



Municipal Income Tax for Electric Light Companies and Telephone Companies

The municipal income tax for electric light companies and telephone companies, outlined in Chapter 5745 of the Ohio Revised Code, was enacted by the Ohio General Assembly in 2000. This tax is sometimes referred to as the “Chapter 5745 municipal income tax” to distinguish it from the traditional municipal income tax for individuals and business taxpayers located in Chapter 718. Unlike the traditional municipal income tax, the Chapter 5745 tax is administered by the Ohio Department of Taxation.

“Electric light companies” – meaning, electric companies and certain marketers and brokers of electricity – were first subject to the Chapter 5745 tax for their taxable year including Jan. 1, 2002. Two years later, the tax began to apply to local exchange telephone companies (starting with the taxable year including Jan. 1, 2004).

Before the enactment of Chapter 5745, only certain marketers and brokers of electricity – defined by the Revised Code as “an electric light company that is not an electric company” – were subject to traditional municipal income taxes. Such marketers and brokers of electricity may now elect to be subject to the state-administered tax (Chapter 5745). Otherwise, they remain subject to the traditional municipal income tax (Chapter 718). For details, see **Special Provisions**.

The municipal income tax for electric light companies and telephone companies generated \$41.8 million in revenue in calendar year 2007 on returns filed for taxable year 2006. Tax returns for calendar year 2007 will be reported in April 2008.

Taxpayer (Ohio Revised Code 5745)

Taxpayers include:

- **Electric companies.** A person is an electric company when engaged in the business of generating, transmitting, or distributing electricity within Ohio for use by others. The Ohio Revised Code excludes rural electric companies from this definition (see R.C. 5727.01(D)(3));
- **Combined companies.** A person is a combined company when engaged in the activity of an electric company or rural electric company, and in the activity of a heating company or a natural gas company, or any combination thereof (see R.C. 5727.01(L));
- **Certain marketers or brokers of electricity** that meet the requirements and make the election set out in R.C. 5745.031; and
- **(Local exchange) telephone companies.** A person is a “telephone company” when primarily engaged in the business of providing local exchange telephone

service, excluding cellular radio service, in this state (R.C. 5727.01(D)(2)).

Tax Base (R.C. 5745)

The “starting point” for Chapter 5745 municipal income taxpayers is federal taxable income after certain adjustments (see below). The taxpayer’s adjusted federal taxable income is first multiplied by the taxpayer’s Ohio apportionment ratio to determine Ohio income. Then, Ohio income is multiplied by the taxpayer’s municipal apportionment ratio and the tax rate for each Ohio municipality that has enacted a municipal income tax and in which the taxpayer has taxable nexus.

Ohio Apportionment Ratio (R.C. 5745.02):

The Chapter 5745 municipal income tax Ohio apportionment ratio is computed in a manner similar to the Ohio corporation franchise tax apportionment ratio.

Municipal Apportionment Ratio (R.C. 5745.02(C)):

For purposes of determining the taxpayer’s apportionment ratio for each municipality, the Chapter 5745 municipal income taxpayer’s payroll, sales, and property are generally situated consistent with the franchise tax siting provisions. However, for purposes of the municipal payroll factor, compensation is situated based upon the amount of compensation that during the taxable year is earned in the municipality by the taxpayer’s employees for services performed for the taxpayer, and that is subject to income tax withholding by the municipality.

Taxable year:

For Chapter 5745 municipal income tax purposes, a municipal income taxpayer’s taxable year is the same as the taxpayer’s taxable year for federal income tax purposes, regardless of when during the taxable year the taxpayer first entered Ohio and regardless of when during the taxable year the municipal income taxpayer first became subject to the Chapter 5745 tax in a particular municipality.

Adjustments to federal taxable income:

Net intangible income (R.C. 5745.01(G)(1) and (G)(2)) – Taxpayers may deduct intangible income as defined in R.C. 718.01, less expenses incurred in the production of such intangible income, to the extent that the income and expenses are used in determining federal taxable income.

Book-tax difference for electric companies (R.C. 5745.01(G)(3)) – Electric companies may add or subtract the net “book-tax difference” on “qualifying assets.” Book tax difference is defined in R.C. 5745.01(G)(3) and 5733.0511 as the “difference between a qualifying asset’s net book value on Dec. 31, 2000 and such asset’s adjusted basis on Dec. 31, 2000.” Qualifying asset is defined in R.C. 5733.0510(B)(3) as any asset on the taxpayer’s books as of

Dec. 31, 2000. The book-tax difference may be a negative number.

Book-tax difference adjustment for telephone companies (R.C. 5745.01(G)(5) and R.C. 5733.0511(A)) – For each of the ten taxable years ending in 2009 through 2018, local exchange telephone companies are eligible for a book-tax difference adjustment. For each of those years the adjustment equals one-tenth of the difference between the book value of a qualifying telephone company's assets on Dec. 31, 2003, in accordance with generally accepted accounting principles (GAAP), and the federal adjusted basis of such assets on Dec. 31, 2003. The book-tax difference may be a negative number.

Rates (R.C. 5745.03 (F))

In determining the tax payable to each municipality for the taxpayer's taxable year, the taxpayer must use the certified tax rate in effect for that municipality on the first day of January of the taxpayer's taxable year. If a taxpayer's taxable year is for a period of less than twelve months and that taxable year does not include the first day of January, the tax rate used is the tax rate in effect in a municipality on the first day of January of the preceding taxable year.

Credits (R.C. 5745.06)

If the taxpayer has an interest in a pass-through entity that is also subject to and has paid the Chapter 5745 municipal income tax, then the taxpayer may claim a credit against its own Chapter 5745 liability. The credit equals the qualifying taxpayer's proportionate share of the lesser of either the Chapter 5745 tax due from, or paid by, the qualifying pass-through entity to that municipality for the pass-through entity's taxable year ending in the taxpayer's taxable year.

Special Provisions

Taxpayer elections (R.C. 5745.031):

An "electric light company that is not an electric company" can elect to be a taxpayer under Chapter 5745 if during the company's most recently concluded taxable year, at least 50 percent of the company's total sales in Ohio, as determined under R.C. 5733.059, consist of sales of electricity and other energy commodities. The company must make the election in writing to the Tax Commissioner before the first day of the first taxable year to which the election is to apply. The election is effective for five consecutive taxable years and, once made, is irrevocable for those five years. An "electric light company that is not an electric company" that does not meet the requirements to make the election, or meets the requirements but does not make a timely election, is subject to the filing and payment requirements of each municipality which has enacted an income tax and in which the company has taxable nexus.

Qualified subchapter S subsidiaries and combined companies:

If a taxpayer is a qualified subchapter S subsidiary as defined in Internal Revenue Code (I.R.C.) section 1361 or a disregarded entity, the company's parent S corporation or owner is the taxpayer for the purposes of the municipal income tax.

If the taxpayer is a "combined company," it must adjust the numerator of its municipal property, payroll, and sales factors (but not the numerator of its Chapter 5745 Ohio property, payroll, and sales factors) to include only the company's activity as an electric company, because "for a combined company, only the income attributed from the activity of an electric company shall be subject to taxation by a municipal corporation" (see R.C. 1701.18(F)(6)).

Alternative apportionment methods:

Alternative apportionment methods may also be available to taxpayers (see R.C. 5745.02(E)). If the provisions for apportioning adjusted federal taxable income to Ohio or for apportioning Ohio net income to an Ohio municipality do not fairly represent business activity in Ohio or in a municipality, the Tax Commissioner may adopt rules for apportioning such income by an alternative method that does fairly represent business activity in Ohio or Ohio's municipalities. In addition, if the above provisions for apportioning adjusted federal taxable income to Ohio or for apportioning Ohio net income to an Ohio municipality do not fairly represent the extent of a taxpayer's business activity in Ohio or Ohio's municipalities, the taxpayer may request, or the Tax Commissioner may require, that the taxpayer's adjusted federal taxable income or Ohio net income be determined by an alternative method, including any of the alternative methods enumerated in R.C. 5733.05(B)(2)(d). A taxpayer requesting an alternative method must make the request in writing to the Tax Commissioner either with the annual report, a timely filed amended report, or a timely filed petition for reassessment.

Municipal tax returns (R.C. 5745.03(E)):

A municipality that has enacted an income tax may not require a Chapter 5745 municipal income taxpayer to file a municipal income tax return for that municipality. However, to the extent necessary for a municipality to compute a taxpayer's property, payroll, and sales factors for that municipality, the municipality may require the taxpayer to report to the municipality the value of the taxpayer's real and tangible personal property situated in the municipality, the taxpayer's compensation paid to its employees in the municipality, and the taxpayer's sales made in the municipality.

Filing and Payment Dates (R.C. 5745.02 –

.04, R.C. 5745.041)

Remittances are payable to the Treasurer of State.

Estimated payment requirements:

- For each taxable year, each taxpayer must file a declaration of estimated tax report and make payment as follows:
- Not later than the 15th day of the fourth month after the end of the preceding taxable year, the taxpayer must pay at least 25 percent of the combined tax liability for the preceding taxable year, or 20 percent of the combined tax liability for the current taxable year.
- Not later than the 15th day of the sixth month after the end of the preceding taxable year, the taxpayer must pay at least 50 percent of the combined tax liability for the preceding taxable year, or 40 percent of the combined tax liability for the current taxable year.
- Not later than the 15th day of the ninth month after the end of the preceding taxable year, the taxpayer must pay at least 75 percent of the combined tax liability for the preceding taxable year, or 60 percent of the combined tax liability for the current taxable year.
- Not later than the 15th day of the 12th month after the end of the preceding taxable year, the taxpayer must pay at least 100 percent of the combined tax liability for the preceding taxable year, or 80 percent of the combined tax liability for the current taxable year.

The term “combined tax liability” means the total of the taxpayer’s income tax liabilities to all Ohio municipalities for a taxable year.

Returns and extensions:

Returns are due by the 15th day of the fourth month following the end of the taxpayer’s taxable year. An extension will be granted if, by that date, the taxpayer filed with the Tax Commissioner a copy of the taxpayer’s federal extension. The granting of an extension does not extend the last day for paying taxes without penalty unless the Tax Commissioner extends the payment date.

Tax payment by electronic funds transfer (R.C. 5745.03(E), 5745.04(E) and 5745.041):

If any remittance of estimated Chapter 5745 municipal income tax is for \$1,000 or more or the amount payable with the report exceeds \$1,000, the taxpayer must make the remittance by electronic funds transfer (EFT).

Disposition of Revenue (R.C. 5745.05)

Revenue is distributed to municipal corporations quarterly – by the first day of March, June, September, and December – from the Municipal Income Tax Fund. The Department of Taxation certifies the amount to be distributed to each municipality and receives 1.5 percent of collections into the fund to defray the costs of administering the tax.

Administration (R.C. 5745)

The municipal income tax for electric light companies and local exchange telephone companies is administered and enforced by the Department of Taxation, rather than by the various Ohio municipalities that have enacted a municipal income tax.

Ohio Revised Code Citations

Chapters 5745, 113, 718, 4928, 5703, 5727, and 5733.

Recent Legislation

Substitute House Bill 157, 127th Ohio General Assembly (I.R.C. Conformity Provision, effective December 21, 2007).

Among other provisions this new law amended the R.C. 5701.11 definition of “Internal Revenue Code as amended” and thereby adopted all the changes to the Internal Revenue Code enacted by Congress from Dec. 28, 2006 through Dec. 21, 2007, the effective date of House Bill 157’s amendment to R.C. 5701.11.

Amended Substitute House Bill 119, 127th General Assembly (effective Sept. 28, 2007).

The bill:

Established a procedure for refunding the Department of Taxation’s administrative fee to municipalities in those instances where the department requires a municipality to refund the taxpayer’s overpayment. (R.C. 5745.05(B))

Clarified the circumstances under which the Department of Taxation is required to notify a municipality of the department’s adjustment to a particular taxpayer’s tax for that municipality. The Department of Taxation is required to notify the municipality of the adjustment only if the adjustment increases or decreases the taxpayer’s tax for that municipality for the taxable year by more than \$500. Prior law could be interpreted as requiring that the department notify each affected municipality if the aggregate total tax adjustment to all municipalities was more than \$500. (R.C. 5745.13)

Changed municipal sales factor terminology. For purposes of siting sales of electricity to a particular municipality, the R.C. 5745.02(C)(3) municipal sales factor statute specifically applies the franchise tax electricity siting provisions found in R.C. 5733.059. R.C. 5733.059 situses sales of electricity based on where the **customer** consumes the electricity. On the other hand, the R.C. 5745.02(C)(3) municipal sales factor language referred to the **consumer**. The amendment to R.C. 5745.02(C)(3) substitutes the word “customer” for the word “consumer” making the terminology in R.C. 5745.02(C)(3) consistent with the terminology in R.C. 5733.059.

Table
Revenue from Municipal Income Tax for Electric Light Companies
and Telephone Companies:
Calendar Years
2003 - 2007

(in millions)

Calendar Year	Total
2003	\$15.4 ¹
2004	30.9 ²
2005	40.9 ³
2006	32.0 ⁴
2007	41.8 ⁵

- 1 Includes \$0.5 million distributed to the Municipal Income Tax Administration Fund.
- 2 Includes revenue from telephone companies. Also includes \$0.2 million distributed to the Municipal Income Tax Administration Fund.
- 3 Includes revenue from telephone companies. Also includes \$0.6 million distributed to the Municipal Income Tax Administration Fund.
- 4 Includes revenue from telephone companies. Also includes \$0.5 million distributed to the Municipal Income Tax Administration Fund.
- 5 Includes revenue from telephone companies. Also includes \$0.6 million distributed to the Municipal Income Tax Administration Fund.

