



**Department of
Taxation**

tax.ohio.gov

For taxable years ending in

2009

Rev. 1/10

**Ohio IT 4708
Composite Income Tax
Return Instructions for
Certain Investors in a
Pass-Through Entity**

Which Pass-Through Entities Must File?

Ohio Revised Code section (R.C.) 5747.08(D) allows each pass-through entity (defined below) to elect to file a composite return (Ohio form IT 4708) on behalf of one or more of the entity's direct and indirect investors other than C corporations. **Note: Both resident and nonresident individuals, other pass-through entities, estates and trusts can be included in a composite return for each pass-through entity in which they invest. C corporations that are direct or indirect investors in the pass-through entity cannot participate in filing an Ohio form IT 4708. See R.C. 5747.08(D)(1)(b)(ii).**

If a nonresident individual's, estate's or trust's **only** source of Ohio income is a distributive share of income from an investment in one or more pass-through entities doing business in Ohio, the nonresident can fulfill the nonresident's Ohio individual income tax filing requirements under R.C. 5747.02 by being included in a composite return (Ohio form IT 4708) for **each** pass-through entity in which the nonresident invests.

A nonresident partner having other Ohio-sourced income may participate in the filing of Ohio form(s) IT 4708, but that nonresident partner must also file an Ohio income tax return (Ohio form IT 1040 for individuals; Ohio form IT 1041 for estates and trusts) to report all other Ohio-sourced income that is not reported on Ohio form(s) IT 4708. "Other Ohio-sourced income" includes gain apportioned to Ohio under R.C. 5747.212.

The election provided in division (D) of R.C. 5747.08 applies only to the taxable year for which the election is made. Unless the tax commissioner provides otherwise, this election, once made, is binding and irrevocable for the taxable year for which the election is made. Nothing in this division provides for any deduction or credit that would not be allowable if a pass-through entity investor were to file the annual Ohio income tax return, Ohio form IT 1040.

No Carryforward Deductions

Ohio law does not allow for a deductible for net operating loss carryforwards or for capital loss carryforwards. Investors who want to deduct such carryforwards should file Ohio form IT 1040 and should not participate in the filing of Ohio form IT 4708. Note: The pass-through entity may be required to file Ohio form IT 1140 if such nonresident pass-through entity investors file Ohio form IT 4708.

Definition of Pass-Through Entity

A "pass-through entity" is defined as any of the following:

- a corporation or limited liability company that has made an election under Subchapter S of Subtitle A of the Internal Revenue Code (I.R.C.) for its taxable year, or
- a partnership, limited partnership, limited liability company, or any other person, other than an individual, trust or estate, if the partnership, limited partnership, limited liability company or other such person is not classified for federal tax purposes as an association taxed as a C corporation.

Investor Information

This return must include either (i) Schedule V, (ii) a copy of pages 1 and 2 of the K-1 for each investor whether or not the investor participates in filing this composite return (do not include any K-1 attachments, schedules or statements), (iii) a list of investors and their Social Security numbers (or federal employer identification numbers), who are participating in the filing of this return (alternatively, indicate on the K-1s those investors who are participating), and (iv) a copy of the approved IRS extension, if applicable. For detailed instructions, see "Schedule V – Investor Information" on page 10.

Taxable Year

A pass-through entity's taxable year for Ohio income tax purposes is the same as its taxable year for federal income tax purposes. If an entity's taxable year is changed for federal income tax purposes, the taxable year for purposes of this return is changed accordingly.

Method of Accounting

A pass-through entity's method of accounting for this return must be the same as its method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, income must be computed under such method as in the opinion of the tax commissioner clearly reflects income. If a pass-through entity's method of accounting is changed for federal income tax purposes, its method of accounting for purposes of this tax must be changed accordingly.

Amended Returns

If any of the facts, figures, computations or attachments required in a pass-through entity's composite income tax return must be altered as the result of an adjustment to the pass-through entity's federal income tax return, and whether the adjustment is initiated either by the pass-through entity or by the IRS, and if such alteration affects the pass-through entity's tax liability, the pass-through entity must file an amended report. **Upon completing an amended return, check the "amended return" box on the front of the return.**

The pass-through entity must file the amended return not later than 60 days after either (i) the adjustment has been agreed to or finally determined for federal income tax purposes or (ii) any federal income tax deficiency or refund, or the abatement or credit resulting therefrom, has been assessed or paid, whichever occurs first.

Caution: The IRS informs us of all changes it makes to federal income tax returns. To avoid penalties, be sure the pass-through entity files its Ohio amended return within 60 days of the final determination of the federal change.

- (1) In the case of an underpayment, the amended return must be accompanied by payment of an additional tax and interest due and is a return subject to assessment under R.C. 5747.13 for the purpose of assessing any additional tax due under this division. The amended return must not reopen those facts, figures, computations or at-

tachments from a previously filed return no longer subject to assessment if those facts, figures and computations are not affected, either directly or indirectly, by the IRS adjustment to the pass-through entity's federal income tax return.

- (2) In the case of an overpayment, the pass-through entity may file an amended return within the 60-day period prescribed for filing the amended return even if it is filed beyond the period prescribed in division (B) of R.C. 5747.11 and if the amended return otherwise conforms to the requirements of that section. An amended return filed under this section may claim refund of overpayments resulting from alterations to only those facts, figures, computations or attachments required in the pass-through entity's annual return that are affected, either directly or indirectly, by the IRS adjustment to the pass-through entity's federal income tax return unless the amended return is also filed within the time prescribed in division (B) of R.C. 5747.11. Otherwise, the amended return shall not reopen those facts, figures, computations or attachments that are not affected, either directly or indirectly, by the IRS adjustment to the pass-through entity's federal return (IRS form 1065 or 1120S).

Rounding to Whole Dollars

Show all money amounts on Ohio form IT 4708 and accompanying schedules as whole dollar amounts. To do so, eliminate amounts less than 50 cents and increase amounts from 50 cents to 99 cents to the next highest dollar.

If an investor participates in the filing of this form, then for Ohio form IT 1140 purposes for the taxable year the investor is not a "qualifying investor." So, for that taxable year the pass-through entity is not subject to the withholding tax or the entity tax (Ohio form IT 1140) with respect to the distributive share of income passing through from the pass-through entity to each investor participating in the filing of this form.

Filing Date

If any filing due date set forth below falls on a weekend or on a holiday, then the due date becomes the first business day thereafter.

Calendar year pass-through entities – April 15th of the immediately following calendar year.

Fiscal year pass-through entities – April 15th of the calendar year immediately following the calendar year in which the fiscal year ends.

Example: A pass-through entity having a Jan. 31, 2009 fiscal year end and electing to file this return must file the return by April 15, 2010.

Extended Due Date

If the pass-through entity has received from the IRS an extension of time to file and if the IRS-granted extended due date is later than the unextended date for filing Ohio form IT 4708, then the filing date for the Ohio form IT 4708 is ex-

tended to the same date. **Note:** An extension of time to file is not an extension of time to pay. Use Ohio form IT 4708EXT to make extension payments. Tax remaining unpaid on the unextended due date is subject to both interest and failure-to-timely-pay penalties.

Payment Date Postmark

If a payment or document is mailed on or before the due date, the date of the postmark is deemed the date of delivery.

Preparer's Signature

The Ohio Department of Taxation follows IRS Service Notice 2004-54, which provides for alternative preparer signature procedures for IRS income tax paper returns that paid practitioners prepare on behalf of their clients. Except as set forth below, paid preparers must 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).

Exception: The paid preparer should **print** (rather than write) his/her name on the form if the taxpayer checks "Yes" to the question, "Do you authorize your preparer to contact us regarding this return?" (from page 4 of the return)

Interest on Underpayments and Overpayments

If a pass-through entity fails to pay the tax by the due date, interest accrues on the unpaid tax. Interest on tax due is charged in addition to any penalties that may be incurred for late filing or failure to file timely. The period of underpayment runs from the date the tax was required to be paid to the date on which such payment is made.

Interest is allowed and paid upon any overpayment in excess of one dollar in respect of the tax imposed under R.C. 5747.02 from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within 90 days after the due date of the annual return or within 90 days after the return was filed, whichever is later, no interest shall be allowed on such overpayment.

During calendar year 2009, interest accrues on underpayments and overpayments at the rate of 5% per annum. During calendar year 2010, interest accrues on underpayments and overpayments at the rate of 4% per annum.

Penalties

Penalty for failure to file or timely file a report is the greater of (i) up to \$50 per month (up to \$500) or (ii) up to 5% per month (up to 50% of the tax due shown on the return). The law also imposes penalties for failure to pay timely and/or fully.

Records To Be Maintained

Every pass-through entity must maintain books and records that substantiate any information reported on Ohio form IT 4708. 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 date Ohio form IT 4708 was filed or the date the form was required to be filed, whichever is later.

Assessments

The tax commissioner may issue an assessment against the pass-through entity for any deficiency within four years after the later of the final date the return is subject to assessment was required to be filed or the date the return 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 pass-through entity and the tax commissioner consent in writing to the extension by signing Ohio form IT Waiver.

An amended Ohio form IT 4708, which the pass-through entity files as a result of an adjustment to the federal tax return, form 1065 or 1120S, is deemed a report subject to assessment. However, the amended return does not reopen those facts, figures, computations or attachments from a previously filed return no longer subject to assessment to the extent that those facts, figure and computations are not affected, either directly or indirectly, by the IRS adjustment to the entity's federal income tax return.

Estimated Tax Payments for Next Year

The pass-through entity must make estimated tax payments on the year 2010 Ohio form IT 4708ES for the entity's taxable year ending in year 2010 if the year 2010 Ohio composite annual income tax after nonrefundable credits will be more than \$500. Interest penalty applies to estimated payments not timely made.

Due Dates for Estimated Tax Payments

If any filing due date set forth below falls on a weekend or on a holiday, then the due date becomes the first business day thereafter.

Calendar year pass-through entities – April 15th, June 15th and Sept. 15th of the calendar year and Jan. 15th of the immediately following calendar year.

Fiscal year pass-through entities – April 15th, June 15th, and Sept. 15th of the calendar year in which ends the fiscal year of the pass-through entity and Jan. 15th of the immediately following calendar year.

Example: A pass-through entity has a Nov. 30 fiscal year end. For the fiscal year ending Nov. 30, 2010, the estimates would be due on April 15, 2010; June 15, 2010; Sept. 15, 2010; and Jan. 18, 2011. These estimates would be based upon either (i) the tax due, net of credits, for the fiscal year ending Nov. 30, 2009, or (ii) 90% of the tax due on income (or annualized income), net of credits for the fiscal year ending Nov. 30, 2010.

Which Should I Use: Ohio Form IT 1140 or Ohio Form IT 4708?

Qualifying pass-through entities whose equity investors are limited to nonresident individuals, nonresident estates and nonresident trusts can file either Ohio form IT 1140 or IT 4708. All other qualifying pass-through entities **must** file Ohio form IT 1140 and may also choose to file Ohio form IT 4708.

Ohio form IT 1140 is based upon the **first** day of the pass-through entity's calendar or fiscal year; Ohio form IT 4708 is based upon the **last** day of the pass-through entity's calendar or fiscal year. A pass-through entity that changes forms from year to year must make sure that (i) all periods of income are reported and (ii) all related tax is timely and fully paid.

Example: A pass-through entity whose equity investors are composed solely of nonresident individuals has a Jan. 31 fiscal year end. For the fiscal year beginning Feb. 1, 2008 and ending Jan. 31, 2009, the pass-through entity elects to file the year 2009 Ohio form IT 4708 (this return would be due April 15, 2010, not April 15, 2009). For the fiscal year beginning Feb. 1, 2009 and ending Jan. 31, 2010, the entity elects to file the year 2009 Ohio form IT 1140. This return would be due May 17, 2010. For the fiscal year beginning Feb. 1, 2010 and ending Jan. 31, 2011, the entity elects to file the year 2011 Ohio form IT 4708. This return would be due April 16, 2012. With this fact pattern the pass-through entity will not file any 2010 Ohio pass-through entity return, but the pass-through entity will have reported all periods of income.

Ohio Form IT 4708 Line Instructions**Schedule I – Taxable Income, Tax, Payments and Net Amount Due Calculations****Line 4 – Net Allocable Nonbusiness Income (Loss) Everywhere**

Generally, income is apportionable business income. Non-business income, if any, is allocable only as provided by R.C. 5747.20 through 5747.231. If you show income on this line, please provide (i) a schedule indicating the type and the amount for each item of income, (ii) a statement explaining why the income is not business income and (iii) a list of states, if any, for which the pass-through entity treats such income as business income. Each nonresident taxpayer who sells, exchanges or otherwise disposes of his/her direct or indirect interest in a closely held business having property, payroll and/or sales in Ohio must situs to Ohio a portion of the gain (loss) recognized from that sale, exchange or other disposition. The nonresident taxpayer shall apportion the income using the average of the entity's apportionment factors for the current and two preceding taxable years. For additional information see R.C. 5747.212.

Line 8 – Net Nonbusiness Income (Loss) Allocated to Ohio

See line 4 instructions above.

Line 11 – Nonrefundable Business Credits and Grant

Nonrefundable business credits claimed on this composite return are limited to the proportionate share amounts for those investors included in this composite return. Claim the credits on the business credit summary worksheet that is part of Schedule E. Schedule E is available from the department's Web site (tax.ohio.gov) or at any of our offices listed on the last page of this instruction booklet.

If the pass-through entity claims nonrefundable business credits, please complete Schedule E, attach a copy of the Schedule E business credit summary worksheet, and enter the amount of the credit on Ohio form IT 4708, Schedule I, line 11.

Note: The Ohio political contribution credit is a nonrefundable business credit available to the pass-through entity.

Manufacturing Equipment Grant

For taxable years ending on or after July 1, 2005, the R.C. 5747.31 manufacturer's credit for purchases of new manufacturing machinery and equipment (the 7.5%–13.5% manufacturer's credit) converts to a grant administered by the Ohio Department of Development. To claim the grant, the pass-through entity must complete (and attach to Ohio form IT 4708) the Grant Request Form, which is available at www.odod.state.oh.us.

The manufacturer's grant applies to taxpayers who purchased, and to taxpayers that have an interest in pass-through entities that purchased, new manufacturing machinery and equipment during the qualifying purchase period July 1, 1995, to June 30, 2005, provided that the taxpayer or the pass-through entity installs the new manufacturing machinery and equipment in Ohio no later than June 30, 2006. The grant is claimed as a direct reduction to the taxpayer's Ohio income tax liability and, like the manufacturer's credit, is nonrefundable. The concepts, definitions and computations that apply to the credit also apply to the grant.

The grant applies not only to the qualifying new manufacturing machinery and equipment purchased during the period Jan. 1, 2005, to June 30, 2005, but also to qualifying equipment purchased in 2004 and/or purchased in earlier years. Thus, the grant applies to (i) the 1/7 amounts from 2005 qualifying purchases, (ii) the 1/7 amounts from pre-2005 qualifying purchases for which the taxpayer claimed the manufacturer's credit on prior income tax returns, and (iii) any credit carryforward amounts from the previous three taxable years.

The grant applies only if both of the following conditions are met:

- (1) The taxpayer files with this return a "grant request" form with the taxpayer's 2009 Ohio income tax return.** The grant request form is available on both the Department of Taxation's Web site (tax.ohio.gov) and on the Department of Development's Web site (www.odod.state.oh.us).
- (2) The purchaser of the qualifying new manufacturing machinery and equipment filed a "notice of intent" with the Ohio Department of Development by the date of the taxpayer's timely filed tax return, including extensions, for the taxpayer's taxable year that included Sept. 30, 2005.** However, if the taxpayer previously filed the notice of intent to claim the credit, that filing also constitutes a notice of the intent to claim the grant.

Line 13 – Interest Penalty on Underpayment of Estimated Tax

If the amount on line 12 is greater than \$500, the pass-through entity may owe an interest penalty unless the sum of (i) the year 2009 timely paid Ohio composite annual return estimated income tax payments (Ohio form IT 4708ES) and (ii) last year's overpayment credited to the current year equals or exceeds either of the following:

- 90% of the 2009 Ohio income tax (line 12, year 2009 Ohio form IT 4708) **or**
- 100% of the 2008 Ohio income tax (line 12, year 2008 Ohio form IT 4708).

To compute an interest penalty (or to show that no interest penalty is due), complete Ohio form IT/SD 2210 (available on our Web site at tax.ohio.gov). Enter on Schedule I, line 13 any interest penalty due and attach Ohio form IT/SD 2210 to the return.

Line 14 – Ohio Form IT 4708ES Estimated Tax Payments

Enter on line 14 the total amount of the 2009 composite annual return estimated tax payments paid with Ohio form IT 4708ES.

Line 15 – Ohio Form IT 1140ES Payments Transferred to This Form

If for the taxable year the pass-through entity has used Ohio form IT 1140ES (Estimated Ohio Withholding Tax and Entity Tax Payment for Pass-through Entities and Trusts) to make estimated payments in connection with the pass-through entity withholding tax and/or the entity tax, the pass-through entity can elect to apply some or all of those form IT 1140ES payments to satisfy the tax due on this form, Ohio form IT 4708. If the pass-through entity so elects, please indicate on Schedule I, line 15 the total amount to be transferred from Ohio form IT 1140ES to Ohio form IT 4708 for the same taxable year.

If the pass-through entity will be filing both Ohio forms IT 4708 and IT 1140ES for the **same** taxable year, please attach to Ohio form IT 4708 a schedule setting forth (i) the dates of the Ohio form IT 1140ES payments transferred to this return (ii) and the amount of each payment transferred to Ohio form IT 4708.

Show on this line the sum of any payments made with previously filed return(s) for this taxable year and attach a schedule showing any payments previously made.

Line 16 – Ohio Form IT 4708ES Payments Transferred to Ohio Form IT 1140

The pass-through entity can also elect to transfer Ohio form IT 4708ES payments ("Ohio Composite Annual Return Estimated Tax Payments") to Ohio form IT 1140 ("Tax Return for Pass-Through Entities and Trusts") for the same taxable year. To the extent that the pass-through entity elects to make such transfers, please indicate on this 2009 Ohio form IT 4708, Schedule I, line 16 the total amount to be transferred from

the Ohio form IT 4708ES payments to Ohio form IT 1140 for the same taxable year.

Reduce the amount on this line by any refunds previously claimed (even if not yet received) and attach a schedule showing any refunds previously claimed.

Line 18 – Amount of 2008 Overpayment Credited to 2009

Enter on Schedule I, line 18 the amount of the 2008 overpayment that was credited to the 2009 tax liability (see line 22 on the 2008 Ohio form IT 4708).

Line 19 – Refundable Business Credits

Refundable business credits claimed on this composite return are limited to the proportionate share amounts for those investors included in this composite return.

Refundable Business Jobs Credit

If the pass-through entity claims the refundable business jobs credit provided by R.C. 5747.058, **attach a copy of the certificate of verification issued by the Ohio Department of Development.** The amount of the credit equals the amount of Ohio income tax the pass-through entity withheld from compensation paid to new employees during its taxable year multiplied by the percentage specified in the pass-through entity's agreement with the Tax Credit Authority.

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

If a pass-through entity claims the refundable new jobs creation credit with respect to an employee, the pass-through entity may not claim the nonrefundable R.C. 5709.66 enterprise zone new employee credit with respect to that employee.

The Tax Credit Authority and the Ohio Department of Development administer this credit. Tax Credit Agreement application forms (Financial Assistance Application) are available from the Ohio Department of Development, Economic Development Division, 77 S. High Street, 28th Floor, P.O. Box 1001, Columbus, Ohio 43216-1001 or call 614-466-2317 or 1-800-848-1300.

Pass-through Entity Credit

If this pass-through entity has invested in another partnership or limited-liability company ("investee pass-through entity") that filed either Ohio form IT 1140 or Ohio form IT 4708 on behalf of this investor pass-through entity, then this investor pass-through entity is entitled to a refundable credit equal

to this investor pass-through entity's proportionate share of the tax that the investee pass-through entity paid on behalf of this investor pass-through entity for that investee pass-through entity's taxable year ending within or with this investor pass-through's taxable year end. **Please attach a copy of the IRS form K-1 setting forth the credit amount that this investor pass-through entity received from the investee pass-through entity.** See R.C. 5747.059 and 5747.08(J).

Ohio Historic Preservation Credit Refundable Portion

Administered by the Ohio Department of Development (ODOD), the 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 income tax liability. See R.C. 149.311 and 5747.76.

Amended Substitute House Bill 1, 128th General Assembly Effective July 19, 2009 amended the credit to specifically provide that if a pass-through entity owns and restores a historic building with respect to which the Ohio Department of Development issued a preservation tax credit certificate for the pass-through entity's "qualified rehabilitation expenditures," the pass-through entity can allocate the credit among the pass-through entity'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 of Development 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.).

For project applications that are approved after March 13, 2008 the credit is limited to \$5 million per project and the credit can contain a refundable portion and a nonrefundable portion. If the credit allowed for any taxable year exceeds the tax otherwise due under R.C. 5747.02, after allowing for any other credits preceding the credit in the order prescribed by R.C. 5747.98, the excess will be refunded to the taxpayer but, if any amount of the credit is refunded, the sum of the amount refunded and the amount applied to reduce the tax otherwise due for that year may not exceed \$3 million or, if the certificate owner is a pass-through entity, may not exceed the taxpayer's distributive or proportionate share of \$3 million. The taxpayer may carry forward any balance of the credit in excess of the amount claimed for that year for not more than five ensuing taxable years, and must deduct any amount claimed for any such year from the amount claimed in an ensuing year.

Additional information is available on ODOT's Web site at www.development.ohio.gov/UD/OHPTC.

Motion Picture Production Credit

A motion picture company whose motion picture has been certified as a tax credit-eligible production may apply to the director of the Ohio Department of Development on or after July 1, 2009 for a refundable credit against the income tax. The credit equals a percentage of the motion picture company's eligible production expenditures with respect to the tax credit-eligible production. See R.C. 122.85 and 5747.66.

Line 25 – Interest and Penalty Due on Late-Paid and/or Late-Filed Return

See page 2, interest on underpayments, overpayments and penalties.

Schedule II – Income and Adjustments

Note: Show on Schedule II the income and adjustments only for those investors who are participating in the filing of this return.

Line 28 – Related Member Adjustments

“Related member” is defined in R.C. 5733.042(A)(6) but is modified by R.C. 5733.40(P). For purposes of the line 28 adjustment, a related member is any business entity or person directly or indirectly related to the taxpayer if the direct and indirect ownership interests exceed 40%.

Include on this line all compensation paid to or for family member employees if the pass-through entity owner is a member of the family directly, indirectly and/or by attribution owns at least 40% of the pass-through entity. See R.C. 5733.40. Do not show on line 30 any amount you show on line 28.

Line 30 – Reciprocity Agreements

Reciprocity agreements do not apply to those nonresidents directly or indirectly owning at least 20% of the stock or other equity of the pass-through entity. That is, pass-through entities cannot use the reciprocity agreements in order to avoid adding back compensation that the pass-through entities pay to such nonresidents. See R.C. 5733.40(A)(7).

Line 34 – Depreciation Adjustments

Each pass-through entity that for federal income tax purposes directly or indirectly claims bonus depreciation must add back 5/6 of the qualifying I.R.C. 168(k) bonus depreciation allowed under the I.R.C. in effect on Oct. 16, 2009. Also add 5/6 of the excess of the I.R.C. 179 depreciation expense allowed under the I.R.C. in effect on Oct. 16, 2009 over the amount of I.R.C. 179 depreciation expense that would have been allowed based upon I.R.C. 179 in effect on Dec. 31, 2002. Under I.R.C. 179 as that section existed on Dec. 31, 2002, the maximum amount that could be expensed was \$25,000, and the phase-out began once the cost of purchases of I.R.C. 179 property during the year exceeded \$200,000. So, under the prior law the taxpayer could not claim any I.R.C. 179 expense if the taxpayer's purchases during the year of I.R.C.

179 property, as defined on Dec. 31, 2002, were \$225,000 or more. See the department's information release regarding bonus depreciation on our Web site at tax.ohio.gov.

Important: S corporation shareholders cannot claim this deduction with respect to depreciable property for which the add-back occurred while the corporation was a C corporation. See R.C. 5733.40(A)(5) and 5747.01(A)(21)(a).

The “add-back and subsequent deduction” laws also cover (i) depreciable assets acquired by the pass-through entity's disregarded entities and (ii) depreciable assets that are owned by pass-through entities in which the pass-through entity directly or indirectly owns at least 5% (see R.C. 5747.01(A)(20)(a)).

In addition, the pass-through entity can defer making all or some of the add-back under the following circumstances:

- (i) the pass-through entity is an equity investor in another pass-through entity that has generated I.R.C. 168(k) bonus depreciation and/or I.R.C. 179 depreciation, AND
- (ii) because of either the federal passive activity loss limitation rules or the federal at-risk limitation rules, this investor pass-through entity is unable to deduct fully a loss passing through from the other pass-through entity to this investor pass-through entity.

In such circumstances, to the extent that this investor pass-through entity does not deduct the loss passing through, this investor pass-through entity can defer making the “5/6 add-back” until the taxable year or years for which this investor pass-through entity does deduct the investee pass-through entity's loss and does receive a federal tax benefit from the bonus depreciation amount and/or the I.R.C. 179 amount generated by the investee pass-through entity. This investor pass-through entity cannot begin claiming the related five-subsequent-years' deduction until the first taxable year immediately following the taxable year for which this investor pass-through entity makes the 5/6 add-back.

For detailed information and examples regarding this adjustment, go to our Web site at tax.ohio.gov and click on “Information Releases” to view “Recently Enacted Ohio Legislation Affects Depreciation Deductions for Taxable Years Ending in 2002 and Thereafter.” The department issued this information release on July 1, 2002, and revised it in July 2005.

Miscellaneous Federal Income Tax Adjustments

Also enter on this line (i) any income amount that was not included in the pass-through entity's business income (line 27) solely because of post-Oct. 16, 2009 amendments to the I.R.C. and (ii) any amount you deducted in arriving at ordinary income solely because of post-Oct. 16, 2009 amendments to the I.R.C. For example, you must add back 100% of (i) total depreciation (I.R.C. 167, 168 and 179) allowed over (ii) the total depreciation that you would have been allowed to claim under the I.R.C. as enacted on Oct. 16, 2009. See R.C. 5701.11.

Note: At the time of the printing of these instructions, there were no federal tax adjustments.

Line 35 – Other Income (Loss)

Include on this line any item of income or deduction if not otherwise reported and if that item affects an individual's computation of federal adjusted gross income.

Line 36 – Pass-through Entity Add-back

Add any Ohio form IT 1140 or IT 4708 taxes shown on federal K-1s that this pass-through entity received from other entities to the extent the taxes were deducted in arriving at your ordinary income.

Line 39 – Losses From Sale or Other Disposition of Ohio Public Obligations

See R.C. 5709.76, 5747.01(A)(9) and 5747.01(S)(7).

Schedule III – Deductions

The allowable deductions in arriving at federal adjusted gross income reflected on lines 41-48 are the combined amounts from the federal K-1s for the taxable year for only those investors that participate in the filing of Ohio form IT 4708. **Do not include any deductions that have been already used to reduce any income items set forth in Schedule II.**

Line 41 – I.R.C. 179, Expense Not Otherwise Deducted

If you show an amount on this line, attach the following forms:

- Page 1 of federal form 1065 or page 1 of federal form 1120S.
- Federal form 4562, Depreciation and Amortization.
- Federal form 8825, Rental Real Estate Income and Expenses of a Partnership or an S Corporation, if applicable.

Line 42 – Deduct 1/5 Depreciation and Miscellaneous Federal Income Tax Adjustments

Deduct 1/5 of the I.R.C. 168(k) and 179 depreciation adjustments the entity added back on each of its last five years' Ohio form IT 4708 returns. The entity can take this deduction even if the entity no longer directly or indirectly owns the asset. See the July 31, 2002 information release regarding Ohio bonus depreciation adjustments on our Web site at tax.ohio.gov.

Miscellaneous Federal Income Tax Adjustments

Also enter on this line (i) any income amount that was included in pass-through entity's business income (line 27) solely because of post-Oct. 16, 2009 amendments to the I.R.C. and (ii) any amount the entity were not able to deduct in arriving at ordinary income but the entity would have been able to deduct under the I.R.C. effect on Oct. 16, 2009. See R.C. 5701.11.

Note: At the time of the printing of these instructions, there were no federal tax adjustments.

Line 43 – Net Federal Interest and Dividends Exempt from State Taxation

For purposes of this adjustment, "net federal interest" is defined as federal interest less any expenses that were claimed on the federal tax return but that would not have been allowed under I.R.C. 265 if such interest were exempt from federal income tax. The Jan. 9, 1992, Ohio Department of Taxation information release lists federal obligations, the interest from which is deductible. You can obtain a copy of the release from the department's Web site address at tax.ohio.gov.

Interest income generated from repurchase agreements secured by federal obligations is not interest from federal obligations and therefore is not deductible. See *Nebraska Department of Revenue v. Lowenstein* 513 U.S. 123, 115 S. Ct. 557, 1994 US Lexis 8802. Also see *Associated Estates Corp., AEC Management Co. and Hirsch Electric Co. v. Limbach*, BTA Case Nos. 87-H-743, 87-G-774 and 87-D-756, May 11, 1990.

Line 44 – Other Separately Stated K-1 Amounts and Individual Development Accounts

The amount contributed to other separately stated K-1 amounts and an individual development account that are allowable as deductions (if not otherwise deducted above) in arriving at federal adjusted gross income on the federal income tax return may be deducted from total income. Examples include the domestic production activities deduction and the self-employed health insurance deduction.

Note: Income taxes that the pass-through entity pays on behalf of its investors and charitable contributions are not allowable deductions on this form.

Lines 47 and 48 – Ohio Public Obligations and Ohio Purchase Obligations

See R.C. 5747.01(A)(8), 5747.01(A)(9), 5747.01(S)(6), 5747.01(S)(7) and 5709.76.

Schedule IV – Apportionment Formula

Note: When calculating the apportionment ratio, a pass-through entity that has invested in another pass-through entity must apply the "aggregate" (conduit) theory of taxation. That is, the character of all income and deductions (and adjustments to income and deductions) realized by a pass-through entity in which the pass-through entity has invested retains that character when recognized by the pass-through entity. Furthermore, the pass-through entity's factors generally must include the proportionate share of each lower-tiered pass-through entity's property, payroll and sales. See R.C. 5733.057 and 5747.231.

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

owned or rented, and used in the trade or business everywhere during such year.

For taxable years ending on or after June 26, 2003, the property factor specifically **includes** real property and tangible personal property that the pass-through entity rents, subrents, leases or subleases to others if the income or loss from such rentals, subrentals, leases or subleases is business income. Furthermore, for taxable years ending on or after June 26, 2003, Ohio law specifically excludes from the factor property relating to, or used in connection with, the production of non-business income allocated under R.C. 5733.051.

Property owned by the pass-through entity is valued at its original cost average value. Average value is determined by adding the cost values at the beginning and at the end of the taxable year and dividing the total by two. The tax commissioner may require the use of monthly values during the taxable year if such values more reasonably reflect the average value of the corporation's property.

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

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

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

Line 1(a), Column 1 – Property Owned Within Ohio

Enter the average value of the pass-through entity's real property and tangible personal property, including leasehold improvements, owned and used in the trade or business in Ohio during the taxable year.

Line 1(a), Column 2 – Property Owned – Total Everywhere

Enter the average value of all the pass-through entity's real property and tangible personal property, including leasehold improvements, owned and used in the trade or business everywhere during the taxable year.

Line 1(b) – Property Rented

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

Line 1(c) – Property Total – Within Ohio and Everywhere

Add lines 1(a) and 1(b) for column 1, (within Ohio) and column 2 (total everywhere).

Line 1(c), Column 3 – Property Ratio

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

Line 1(c), Column 5 – Weighted Property Ratio

Multiply the property ratio on line 1(c), column 3 by the property factor weight of 20%.

Payroll Factor

The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the pass-through entity, and the denominator of which is the total compensation paid both within and without this state during the taxable year by the pass-through entity. As used below, the term "compensation" means any form of remuneration paid to an employee for personal services.

Do not include in column 1 (within Ohio) or in column 2 (total everywhere) the following:

- Guaranteed payments made to partners.
- Compensation paid in Ohio to employees who are primarily engaged in qualified research.
- Compensation paid to employees to the extent that the compensation relates to the production of nonbusiness income allocable under R.C. 5733.051 (see R.C. 5733.05(B)(2)).
- Compensation that an S corporation paid to any shareholder included in this report if the shareholder directly or indirectly owned at least 20% of the S corporation at any time during the year. R.C. 5733.40(A) (7).

Do not include in column 1 but do include in column 2 compensation paid in Ohio to certain specified new employees at an urban job and enterprise zone facility for which the pass-through entity has received a Tax Incentive Qualification Certificate issued by the Ohio Department of Development.

Line 2, Column 1 – Payroll Within Ohio

Enter the total amount of the pass-through entity's compensation paid in Ohio during the taxable year. Compensation is paid in Ohio if any of the following apply:

- The recipient's service is performed entirely within Ohio;
OR

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

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

Line 2, Column 2 – Payroll – Total Everywhere

Enter the total amount of the pass-through entity's compensation paid everywhere during the taxable year.

Line 2, Column 3 – Payroll – Ratio

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

Line 2, Column 5 – Weighted Payroll Ratio

Multiply the property ratio on line 2, column 3 by the payroll factor weight of 20%.

Sales Factor

The sales factor is a fraction whose numerator is the pass-through entity's includable business income receipts in Ohio during the taxable year and whose denominator is the sum of the pass-through entity's within Ohio and without Ohio includable business income receipts during the taxable year.

The sales factor specifically excludes receipts attributable to nonbusiness income allocable under R.C. 5733.051 (see R.C. 5733.05(B)(2) and the tax commissioner's April 2004 information release entitled "Sales Factor Siting Revisions").

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

- Interest or similar amounts received for the use of, or for the forbearance of the use of, money;

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

Note: Income and gain from receipts excluded from the sales factor is not presumed to be nonbusiness income. All income, gain, loss and expense is presumed to be apportionable business income – even if the related receipts are excluded from the sales factor. A pass-through entity reporting any allocable income from Schedule 1, lines 4 and 8 must attach to the report (i) a schedule indicating the type and the amount for each item of income, (ii) a statement explaining why the income is not business income and (iii) a list of states, if any, for which the pass-through entity treats such income as business income.

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

Line 3, Column 1 – Sales Within Ohio

Enter the total of gross receipts from sales not excludable from the numerator and the denominator of the sales factor, to the extent the includable gross receipts reflect business done in Ohio. Sales within Ohio include the following:

- Receipts from sales of tangible personal property, less returns and allowances, received by the purchaser in Ohio. In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed is considered as the place at which such property is received by the purchaser.

Direct delivery in Ohio, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in Ohio, and direct delivery outside Ohio to a person or firm designated by a purchaser does not constitute delivery to the purchaser in Ohio, regardless of where title passes or other conditions of sale. Customer pick-up sales are situsable to the final destination after all transportation (including customer transportation) has been completed. See *Dupps Co. v. Lindley* (1980), 62 Ohio St. 2d 305.

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

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

Line 3, Column 2 – Sales – Total Everywhere

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

Line 3, Column 3 – Sales – Ratio

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

Line 3, Column 5 – Weighted Sales Ratio

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

Line 4, Column 5 – Total Weighted Apportionment Ratio

Add column (5), lines 1(c), 2 and 3. Enter ratio here and on page 1, line 6 and on page 1 in the upper right-hand box.

Schedule V – Investor Information

Please provide investor information for all investors in the pass-through entity, which is any of the following:

- Completion of Schedule V and additional sheet(s) if necessary.
- A paper copy of pages 1 and 2 of the IRS schedule K-1s that this entity will issue to each investor in this entity. The K-1s must indicate the amount of Ohio form IT 4708 tax paid (net of overpayments) that, for Ohio income tax purposes, will pass through as a credit from this pass-through entity to each investor whose income is included in this report. Please do not include any attachments or statements relating to the K-1s. (See "Tax Credit Available to Investors" on page 11.)
- Magnetic media meeting the specifications that the IRS requires for transmission of information by electronic media (for more information, see IRS publication 1525 and 3416). The magnetic media must set forth the same K-1 information described above.
- Information in ASCII Comma Delimited Format appear in the following order:
 1. Federal employer identification number of the pass-through entity.
 2. Name of the pass-through entity.
 3. Name of investor in this entity.
 4. Federal employer identification number or Social Security number of the investor set forth in field number 3.
 5. Street address of the investor set forth in field number 3.
 6. City of the investor set forth in field number 3.
 7. State of the investor set forth in field number 3.
 8. ZIP code of the investor set forth in field number 3.
 9. The amount of Ohio form IT 4708 tax paid (net of overpayments, if any, previously paid) that will pass through as a credit from this pass-through entity to each investor whose income is included in this report set forth in field number 3. (See "Tax Credit Available to Investors" on page 11.)

The return preparer must repeat the sequence set forth in fields number 1 through number 9 for each investor.

Preparers using magnetic media must affix to the outside of the magnetic media a label containing the following information in large type or print: (i) the name and federal employer identification number of the pass-through entity, (ii) the phrase, "IT 4708 K-1 Information," and (iii) the phrase, "Taxable Year Ending in 2009."

Tax Credit Available to Investors

Prior to issuing to investors whose income is included in this report the IRS form K-1, this pass-through entity should indicate on each IRS form K-1 the investor's portion of the Ohio form IT 4708 net tax paid by this pass-through entity for the taxable year, even if the tax is paid (or if the refund

is received) after the end of the taxable year. The investor can claim this amount as a credit on Ohio forms IT 1040, IT 1041 or IT 4708. R.C. 5747.08(J) sets forth the conditions for claiming this credit. Investors claiming the credit on Ohio forms IT 1040, IT 1041 or IT 4708 must include with that form a copy of the K-1.

Federal Privacy Act Notice

Because we require you to provide us with a Social Security number, the *Federal Privacy Act of 1974* requires us to inform you that providing us with your Social Security number is mandatory. Ohio Revised Code sections 5703.05, 5703.057 and 5747.08 authorize us to request this information. We need your Social Security number in order to administer this tax.

Taxpayer Assistance

By Internet



Ohio Department of Taxation Internet Web Site – tax.ohio.gov

Tax Forms
Instructions
Information Releases
Frequently Asked Questions
Refund Status
E-mail us

By Phone



Toll-Free Telephone Numbers

Toll-Free 24-hour **Refund Hotline** 1-800-282-1784
Toll-Free **Form Requests** 1-800-282-1782
Toll-Free **Tax Questions** 1-800-282-1780

Written



Ohio Department of Taxation Taxpayer Services Mailing Address

Ohio Department of Taxation
Taxpayer Services Division
P.O. Box 182382
Columbus, Ohio 43218-2382

Walk-in



Ohio Department of Taxation Taxpayer Service Locations

Taxpayer Service Center Hours
Office hours: 8:00 a.m. – 5:00 p.m.
Monday through Friday

See location listing at right.

Ohio Department of Taxation Taxpayer Service Centers

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

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

Cleveland Taxpayer Service Center
615 W. Superior Ave.
Fifth Floor, Rm. 570
Cleveland, OH 44113-1891

Columbus Taxpayer Service Center
4485 Northland Ridge Blvd.
Columbus, OH 43229-3414

Dayton Taxpayer Service Center
Centre City Offices
40 S. Main St., 5th Floor
Dayton, OH 45402-2068

Toledo Taxpayer Service Center
One Gov't. Center, Suite 1400
Toledo, OH 43604-2232

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

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

For the Deaf, Hearing Impaired or Speech Impaired Who Use TTY or TDD Only: Please contact the Ohio Relay Service at 1-800-750-0750 and give the communication assistant the Department of Taxation phone number that you wish to contact.

Volunteer Tax Assistance Program (VITA) and Tax Counseling for the Elderly (TCE): These programs help older, disabled, low-income and non-English speaking people fill in their state and federal returns. For locations in your area, call the Internal Revenue Service at 1-800-829-1040. If you received an Ohio and/or federal income tax package in the mail, take them with you when you go for help.