income from investment assets and activities in the investment account included in the numerator of the factor are determined by multiplying all such income from such assets and activities by a fraction whose numerator is the gross income from such assets and activities which are properly assigned to a **regular place of business** of the taxpayer within Ohio and whose denominator is the gross income from all such assets and activities.
- (ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements included in the numerator of the factor is determined by multiplying the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements by a fraction whose numerator is the gross income from such funds and such securities which are properly assigned to a **regular place of business** of the taxpayer within Ohio and whose denominator is the gross income from all such funds and such securities.
- (iii) The amount of interest, dividends, gains and other income from trading assets and activities but excluding amounts described in C(i) and C(ii) above, included in the numerator is determined by multiplying the amount described in A(ii) by a fraction whose numerator is the gross income from such trading assets and activities which are properly assigned to a **regular place of business** of the taxpayer within

Ohio and whose denominator is the gross income from all such assets and activities.

- (iv) Dividends and interest received from subsidiaries – amount included in numerator. The amount of dividends received on the capital stock of, and the amount of interest received from **loans** and advances to, subsidiary corporations at least 51% of whose common stock is owned by the taxpayer included in the numerator of the factor is determined by multiplying such dividends and interest by a fraction whose numerator is the sum of the net book value of the payer's **real property owned** in Ohio and the payer's **tangible personal property owned** in Ohio and whose denominator is the sum of the net book value of the payer's real property owned wherever located and the payer's tangible personal property owned wherever located. For purposes of determining this fraction, the taxpayer must determine net book value in accordance with generally accepted accounting principles.

- D. If the taxpayer elects or is required by the tax commissioner to use the method set forth in C above, the taxpayer must use this method on all subsequent reports unless the taxpayer receives prior permission from the tax commissioner to use a different method or the tax commissioner requires a different method.
- E. The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a **regular place of business** outside of Ohio by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside Ohio. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in Ohio and one such regular place of business is outside Ohio, then such asset or activity is considered to be located at the taxpayer's regular place of business where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies or guidelines shall be presumed to be established at the **commercial domicile** of the taxpayer.

Line 16 – All other receipts. The numerator of the factor includes all other receipts if either the income-producing activity is performed entirely in Ohio or the income-producing activity is performed both within and without Ohio and a greater proportion of the income-producing activity is performed within Ohio than in any other **state**, based on costs of performance.

Property Factor

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

Line 18 – Real property and tangible personal property owned,

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

Line 20 – Loans and credit card receivables.

The property factor is a fraction whose numerator is the sum of the following: (1) the average value of the taxpayer's **real property owned** and **tangible personal property owned** and physically located or used in Ohio during the taxable year, (2) the average value of real property and tangible personal property that the taxpayer has rented

from another and that is physically located or used in Ohio during the taxable year and (3) the average value of the taxpayer's *loans* and *credit card* receivables that are located within Ohio during the taxable year. The denominator of the property factor is the average value of all such property located or used both within and without Ohio during the taxable year.

The value of the taxpayer's real property owned and tangible personal property owned is the original cost or other basis of such property for federal income tax purposes without regard to depreciation, depletion or amortization.

The value of *loans* and *credit card* receivables is the outstanding principal balance of such accounts without regard to any reserve for bad debts. However, if a loan or credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the loan or credit card receivable charged-off is not outstanding. Furthermore, a specifically allocated reserve that is established pursuant to generally accepted accounting principals and treated as charged-off for federal income tax purposes will be treated as charged-off for purposes of determining the property factor.

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

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

A *credit card* receivable or a *loan*, other than a loan to a subsidiary corporation at least 51% of whose common stock is owned by the taxpayer, is assigned to the taxpayer's *regular place of business* with which the credit card receivable or loan has a preponderance of substantive contacts. A credit card receivable or loan is located in Ohio if it is properly assigned to a regular place of business of the taxpayer within Ohio, and a credit card receivable or loan is located outside Ohio if it is properly assigned to a regular place of business of the taxpayer outside Ohio.

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

- The taxpayer assigned the credit card receivable or loan to a *regular place of business* and the assignment is consistent with federal or *state* regulatory requirements;
- The assignment is based upon substantive contacts of the credit card receivable or loan to such regular place of business; and

- The taxpayer uses the assignment for filing all state and local tax returns for which an assignment of credit card receivables or loans is required.

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

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

Absent any change of material fact, a *loan* (other than a loan or advance to a subsidiary corporation at least 51% of whose common stock is owned by the taxpayer) that has been properly assigned to a *state* shall remain assigned to that *state* for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contacts to a *regular place of business* there.

The amount of a *loan* or advance to a subsidiary corporation at least 51% of whose common stock is owned by the taxpayer to be included in the numerator of the property factor is determined by multiplying the average value of the loan by a fraction whose numerator is the net-book value of the subsidiary's physical assets in Ohio and whose denominator is the net-book value of the subsidiary's physical assets everywhere. The fraction is determined as of the end of the subsidiary's taxable year that is included in the taxpayer's taxable year. If the subsidiary corporation owns at least 51% of the common stock of another corporation, the ratio must be calculated by including the

other corporation's real property and tangible personal property, too. The calculation of the ratio applies with respect to all lower-tiered subsidiaries, if the immediate parent corporation of the subsidiary owns at least 51% of the common stock of that subsidiary. As noted above, the average value of a loan is one-half the sum of the outstanding principal balance of such loan on the first day of the taxable year and the outstanding principal balance of such loan on the last day of the taxable year.

Payroll Factor

Line 22 – Compensation paid to employees. The payroll factor is a fraction whose numerator is the taxpayer's total **compensation** paid in Ohio during the taxable year, and whose denominator is the taxpayer's total compensation paid everywhere during the taxable year. **Compensation** is paid in Ohio if any one of the following three tests, applied consecutively, is met:

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

Alternative Apportionment Methods. If the above apportionment provisions do not fairly represent the extent of the taxpayer's business activity in Ohio, the taxpayer may request or the tax commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

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

Schedule D-2 – Deposits Factor

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

Definitions – RC. 5733.056(A)

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

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

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

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

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

Credit card means a credit, travel or entertainment card.

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

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

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

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

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

Loan means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include debt obligations of subsidiaries, **participations**, **syndications** and leases treated as loans for federal income tax purposes. Loan

does not include properties treated as loans under section 595 of the I.R.C.; futures or forward contracts; options; notional principal contracts such as swaps; **credit card** receivables, including purchased credit card relationships; noninterest-bearing balances due from depositor institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit or other mortgage-backed or asset-backed security; and other similar items.

Loan secured by real property means that 50% or more of the aggregate value of the collateral used to secure a **loan** or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

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

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

Principal base of operations:

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

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

Qualified institution means a financial institution that has at least 9% of its deposits in Ohio as of the last day of June before the beginning of the tax year and meets one of the following three tests:

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

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

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

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

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

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

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

Schedule E – Net Value of Stock

Note: For franchise tax years 2002 and thereafter, a financial institution that is a related member to a company that makes the qualifying holding company election is not required (nor is it permitted) to make the Schedule E "qualifying amount" debt to equity adjustment set forth in R.C. 5733.05(C).

The value of issued and outstanding shares of stock is determined from the books of the taxpayer as of the beginning of the taxpayer's annual accounting period that includes the first day of January of the tax year. See R.C. 5733.056(B). For example, assume that an Ohio franchise taxpayer has a taxable year beginning July 1, 2008 and ending June 30, 2009. The taxpayer's franchise tax net value of stock for tax year 2010 is determined as of July 1, 2009, the beginning of the taxpayer's annual accounting period that includes the first day of January of tax year 2010. Generally, the figures at the beginning of the taxpayer's annual accounting period that includes the first day of January of the tax year (in this example, July 1, 2009) will be the same as the figures at the end of the taxable year that concludes prior to Jan. 1 of the tax year (in this example, June 30, 2009).

Line 2 – Ownership interest of depositors. With respect to a financial institution that does not have capital stock "issued and outstanding shares of stock" includes, but is not limited to ownership interests of depositors in the capital employed in such an institution. See R.C. 5733.04(A). Except for the amounts determined under the instructions for line 4, ownership interest of depositors does not include any amount which is treated as a liability in accordance with generally accepted accounting principles.

Line 4 – Reserves and net deferred tax liabilities. Reserves and net deferred tax liabilities (that is, deferred tax liabilities less deferred tax benefits) are includable in the computation of net value of stock. See *Kroger v. Bowers* (1965), 3 Ohio St. 2d 76; *Baldwin Piano and Organ Company v. Kosydar* (April 7, 1975) First District Court of Appeals Hamilton County, Case No. 7425500; and *Allied Stores of Penn-Ohio, Inc. v. Limbach*, B.T.A. Case No. 85-B-484, February 19, 1988. **The debit balance of the taxpayer's deferred income tax account (that is, the excess of deferred tax benefits over deferred tax liability) accounted for in accordance with generally accepted accounting principles is deductible from net worth as a negative reserve, thereby decreasing taxable net worth. See USX v. Tracy, BTA Nos. 92-1479, 92-1480 (1-22-99).**

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

Contingent liabilities are includable in the net worth computation if:

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

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

Schedule F – Adjusted Net Value of Stock for Holding Companies

This schedule applies to:

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

The taxpayer's excludable investment, total assets and net value of stock are determined from the books of the taxpayer as of the beginning of the taxpayer's annual accounting period that includes the first day of January of the tax year. See R.C. 5733.056(B). For example, assume that an Ohio franchise taxpayer has a taxable year beginning July 1, 2008 and ending June 30, 2009. For tax year 2010 the taxpayer's franchise tax excludable investment, total assets and net value of stock are determined as of July 1, 2009 the beginning of the taxpayer's annual accounting period that includes the first day of January of tax year 2010. Generally, the figures at the beginning of the taxpayer's annual accounting period that includes the first day of January of the tax year (in this example, July 1, 2009) will be the same as the figures at the end of the taxable year that concludes before Jan. 1 of the tax year (in this example, June 30, 2009).

Line 1 – Excludable Investment. If the taxpayer owns the applicable percentage of the common stock of a public utility, insurance company or another financial institution, as set forth above, enter the taxpayer's investment in such public utility, insurance company or other financial institution net of goodwill and appreciation included in such investment. Appreciation does not include "negative appreciation." See *SHV North American Corp. v. Tracy* (1994), 70 Ohio St.3d 395.

Line 2 – Total Assets. Enter the taxpayer's total assets as shown by the books of the corporation net of all appreciation and goodwill.

Schedule A-1 Nonrefundable Credits

The nonrefundable credits generally available to financial institutions are summarized below in the order in which taxpayers must claim them as set out in R.C. 5733.98. In addition, the table on page 21 lists (i) all currently available nonrefundable franchise tax credits in the order in which taxpayers (whether general taxpayers or financial institutions) must claim them, (ii) the carryforward period of each credit and (iii) the section of the Ohio Revised Code that authorizes each credit.

Although several credits listed in the table are available, they generally do not apply to financial institutions. For information regarding the credits listed in the table but not summarized in these instructions, please see the franchise tax instructions for general taxpayers. Those instructions are available in another file on the department's Web site. If a credit listed in the table applies to the taxpayer but is not shown on schedule A-1 of franchise tax Ohio form FT 1120FI, then in completing the form please line out a credit that the taxpayer does not claim and enter the credit and the amount that the taxpayer is claiming consistent with the order set out in R.C. 5733.98.

The order of the credits is important if the taxpayer is entitled to more than one nonrefundable credit and the taxpayer is unable to use some portion of the total credit amount in the year the credits were generated (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. 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. Any credit amount remaining unused after the carryforward period for that credit expires is lost.

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, the credit for losses on loans made to the Ohio Venture Capital (OVC) Program, and the recently enacted motion picture credit 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 9.

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 R.C. 122.173 grant for purchases of new manufacturing machinery and equipment does not apply to a lessor that purchases new manufacturing machinery and equipment and leases that equipment to a manufacturer (other than a manufacturer that is a member of the lessor's qualifying controlled group – see the consolidated grant provision in R.C. 122.173(I)). See *Duramed Pharmaceuticals, Inc. v. Zaino*, BTA No. 2002-V-164 (3-7-03).

In *Duramed* the Board of Tax Appeals held that Duramed could claim the R.C. 5733.33 manufacturer's credit on manufacturing equipment that it leased from Ortho-McNeil Pharmaceuticals in 1994 (prior to the qualifying purchase period) and purchased during the qualifying purchase period by exercising an option in the lease agreement. Finding nothing in the record to suggest that the lease was treated as a purchase for federal income tax purposes or under Generally Accepted Accounting Principles, the board held that the existence of the lease does not operate to defeat the credit. The board found that the definition of "new" machinery is unambiguous and requires only that the original use in Ohio begin with the taxpayer and such original use is not restricted or limited to the qualifying purchase period.

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 that equipment to a manufacturer is not entitled to the credit or to the grant on such equipment 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).

Nonrefundable Credits Available to Financial Institutions

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

2. **Credit for Savings-and-Loan Association Fees** (R.C. 5733.063). Savings-and-loan associations are permitted a credit against the total tax due equal to the amount of the annual assessment the association paid during the taxable year to the Ohio Division of Savings and Loan Associations under R.C. 1155.13 less the amount the association paid in supervisory fees during the taxable year to the Federal Savings-and-Loan Insurance Corporation or in the case of a savings and loan association not insured by the Federal Savings-and-Loan Insurance Corporation, the amount it would have paid if insured thereby. To qualify for this credit, the association must file with the franchise report a document certified by the Superintendent of the Division of Savings-and-Loan Associations verifying the amount of state annual assessment fees and supervisory fees paid by the association during the taxable year.

3. **Job Training Credit** (R.C. 5733.42). With the exception of credit carryforward amounts from earlier years this credit expired with the 2008 report. Taxpayers may carry forward unused credit amounts for three tax years following the tax year for which the credit was computed.

4. **Ethanol plant investment credit** (R.C. 5733.46 and R.C. 901.13). This nonrefundable franchise tax and individual income tax credit equals 50% of the amount of money that the taxpayer invests in R.C. 901.13 certified ethanol plants in the calendar year preceding the tax year (the investment period is the calen-

dar 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.

5. **Credit for Taxes Paid by a Qualifying Pass-Through Entity** (R.C. 5733.0611). Upon filing a corporation franchise tax report, a qualifying investor corporation in a qualifying pass-through entity can claim a nonrefundable credit equal to the corporation’s proportionate share of the tax paid by the qualifying pass-through entity. To claim this credit, the qualifying investor must attach to its franchise tax report a copy of the IRS form K-1 indicating the qualifying investor’s proportionate share of the amount of the pass-through entity tax for which the qualifying investor seeks to claim a credit. For an explanation of the tax on qualifying pass-through entities see the instructions for form IT 1140, Tax Return for Pass-Through Entities and Trusts. This credit has an unlimited carryforward period.

6. **New Markets Tax Credit** (R.C. 5725.33, 5729.16 and 5733.58). For a summary of the new markets credit see “Recent Legislation” on page 1 of these instructions. The new markets credit cannot be claimed for tax year 2010 because the credit percentage for the taxpayer’s first two “credit allowance dates” is zero. Accordingly, the new markets credit is not included on the 2010 franchise tax report for financial institutions, Ohio form FT 1120FI.

Note: For a summary of refundable credits see the line instructions for schedule A, line 9.

Tax Commissioner Rules Applicable to Financial Institutions in Determining the Ohio Corporation Franchise Tax

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

***Note:** Effective for taxable years ending after Dec. 31, 2003, 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.

Information Releases

Since 1991 the Ohio Department of Taxation has issued the following corporation franchise tax information releases:

- Waiver of Corporation Franchise Tax Filing Requirement for 2010 for S Corporations, Oct. 2009
- No 2010 Franchise Tax Filing or Payment Obligation for Corporations Subject to the Phase-Out, Sept. 2009
- Questions Regarding Ohio's Manufacturing Machinery and Equipment Tax Credit and Subsequent Grant, September 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, September 2004 – Revised February 2005
- The Franchise Tax Effects of the I.R.C. 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, November 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, September 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 January 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 Twenty Percent 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.

tax.ohio.gov

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.	Job Training Credit (carryforward amount only)	Three years	5733.42
8.	Credit for Qualified Research Expense	Seven years	5733.351
9.	Credit for Eligible New Employees in an Enterprise Zone	Three years	5709.66
10.	Ethanol Plant Investment Credit	Three years	5733.46 and 901.13
11.	Credit for Grape Production Property	Seven years	5733.32
12.	Technology Investment Credit	Fifteen years	5733.35, 122.15, 122.151, 122.152, 122.153, & 122.154
13.	Enterprise Zone Day Care and Training Credits	Unlimited*	5709.65(A)
14.	New Markets Credit	Four years	5725.33, 5729.16 and 5733.58
15.	Research and Development Loan Repayment Credit	Unlimited*	5733.352 and 166.17 thru 166.21
16.	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, (iii) the credit was converted to a grant and/or (iv) the taxpayers to whom the credit applied are subject to the franchise tax phase-out and commercial activity (CAT) tax phase-in.

- Expired credits listed in R.C. 5733.98 but not included in the above table include (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, (vii) the export sales credit, and (viii) the credit for selling alternative fuel.
- 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. For refundable credits applicable to financial institutions see the line instructions for schedule A, line 9.
- 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 after all nonrefundable credits and before all refundable credits.
- Although included in the table for earlier years, the following credits are not included in the table for 2010: (i) electric company credit for using Ohio coal (R.C. 5733.39), (ii) credit for small telephone companies (R.C. 5733.57), (iii) telephone company credit for eligible nonrecurring 9-1-1 charges (R.C. 5733.55), and (iv) credit for providing programs to aid the communicatively impaired (R.C. 5733.56). These credits specifically apply only to electric companies and telephone companies. Electric companies and telephone companies are not subject to the franchise tax for tax years 2010 and thereafter (because of the franchise tax phase-out and CAT phase-in). As such, the listed credits have been deleted from the table.

Note 2: Credits #1, 3 and 14 apply only to financial institutions.

OHIO FRANCHISE TAX FORMS		Latest Revision Date
Many of the Department of Taxation's forms are available on the Department's Web site at: http://www.tax.ohio.gov .		
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	06/09
FT 1120ER	Application for Automatic Extension	06/09
FT 1120EX	Request for an Additional Extension of Time for Filing Corporation Franchise Tax Report	06/09
FT 1120	Corporation Franchise Tax Report	10/09
FT 1120VL	Valuation Limitation on Gains and Losses from Sales or Exchanges of Property	10/06
FT 1120C	Corporation Franchise Tax (Combined Report)	09/09
FT OTAS	Ohio Taxpayers' Affiliation Schedule	10/06
FT 1120FI	Corporation Franchise Tax Report for Financial Institutions	07/09
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
	Grant Request Form	10/09

Note 1: Franchise tax forms “Supplemental Schedules for Electric Companies” and “Supplemental Schedule for Local Exchange Telephone Companies” are not listed in the above table because electric companies and telephone companies are subject to the franchise tax phase-out and the commercial activity tax (CAT) phase-in. Thus, electric companies and telephone companies have no franchise tax filing or payment requirement for tax year 2010.

Note 2: Franchise tax Ohio form, FT 1120S, “Notice of S Corporation Status,” is not included in the above table. By administrative journal entry dated Oct. 29, 2009 the tax commissioner waived the R.C. 5733.09(B) notice of S election filing requirement for 2010 (taxable year ending in 2009). That is, unlike earlier years, S corporations and their “qualified subchapter S subsidiaries” (QSSS), as defined in Internal Revenue Code section 1361(b)(3)(B), are not required to file a 2010 Notice of S Corporation Status, Ohio form FT 1120S. See the tax commissioner’s administrative journal entry at the following address: http://tax.ohio.gov/divisions/corporation_franchise/filing_exemptions.stm.