

**Ohio Municipal Income Tax for Electric Light
Companies
Ohio Revised Code [ORC] Chapter 5745**

General Instructions

Please contact Carolyn Jordan at 614-995-0333 for your electronic filing packet, and register for electronic funds transfer with the Treasurer of State by calling Jane Greenberg at 614-466-8063. Please read the electronic forms instructions and complete the identification sheet in its entirety. Please direct your questions regarding your Chapter 5745 municipal income tax filing and payment requirements to either Chuck Ortlieb at 614-433-7609 or Tom Duncan at 614-433-7615.

The Chapter 5745 Ohio municipal income tax for electric light companies is administered and enforced by the Ohio Department of Taxation rather than by the various Ohio municipalities that have enacted a municipal income tax. The term "electric light company" includes "electric companies", "combined companies" and certain electing marketers and brokers of electricity (the statute refers to a marketer or broker of electricity as "an electric light company that is not an electric company").

As used throughout these instructions, the term "taxpayer" means an entity that is subject to the Chapter 5745 municipal income tax for electric light companies. Taxpayers include the following :

- **Electric company.** A person is an electric company when engaged in the business of generating, transmitting or distributing electricity within Ohio for use by others, but excludes a rural electric company. See ORC 5727.01(D)(3);
- **Combined company** -- means any person engaged in the activity of an electric company or rural electric company that is also engaged in the activity of a heating company or a natural gas company, or any combination thereof (see ORC 5727.01(L)); and
- Certain markets or brokers of electricity that meet the requirements and make the election set out in ORC section 5745.031. See below "Taxpayer election for an 'electric light company that is not an electric company'."

A taxpayer is subject to the Chapter 5745 municipal income tax for any Ohio municipality which has enacted a municipal income tax and in which the company has property, payroll or sales during the taxable year.

An **electric company** is first subject to the ORC Chapter 5745 municipal income tax reporting and payment requirements for the electric company's taxable year that includes **January 1, 2002**. For taxable years prior to the taxable year that includes January 1, 2002, electric companies were exempt from municipal income tax.

An "**electric light company that is not an electric company**" can elect to be a Chapter 5745 taxpayer for its taxable year that includes **December 31, 2002** (see section 7 of Senate Bill 287, 123rd General Assembly). Unlike an "electric company", an "electric light company that is not an electric company" is not exempt from municipal income tax for taxable years prior to the taxable year that includes December 31, 2002.

Throughout these instructions we have assumed that all ORC Chapter 5745 taxpayers have a calendar year end. If the taxpayer's taxable year is other than a calendar year, please notify the Ohio Department of Taxation by calling 614-433-7609. Also, see section 7 of SB 287 and the instructions for schedule 1, line 8 – proration factor.

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 Chapter 5745 taxpayer's property, payroll, and sales factors for that municipality, the municipality may require an electric light company 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. ORC section 5745.03(E).

Taxpayer election for an "electric light company that is not an electric company." An "electric light company that is not an electric company" can elect to be a taxpayer under Chapter 5745 of the Ohio Revised Code if during the company's most recently concluded taxable year not less than fifty

per cent of the company's total sales in Ohio as determined under section 5733.059 of the Revised Code 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 the five taxable years for which the election was made.

An electric light 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 requirement of each municipality which has enacted an income tax and in which the company has taxable nexus. See ORC section 5745.031 and section 7 of SB 287.

Taxable year. A taxpayer's taxable year for Chapter 5745 municipal income tax purposes is the same as the taxpayer's taxable year for federal income tax purposes regardless of when during the taxable year the taxpayer first enters Ohio and regardless of when during the taxable year the taxpayer first becomes subject to the Chapter 5745 municipal income tax in a particular municipality. Unlike the Ohio franchise tax concept and definition of taxable year, a taxpayer's Chapter 5745 taxable year for a particular municipality does not begin on the date that the taxpayer becomes subject to the municipal income tax in that municipality. So if an electric company or electric light company enters Ohio for the first time after the beginning of its federal taxable year, the taxpayer's taxable year is nevertheless the taxpayer's entire federal taxable year. Furthermore, if a taxpayer already subject to the Chapter 5745 municipal income tax in some Ohio municipalities first becomes subject to the municipal income tax in another Ohio municipality sometime after the beginning of the taxable year, the taxpayer's taxable year with respect to the other municipality is nevertheless the taxpayer's entire federal taxable year.

Qualified subchapter S subsidiaries and disregarded entities. If an electric light company is a qualified subchapter S subsidiary as defined in section 1361 of the Internal Revenue Code or a disregarded entity, the company's parent S corporation or

owner is the taxpayer for the purposes of the Chapter 5745 municipal income tax for electric light companies. See ORC section 5745.01(C).

Adjustments for a Combined company. 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 ORC section 1701.18(F)(6)). The term "combined company" is not to be confused with a member of a "combined report" (see below).

Combined reports. The tax commissioner may adopt rules providing for the combination of adjusted federal taxable incomes of taxpayers satisfying the ownership or control requirements of section 5733.052 of the Revised Code if the tax commissioner finds that such combinations are necessary to properly reflect adjusted federal taxable income, Ohio net income, or the portion of Ohio net income taxable by municipalities. However, a taxpayer satisfying the ownership or control requirements of section 5733.052 of the Revised Code with respect to one or more other taxpayers may not combine their adjusted federal taxable incomes for the purposes of the Chapter 5745 municipal income tax unless the tax commissioner adopts such rules¹ or the tax commissioner finds that such a combination is necessary to properly reflect the taxpayers' adjusted federal taxable incomes, Ohio net income, or the portion of Ohio net income to be subject to taxation within a municipality. See ORC section 5745.02(F).

Extension to file return. Without an extension, the annual Chapter 5745 municipal income tax return for an electric light company is due by the 15th day of the fourth month following the end of the taxpayer's taxable year. The due date of the annual municipal income tax return is extended to the due date of the taxpayer's federal income tax return if by the 15th day of the fourth month following the end of its taxable year the taxpayer filed with the tax

¹ To date the tax commissioner has adopted no such rules.

commissioner a copy of the taxpayer's federal extension. As such, if an electric company or an electric light company that is not an electric company has a calendar year end, its first Chapter 5745 municipal income tax return without extension is due by April 15, 2003 and if by April 15, 2003 the taxpayer filed with the tax commissioner a copy of its federal extension, the due date of the annual return is extended to September 15, 2003. If the taxpayer requested an extension for filing its federal income tax return, and by April 15, 2003 filed a copy of that extension with the tax commissioner, please check the "extension" box at the top of the form and file the return by the extended due date. The granting of an extension does not extend the last day for paying taxes without penalty unless the tax commissioner extends the payment date. So, if the taxpayer does not file its Chapter 5745 municipal income tax return by the 15th day of the fourth month following the end of its taxable year, it must nevertheless pay any remaining tax due by that date. See ORC section 5745.03(B).

Tax Payment by Electronic Funds Transfer. If any remittance of estimated Chapter 5745 municipal income taxes is for \$1,000 or more, or if the amount payable with the report exceeds \$1,000, the taxpayer must make the remittance by electronic funds transfer. See ORC sections 5745.03(E), 5745.04 (E) and 5745.041. Please direct questions regarding the EFT payment program to the Treasurer of State's office at 30 East Broad Street, 9th floor, Columbus, Ohio 43266-0421 or telephone that office toll free at 1-877-EFT-Ohio (338-6446).

Tax Rate. The tax rate used to determine the tax payable to a municipality for a taxpayer's taxable year is the tax rate in effect in that municipality on the first day of January in that taxable year. If a taxpayer's taxable year is for a period less than twelve months and that taxable year does not include the first day of January, the tax rate used to determine the tax payable to a municipality for the taxpayer's taxable year is the tax rate in effect in a municipality on the first day of January in the preceding taxable year. ORC section 5745.03(F).

Municipality must certify tax rate to the tax commissioner. On or before the thirty-first day of January each year, each municipality imposing a tax

on income must certify to the tax commissioner the rate of the tax in effect on the first day of January of that year. If a municipality fails to certify its income tax rate, the director of budget and management will withhold from each payment made to the municipality fifty per cent of the amount of the payment otherwise due as computed on the basis of the tax rate most recently certified. The director must withhold such payment until the municipality certifies the tax rate in effect on the first day of January of that year. ORC section 5745.03(F).

Estimated payment requirements for the taxable year ending in 2002. (Please see page 12 for the estimated payment requirements for the taxable year beginning in 2003.)

As used below, the term "combined tax liability" means the total of the taxpayer's income tax liabilities to all Ohio municipalities for a taxable year.

- If the taxpayer is an electric company, it was required to pay **20%** of its combined tax liability on or before **the fifteenth day of each of the fourth, sixth, ninth and twelfth months of its taxable year ending in 2002**. No penalty or interest will be imposed on a an electric company for the taxable year ending in 2002 if the estimated tax was paid within the time prescribed and the total of the estimated taxes remitted equals at least 80% of the combined tax liability for the taxable year.
- If the taxpayer is an "electric light company that is not an electric company" which paid municipal income tax in the taxable year prior to the taxable year that begins on or after January 1, 2002 and if during that prior taxable year the taxpayer made the election provided in ORC section 5745.031 for its taxable year that began on or after January 1, 2002, then the taxpayer was required to pay **25%** of its combined tax liability for the prior taxable year on or before **the fifteenth day of each of the fourth, sixth, ninth and twelfth months after the end of its prior taxable year**. No penalty or interest will be imposed on an electric light company that is not an electric company for the taxable year ending in 2002 if the total of the estimated taxes paid equals 100% of the combined tax liability for the prior taxable year.

See section 7 of House Bill 287.

Interest on delinquent taxes. If the tax required to be paid under Chapter 5745 or any portion of that tax is not paid on or before the date prescribed for its payment, interest will be assessed, collected, and paid, in the same manner as the tax, upon such unpaid amount at the rate per annum prescribed by section 5703.47 of the Revised Code from the date prescribed for its payment until it is paid or until the day an assessment is issued under section 5745.12 of the Revised Code, whichever occurs first. The interest rate on underpayments is the same as the interest rate on overpayments.

During calendar year 2002 interest on both underpayments and overpayments accrued at the rate of 7% per annum. During calendar year 2003 interest on both underpayments and overpayments will accrue at the rate of 6% per annum. ORC section 5745.07.

Penalties for late payment, failure to file, or late filing.

- Penalty may be imposed for failure to timely pay the tax (including estimated tax). The penalty imposed may not exceed twice the interest charge.
- Penalty may be imposed for failure to file or 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% of the tax required to be shown on the report.
- Additional penalties may be imposed for filing a frivolous or fraudulent report and for filing a fraudulent refund claim.

See ORC section 5745.08.

Reporting federal changes. If, as a result of amendment or adjustment to the taxpayer's federal income tax return by the taxpayer, by the Internal Revenue Service or by the tax commissioner, such alteration affects the taxpayer's Chapter 5745 municipal income tax liability, the taxpayer must report such change to the Ohio Department of Taxation in the form of an amended municipal income tax report by the earliest of the following:

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

- One year after the taxpayer received a federal income tax refund as result of the adjustment.

This provision applies even if the three-year statute of limitations has passed and applies to amended reports which reflect overpayments as well as to amended reports which reflect underpayments. If the amended report reflects an underpayment, the amended report must be accompanied by payment of any additional tax and interest. If the amended report reflects an overpayment, the amended report must be accompanied by an application for refund or by a statement which 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).

Disclosure of tax information to municipalities.

The tax commissioner will adopt rules governing the terms and conditions under which Chapter 5745 tax reports or information filed by an electric light company are available for inspection by properly authorized officers, employees, or agents of the municipality to which the taxpayer's Ohio net income is apportioned under Chapter 5745.

The rules must prohibit disclosure of such reports or information to any person other than a properly authorized officer, employee, or agent of a municipality, and must provide for disclosure of only such information as is necessary to ascertain the share of a taxpayer's net income apportioned to that municipality.

Net operating loss carryforward.

Note: Net operating losses occurring in taxable years ending before 2002 may not be deducted because electric light companies were not subject to Chapter 5745 municipal income tax for taxable years ending before 2002.

For each municipality and for each taxable year ending in 2002 or thereafter in which the net operating loss occurs, the net operating loss is apportioned in and out of the municipality in the same manner that positive net income would have been apportioned. Any net operating loss for a municipality may be carried forward and applied to subsequent net income in that municipality to reduce that income to zero or until the net operating loss has

been fully used as a deduction. The unused portion of net operating losses for each taxable year apportioned to a municipality may only be applied against the income apportioned to that municipality for five subsequent taxable years after which time the unused portion of any remaining net operating loss is lost. See ORC section 5745.02(C).

Refund applications. A taxpayer requesting a refund of any illegal, erroneous, or excessive payment of Chapter 5745 municipal income tax, including the payment of a Chapter 5745 municipal income tax assessment issued pursuant to ORC section 5745.12, must file an amended report accompanied by the full and complete reason for the refund claim within three years after the date of the illegal, erroneous, or excessive payment of the tax. See *Abitibi-Price Corporation and Subsidiaries v. Tracy*, BTA No. 98-N-401 (3-12-01).. For purposes of this three year period, estimated payments made before the due date or extended due date for filing the report to which the payment relates are deemed to have been made on the due date or extended due date of the report. However, if by written agreement the tax commissioner and the taxpayer have extended the three year assessment statute of limitations, then the refund statute of limitations is extended to the same date.

Upon the taxpayer's filing of a claim for refund, the tax commissioner will determine the amount of refund due and certify the amount of the refund to each municipality to which the overpayment was made. The municipality (rather than the Treasurer of State) will issue a refund to the taxpayer, or upon the taxpayer's written request, will credit the amount of the refund against the taxpayer's estimated tax payments to the municipality for an ensuing taxable year. Any portion of the refund not issued within ninety days after the tax commissioner's notice is received by the municipality bears interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the ninetieth day after such notice is received by the municipality until the day the refund is paid or credited. Interest on an illegal or erroneous assessment is paid at the rate per annum prescribed by section 5703.47 of the Revised Code from the date of payment on the illegal or erroneous assessment until the day the refund is paid or credited.

Please do not file an application for refund if the claimed overpayment is indicated on the originally-filed municipal income tax report. For each municipality for which the originally filed municipal income tax report reflects an overpayment, the taxpayer may claim an overpayment carryforward on the taxpayer's municipal income tax return next year. However, if, upon the written request of the taxpayer, the tax commissioner determines that the overpayment is likely to exceed the amount of estimated taxes payable by the taxpayer to that municipality during the ensuing twelve months, the tax commissioner will notify the municipality and the municipality will issue a refund of the excess to the taxpayer within ninety days after receiving such a notice. Interest accrues on the amount to be refunded and is payable at the rate per annum prescribed by section 5703.47 of the Revised Code from the ninety-first day after the notice is received by the municipality until the day the refund is paid.

Uniform Application for Refund Procedure.

Substitute Senate Bill 200, 124th General Assembly, effective June 7, 2002, enacted ORC section 5703.70 to establish a uniform application for refund procedure applicable to Chapter 5745 municipal income tax and various other taxes. If a taxpayer properly files an application for refund and the commissioner determines that 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. If the commissioner determines that the amount of the refund to which the applicant is entitled is less than the amount which the applicant claimed, the commissioner must notify the applicant in writing by ordinary mail of the disallowed portion of the claimed refund.
2. The applicant has sixty days from the date the commissioner mails the notification to provide additional information to the commissioner and/or to request a hearing.
3. If within the sixty day period described in #2, above, the applicant neither requests a hearing nor provides additional information, the commissioner will take no further action, and the refund amount denied becomes final. That is, the taxpayer may not appeal to the Board of Tax Appeals the denied portion of the refund.

4. If within the sixty day period described in #2, above, the applicant requests a hearing, the commissioner must assign a time and place for hearing. After the hearing, the commissioner may make such adjustments to the refund as the commissioner finds proper and must issue a final determination. The taxpayer may appeal the commissioner's final determination to the Board of Tax Appeals pursuant to ORC section 5717.02.
5. If within the sixty day period described in #2, above, the applicant does not request a hearing but does provide additional information, the commissioner must review the information, may make such adjustments to the refund as the commissioner finds proper, and must issue a final determination. The taxpayer may appeal the commissioner's final determination to the Board of Tax Appeals pursuant to ORC section 5717.02.

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

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

However, both the assessment statute of limitations and the refund statute of limitations may be extended for an agreed upon period if both the taxpayer and the tax commissioner consent in writing to the extension.

An amended Chapter 5745 municipal income tax report filed as a result of an adjustment to the taxpayer'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 taxpayer's federal income tax return. Furthermore, once the three-year refund statute of limitations period has passed, the taxpayer may not offset the additional municipal income tax resulting from IRS audit adjustments against municipal income tax that the taxpayer erroneously overpaid due to errors or mistakes unrelated to the federal adjustments. See *Gen. Motors Corp. v. Limbach* (1993), 67 Ohio St. 3d 90.

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

If the taxpayer does not pay the assessment within sixty days of receipt of the assessment and does not file a petition for reassessment within sixty days of receipt of the assessment, interest accrues on the assessment at the rate prescribed in ORC section 5703.47 from the date the tax commissioner issues the assessment until the taxpayer pays the assessment.

Petition for reassessment. If the taxpayer disagrees with an assessment, the taxpayer may object to the assessment by filing a petition for reassessment. A taxpayer must file its petition within sixty days of receipt of the assessment. If the taxpayer sends the petition by certified mail, the date of postmark is considered the date filed. If the taxpayer sends the petition by regular mail, the date the Department receives the petition is considered the date filed. The petition must specify the items of the assessment objected to and the reasons for those objections. However, a taxpayer who has timely filed a Petition for Reassessment may raise additional written objections to the assessment at any time prior to the date of the tax commissioner's final determination. If a taxpayer fails to file the petition for reassessment within the sixty day period described above, the tax commissioner will dismiss the petition as the tax commissioner.

Uniform Petition for Reassessment Procedure. Substitute Senate Bill 200, 124th General Assembly, effective June 7, 2002, enacted ORC section 5703.60 to establish a uniform petition for reassessment procedure applicable to Chapter 5745 municipal income tax and various other taxes. If the taxpayer has properly filed a petition for reassessment, this new law permits the tax commissioner, upon receipt of additional information from the taxpayer, to correct an assessment without issuing a final determination and without a hearing. In addition, this new law permits the commissioner to correct an assessment even if the taxpayer did not properly file a petition for reassessment or did not

file a petition for reassessment. For a more in-depth summary of this new law please see page 18 of the full text version of the 2003 Ohio corporation franchise tax instructions available on the Department's web site.

Municipalities may object to the tax commissioner's adjustments to municipal income. If the tax commissioner adjusts the taxpayer's income apportioned to a municipality, the tax commissioner must notify the taxpayer and, if the commissioner's adjustment causes an adjustment in the taxpayer's tax of more than five hundred dollars, the commissioner must also notify each affected municipality that the taxpayer's tax has been adjusted.

Any municipality so notified may request a review and redetermination of the taxpayer's federal taxable income, Ohio net income, or the portion of Ohio net income apportioned to the municipality by filing a petition with the tax commissioner within sixty days after the tax commissioner issues the notice. The petition must be filed either personally or by certified mail, and must indicate the municipality's objections to the adjustments.

Upon receiving such a petition, if a hearing is requested, the tax commissioner will assign a time and place for a hearing and notify the petitioner of the time and place of the hearing by ordinary mail. The tax commissioner may make any correction to the taxpayer's federal taxable income, Ohio net income, or apportionment of Ohio net income that the commissioner finds proper, and issue notice of any correction to the petitioner, to each other municipality affected by the correction of the apportionment, and to the taxpayer. The tax commissioner's decision on the matter is final, and is not subject to further appeal.

Preservation and inspection of records. Each taxpayer is required to preserve its records and documents related to its Chapter 5745 municipal income tax for a period of three years after the date the return or report, or return or report to which such a record or document pertains, was required to be filed or actually was filed, whichever is later. Each taxpayer must make its records, documents, returns, and reports open to inspection by the tax

commissioner during normal business hours. ORC section 5745.15.

Line Instructions

Schedule 1 – Ohio Net Income.

Line 1 - Federal taxable income. Enter the taxpayer's federal taxable income before net operating loss deduction and special deductions.

Note: If the taxpayer is a member of a consolidated federal income tax return, please compute the taxpayer's federal taxable income as if the taxpayer filed a separate federal return. The Department of Taxation maintains that the federal consolidation rules do not apply in determining federal taxable income for purposes of the corporation franchise tax and the Chapter 5745 municipal income tax.

Line 2 – IRC section 168(k) bonus depreciation adjustment. Compute federal depreciation expense as it would have been computed without enactment of IRC section 168(k) and enter the difference between the depreciation actually deducted on the federal income tax return and the depreciation as it would have been computed prior to the enactment of IRC section 168(k).

Note: The new federal bonus depreciation law does not automatically apply in determining federal taxable income of an electric light company for purposes of the Ohio Revised Code Chapter 5745 municipal income tax for electric light companies because to do so without the consent of the Ohio General Assembly would be an unconstitutional delegation of legislative authority. The Department's reasoning, based upon the Ohio Supreme Court's decision in *State v. Gill* (1992), 62 Ohio St 3d 53, is as follows:

- ORC section 5745.01(H) defines the term "Internal Revenue Code" as used throughout Chapter 5745 " as meaning "the 'Internal Revenue Code of 1986,' 100 Stat. 2085, 26 U.S.C.A. 1, as amended".
- In applying that definition for purposes of determining the federal taxable income starting point for Ohio Revised Code Chapter 5745 taxpayers, each time the General Assembly amends ORC section 5745.01 the General Assembly adopts the Internal Revenue Code as it exists on

the date of enactment of the amendment and that version of the Internal Revenue Code is used in determining Chapter 5745 municipal income tax until the next time the Ohio General Assembly amends ORC section 5745.01.

- Because the Ohio General Assembly has not amended ORC sections 5745.01 subsequent to the date that Congress enacted the “Job Creation and Worker’s Assistance Act” (which created the IRC section 168(k) bonus depreciation), bonus depreciation does not apply.

Line 4 – Net intangible income. Enter the taxpayer’s intangible income as defined in section 718.01 of the Revised Code 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. See ORC section 5745.01(G)(1) and (G)(2).

Line 6 – Book-tax differential. Follow the definitions and concepts set out in ORC section 5733.0510 and in the franchise tax supplemental schedules for electric companies and combined companies, and determine the book-tax differential for each asset that the taxpayer showed on its books on December 31, 2000 and that the taxpayer sold or otherwise disposed of in a taxable transaction during the taxable year. Enter on line 4 the net book-tax differential from all such assets sold or disposed of in taxable transaction during the taxable year. If the net book-tax differential is a positive amount (that is, the assets’ net book value on December 31, 2000 is greater than the assets’ adjusted basis), enter it in parenthesis and deduct it from federal taxable income. If the net book-tax differential is a negative amount (that is, the assets’ net book value on December 31, 2000 is less than the assets’ adjusted basis on that date), enter it as a positive amount and add it to federal taxable income. Please note the following:

- The book-tax differential adjustment applies only to electric companies and combined companies. So, if the taxpayer is an "electric light company that is not an electric company", the book-tax differential adjustment does not apply.
- Unlike the franchise tax book-tax differential adjustment, the municipal income tax book-tax differential adjustment applies to assets located outside Ohio, the gain or loss from the sale of

which is **allocable outside Ohio** for franchise tax purposes. This is so because for municipal income tax purposes gains and losses from the sale of capital assets and IRC section 1231 assets are apportionable (rather than allocable as they are for franchise tax purposes).

See ORC section 5745.01(G)(3).

Line 8 -- Proration factor. If the taxpayer is an electric company or a combined company and its taxable year includes days in both calendar years 2001 and 2002, the electric company may adjust its "adjusted federal taxable income" by a proration factor, the effect of which is to exempt from municipal income tax income earned prior to January 1, 2002 (see section 7 of SB 287 amending section 4 of HB 483). The proration factor applies only to an electric company or a combined company’s taxable year that begins in 2001 and ends in 2002. The proration factor does not apply to "an electric light company that is not an electric company" because such entities were subject to municipal income tax prior to 2002. The proration factor is a fraction the numerator of which is the number of days of the company's taxable year that are in 2002, and the denominator of which is the total number of days in that taxable year.

Schedule 2 – Ohio Apportionment Ratio.

The Chapter 5745 municipal income tax **Ohio** apportionment ratio is similar to the Chapter 5733 Ohio franchise tax apportionment ratio with the following exceptions.

- Unlike the franchise tax Ohio property, payroll and sales factors, the Chapter 5745 municipal income tax Ohio property, payroll and sales factors are equally weighted. In addition, if the denominator (total everywhere amount) of any factor is zero, the program will compute the Ohio ratio by dividing the sum of the remaining factors by the lesser number of factors whose denominator is not zero.
- Unlike the franchise tax Ohio property factor, the numerator and denominator of the Chapter 5745 municipal income tax Ohio property factor do not exclude from “average value” the following:

- 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.
- The original cost of property with respect to which the State of Ohio has issued an exemption certificate for a coal gasification facility, coal conversion demonstration facility, energy conversion facility, solid waste energy conversion facility or thermal efficiency improvement facility.
- The original cost of real property and tangible property (or in the case of property which the taxpayer is renting from others, eight times its net annual rental rate) within Ohio which is used exclusively during the taxable year for qualified research.
- The original cost of rental property owned by the taxpayer and leased to others whether or not the lessee uses the property in a trade or business.
- The original cost of qualifying improvements to land or tangible personal property in an enterprise zone for which the taxpayer holds a Tax Incentive Qualification Certificate issued by the Department of Development.
- Unlike the franchise tax Ohio payroll factor, the numerator and denominator of the Chapter 5745 municipal income tax Ohio payroll factor do not exclude compensation paid in Ohio to employees who are primarily engaged in qualified research and compensation paid in Ohio to employees at a certified coal gasification or coal conversion demonstration facility.
- Unlike the franchise tax Ohio payroll factor, the numerator of the Chapter 5745 municipal income tax Ohio payroll factor does not exclude compensation paid in Ohio to certain specified new employees at an urban job and enterprise zone facility for which the taxpayer has received a Tax Incentive Qualification Certificate issued by the Department of Development.
- Unlike the franchise tax sales factor, the numerator and denominator of the Chapter 5745 municipal income tax Ohio sales factor does not exclude gross rental income, royalties and technical assistance fees.

Compute the taxpayer's Chapter 5745 Ohio apportionment ratio by making the above adjustments, where applicable, to the numerator (within Ohio) and denominator (total everywhere) of the taxpayer's franchise tax property, payroll and sales apportionment data.

Schedule 3 - Municipal Apportionment Ratio (ORC section 5745.02 (C))

For each Ohio municipality which imposes a municipal income tax and in which the taxpayer has payroll, sales or property (owned or rented), enter the taxpayer's payroll, sales and property applicable to that municipality. Payroll, sales and property are generally situated to a particular municipality consistent with the exceptions noted above and the franchise tax situsing provisions. However, for purposes of the municipal payroll factor, compensation is situated based upon the amount of compensation that is earned during the taxable year 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. In addition, for purposes of the municipal income tax sales factor, sales of electricity directly to the consumer are considered sales of tangible personal property and thus situated to the ultimate destination of the user.

If the taxpayer is a "combined company" (a "combined company" is defined as "any person engaged in the activity of an electric company or rural electric company that is also engaged in the activity of a heating company or a natural gas company, or any combination thereof. See ORC section 5727.01(L)), then adjust the numerator of each applicable municipal property, payroll and sales factor to include only the taxpayer's property, payroll and sales attributed to the company's activity as an electric company within that municipality. See ORC 5745.02(D).

The computer program will then compute the following:

- The taxpayer's property factor for each municipality by dividing the taxpayer's property in that municipality by the taxpayer's Ohio property from schedule 2, column (a), line 1(c);

- The taxpayer's payroll factor for each municipality by dividing the taxpayer's payroll in that municipality by the taxpayer's Ohio payroll from schedule 2, column (a), line 2;
- The taxpayer's sales factor for each municipality by dividing the taxpayer's sales in that municipality by the taxpayer's Ohio sales from schedule 2, column (a), line 3;
- The sum of the property, payroll and sales factors for each municipality; and
- The apportionment ratio for each municipality by dividing the sum of each municipality's property, payroll and sales factors by three. However, if the taxpayer's **Ohio** property, payroll or sales is zero, the program will compute the apportionment ratio for each municipality by dividing the sum by the lesser number of factors whose denominator is not zero. For example, if the taxpayer has no payroll in Ohio, but does have Ohio property and Ohio sales, then the apportionment ratio for each municipality is determined by dividing the sum of the taxpayer's sales and property factors for that municipality by two (that is, the number of factors whose denominator is not zero).

The program will enter the apportionment ratio for each municipality on schedule 3, column 1 and on schedule 4, column c.

Alternative apportionment methods. 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 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 among Ohio's municipalities. In addition, if any of 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 among 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 division (B)(2)(d) of section 5733.05 of the Revised Code. 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. See ORC section 5745.02(E).

Schedule 4 -- Municipal Income Tax Computation.

Municipal Income before NOL Deduction – Column (d). For each municipality which has enacted a municipal income tax and in which the taxpayer has property, payroll or sales the program will compute the taxpayer's municipal income before NOL carryforward deduction by multiplying the taxpayer's Ohio net income from schedule 1, line 11 by the taxpayer's municipal apportionment ratio in each municipality (schedule 3, column (l)).

Municipal NOL Carryforward Deduction – Column (e) and Municipal Income – Column (f). **Note:** For taxable years ending in 2002 the municipal NOL carryforward deduction for each municipality is zero. The program does not allow an entry other than zero in column (e) "municipal net operating loss carryforward deduction" because electric light companies were not subject to Chapter 5745 municipal income tax for taxable years ending before 2002. See ORC section 5745.02(C). Therefore, for taxable years ending in 2002 for each line the column (f) amount will equal the column (d) amount.

Municipal income tax before credit – Column (h). For each municipality in which the taxpayer has property, payroll or sales, the program will compute the taxpayer's tax before credits by multiplying the taxpayer's municipal income after the municipal net operating loss carryforward deduction (column (f)) by the municipality's income tax rate (column (g)).

Nonrefundable Credit for Taxpayer's Share of Chapter 5745 Municipal Income Tax Paid by a Pass-Through Entity – Column (i). If the taxpayer has an interest in a pass-through entity that is also subject to and paid the Chapter 5745 municipal income tax for electric light companies, then the taxpayer may claim as a credit against the tax-

payer's own Chapter 5745 municipal income tax for a particular municipality the taxpayer's proportionate share of the tax paid by the pass-through entity to that same municipality. The credit equals the qualifying taxpayer's proportionate share of the lesser of the Chapter 5745 tax due from or the Chapter 5745 tax 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. The taxpayer must claim the credit for the taxpayer's taxable year in which the pass-through entity's taxable year ends. Multiply the taxpayer's interest in the pass-through entity by the pass-through entity's Chapter 5745 municipal income tax for that municipality and enter the product in column (h). See ORC section 5745.06.

Municipal Income Tax after Credit -- Column (j). For each municipality in which the taxpayer has property, payroll or sales, the program will compute the taxpayer's municipal income tax after credit by subtracting column (i) from column (h).

Overpayment Carryforward from Taxable Year Ending in 2001 – Column (k). The overpayment carryforward from taxable year ending in 2001 for each municipality is zero because electric light companies were not subject to the municipal income tax for electric light companies for taxable years ending in 2001 and earlier.

Estimated Payments – Column (l). For each municipality for which the taxpayer made Chapter 5745 municipal income tax payments enter the sum of the estimated payments paid for the taxable year ending in 2002.

Total Payments – Column (m). The program will compute the taxpayer's total payments for each municipality by adding the taxpayer's overpayment carryforward for the municipality (column (k)) and the taxpayer's estimated payments for the municipality (column (l)).

Balance Due – Column (n) and Overpayment Column (o). The program will compute the taxpayer's balance due for each municipality for which the taxpayer's tax after credit (column (j)) exceeds the taxpayer's total payments (column (m)), and the program will compute the taxpayer's overpayment

for each municipality for which the taxpayer's total payments (column (m)) exceeds the taxpayer's tax after credit (column (j)).

The program will then add the balance due amounts in column (n) and enter the sum of those amounts on schedule A, line 1. If the sum of the balance due amounts exceeds \$1,000, the taxpayer must pay electronic funds transfer as prescribed by the treasurer of state. See ORC section 5745.03.

Note: The program does not net the taxpayer's balance due in one municipality with the taxpayer's overpayment in another because the law does not provide for such netting. Instead, the taxpayer must pay the sum of the balance due amounts for those municipalities in which there is a balance due and for each municipality for which the taxpayer has overpaid the taxpayer the taxpayer may claim an overpayment carryforward on the taxpayer's municipal income tax return next year. However, if, upon the written request of the taxpayer, the tax commissioner determines that the overpayment is likely to exceed the amount of estimated taxes payable by the taxpayer to that municipality during the ensuing twelve months, the tax commissioner will notify the municipality, and the municipality will issue a refund of the excess to the taxpayer within ninety days after receiving such a notice. Interest accrues on the amount to be refunded and is payable at the rate per annum prescribed by section 5703.47 of the Revised Code from the ninety-first day after the notice is received by the municipality until the day the refund is paid.

2003 Estimated Municipal Income Tax Payments

Estimated payment requirements for the taxable years beginning in 2003 and thereafter. Beginning with its taxable year beginning in 2003, each Chapter 5745 taxpayer must file a declaration of estimated tax report with, and must send estimated taxes to, the tax commissioner, payable to the treasurer of state as follows:

1. Not later than the fifteenth day of the fourth month after the end of the preceding taxable year the taxpayer must pay at least twenty-five per cent of the combined tax liability for the preceding taxable year or twenty per cent of the combined tax liability for the current taxable year.
2. Not later than the fifteenth day of the sixth month after the end of the preceding taxable year the taxpayer must pay at least fifty per cent of the combined tax liability for the preceding taxable year or forty per cent of the combined tax liability for the current taxable year.
3. Not later than the fifteenth day of the ninth month after the end of the preceding taxable year the taxpayer must pay at least seventy-five per cent of the combined tax liability for the preceding taxable year or sixty per cent of the combined tax liability for the current taxable year.
4. Not later than the fifteenth day of the twelfth month after the end of the preceding taxable year the taxpayer must pay at least one hundred per cent of the combined tax liability for the preceding taxable year or eighty per cent of the combined tax liability for the current taxable year.

Notwithstanding the penalty provisions of ORC section 5745.08 or the interest on the underpayment of estimated tax provisions in ORC section 5745.09, no penalty or interest will be imposed on a taxpayer if within the above prescribed time the declaration of estimated tax report is properly filed and the estimated tax is paid. See ORC section 5745.04(F).

Using the preceding instructions and the attached 2002 electronic forms as guidance and as worksheets for 2003, please compute the estimated municipal income tax for each Ohio municipality which has enacted a municipal income tax and in

which the electric light company is subject to tax. The Department will e-mail to you the certified municipal income tax rates for 2003 when those rates become available.

Please check the box on Ohio form Muni-ES indicating the quarter for which the taxpayer is making the estimated payment. As noted below, if the taxpayer has requested an extension for filing its federal income tax return and has submitted a copy of the federal extension to the tax commissioner by the 15th day of the fourth month following the end of the taxable year, then the due date of the municipal income tax return is extended to the due date of the federal return. Nevertheless, an extension to file the final return is not an extension for payment. So, if after having made the four estimated tax payments the taxpayer has not paid all of the municipal income tax required and the taxpayer will not file its annual municipal income tax return by the 15th day of the fourth month following the end of the taxable year, then by the 15th day of the fourth month following the end of the taxable year the taxpayer should pay the required additional payment along with the Ohio form Muni-ES "extension" and a copy of the taxpayer's federal extension.

The taxpayer must indicate on each estimated report (Ohio form Muni-ES) the portion of the accompanying remittance that is payable to each municipality based on the taxpayer's estimated Ohio net income apportioned to each municipality. **If any payment of estimated taxes (that is, the combined total of the taxpayer's remittance to all municipal corporations) is for \$1,000 or more, the taxpayer must make the payment by electronic funds transfer as prescribed by ORC section 5745.04. Please direct questions regarding the EFT payment program to the Treasurer of State's office at 30 East Broad Street, 9th floor, Columbus Ohio 43266-0421 or telephone that office toll free at 1-877-338-6446.**

When computing your 2003 estimated municipal income tax please consider the following:

- In determining Ohio taxable income there is no proration factor;
- The taxpayer may deduct municipal net operating losses generated in the taxable year that

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ended in 2002 if the taxpayer was subject to Chapter 5745 municipal income tax for the taxable year that ended in 2002.

- For those Ohio municipalities for which the taxpayer's Chapter 5745 municipal income tax for the taxable year that ended in 2002 was less than the taxpayer's payments for that taxable year the taxpayer may reduce its estimated payments by the overpayment carried forward from 2002 to the extent that the overpayment was not refunded.