

**2006 Ohio Municipal Income Tax Instructions for
Electric Light Companies and
Local Exchange Telephone Companies for
the taxable year beginning in 2006
Ohio Revised Code Chapter 5745**

Note: The instructions for Schedule 1, line 2 of the 2006 Chapter 5745 municipal income tax form, "Adjustment for amendments to the IRC," were revised on June 2, 2006 to reflect amendment to the definition of "Internal Revenue Code" enacted by Amended Substitute House Bill 530, 126th Ohio General Assembly. The instructions for Schedule 1, line 2 were again revised on June 6, 2007 to reflect the subsequent amendment to the definition of "Internal Revenue Code" enacted by Amended Substitute House Bill 699, 126th Ohio General Assembly. See page 7 of these instructions for the revisions.

General Instructions

To download the Municipal Tax form and instructions and to register on-line to electronically file your Municipal Tax Return, go to <http://tax.ohio.gov/>. Click on **Online Services** and select **File Municipal Income Tax for Electric Light Companies and Local Exchange Telephone Companies Online**.

If any payment of tax or estimated tax is expected to equal or exceed \$1,000 you must register for electronic funds transfer (EFT) with the Ohio Treasurer of State by calling toll free 1-877-EFT-Ohio (338-6446). Please read the electronic forms instructions and complete the identification sheet in its entirety. Please direct your questions regarding the EFT payment program to the Ohio 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. Please direct your questions regarding your Chapter 5745 municipal income tax filing requirements to either Chuck Ortlieb at 614-466-5284 or Tom Duncan at 614-466-3095.

These Chapter 5745 municipal income tax instructions and the accompanying municipal income tax return and estimated payment forms apply to a taxpayer's taxable year that begins in 2006. Throughout these instructions we have assumed that all Ohio Revised Code Chapter 5745 taxpayers have a calendar year end. If the taxpayer's federal taxable year is other than a calendar year, please notify the Ohio Department of Taxation by calling 614-387-0232.

Administration and application. The Chapter 5745 municipal income tax is administered and enforced by the Ohio Department of Taxation rather than by the various Ohio municipalities that have enacted an income tax. The tax applies only to the following companies:

- electric light companies and
- local exchange telephone companies.

Electric light company. 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").

- **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. Ohio Revised Code section (R.C.) 5727.01(D)(3).
- **Combined company.** The term "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. R.C. 5727.01(L).
- **Electric light company that is not an electric company.** Marketers or brokers of electricity that meet certain requirements can elect to be a Chapter 5745 taxpayer. See below: "Taxpayer election for an 'electric light company that is not an electric company'."

Telephone company. The term "telephone company," as defined in R.C. 5727.01 and used throughout these instructions, means any person "primarily engaged in the business of providing local exchange telephone service, excluding cellular radio service, in this state."

Taxpayer. An electric company or a telephone company is a "taxpayer" within the meaning of Chapter 5745 if pursuant to Chapter 5745 the electric company or telephone company is subject to taxation by a municipality in Ohio for the taxable year. An electric company or a telephone company is subject to the Chapter 5745 municipal income tax for each Ohio municipality that has enacted an income tax and in which the company has property, payroll or sales during the taxable year. An electric light company that is not an electric company is a **taxpayer** within the meaning of Chapter 5745 only if the company elects to be a Chapter 5745 taxpayer (see below).

An electric company is first subject to the 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 are exempt from municipal income tax.

A telephone company is first subject to the Chapter 5745 municipal income tax reporting and payment requirements for the telephone company's taxable year that begins on or after January 1, 2004. For taxable years that begin before January 1, 2004, telephone companies are exempt from municipal income tax.

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 Chapter 5745 taxpayer if during the company's most recently concluded taxable year at least 50% 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 applies. 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.

The first taxable year for which the election applies is the company's 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.

An electric light company that is not an electric company and 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 that has enacted an income tax and in which the company has taxable nexus. R.C. 5745.031 and section 7 of Senate Bill 287, 123rd General Assembly.

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 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. R.C. 5745.03(E).

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 establishes taxable nexus with the municipality. So, if an electric light company or telephone company enters Ohio for the first time after the beginning of its federal taxable year, the taxpayer's Chapter 5745 taxable year is nevertheless the taxpayer's entire federal taxable year. Similarly, 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 or telephone company is a disregarded entity or a qualified subchapter S subsidiary as defined in section 1361 of the Internal Revenue Code, the company's parent S corporation or owner is the taxpayer for the purposes of the Chapter 5745 municipal income tax. R.C. 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" The term "combined company" is not to be confused with a member of a "combined return" (see below). R.C. 1701.18(F)(6).

Combined returns. The tax commissioner may adopt rules providing for the combination of adjusted federal taxable incomes of taxpayers satisfying the ownership or control requirements of R.C. 5733.052 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 R.C. 5733.052 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. R.C. 5745.02(F).

Extension to file return. Without an extension, a taxpayer's annual Chapter 5745 municipal income tax return 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 15th day of the month following 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 commissioner a copy of the taxpayer's federal extension. As such, if a Chapter 5745 taxpayer has a calendar year end, its 2006 Chapter 5745 municipal income tax return without extension is due by April 15, 2007, and if by April 15, 2007 the taxpayer filed with the tax commissioner a copy of its federal extension, the due date of the annual return is extended to October 15, 2007. If the taxpayer requested an extension for filing its federal income tax return and by April 15, 2007 the taxpayer 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. R.C. 5745.03(B).

Tax payment by electronic funds transfer (EFT). If any remittance of estimated Chapter 5745 municipal income tax is \$1,000 or more, or if the amount payable with the return is \$1,000 or more, the taxpayer must make the remittance by EFT. See R.C. 5745.03(E), 5745.04(E) and 5745.041. Please direct questions regarding the EFT payment program to the

¹ To date the tax commissioner has not adopted any such rules.

Ohio 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 in determining the tax payable to a particular municipality for the taxpayer's taxable year is the tax rate in effect for that municipality on the first day of January in that taxable year. If the 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 in determining the tax payable to each municipality is the tax rate in effect for each municipality on the first day of January in the preceding taxable year. R.C. 5745.03(F).

Municipality must certify the tax rate to the tax commissioner. On or before the 31st day of January each year, each municipality imposing a tax on income must certify to the tax commissioner the income tax rate in effect on the first day of January of that year. If a municipality fails to certify its tax rate, the director of budget and management will withhold from each payment made to the municipality 50% 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. R.C. 5745.03(F).

Estimated payment requirements for the taxable year beginning in 2006. 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.

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 Ohio Treasurer of State as follows:

1. 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% of the combined tax liability for the preceding taxable year or 20% of the combined tax liability for the current taxable year.
2. 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% of the combined tax liability for the preceding taxable year or 40% of the combined tax liability for the current taxable year.
3. 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% of the combined tax liability for the preceding taxable year or 60% of the combined tax liability for the current taxable year.
4. Not later than the 15th day of the twelfth month after the end of the preceding taxable year the taxpayer must pay at least 100% of the combined tax liability for the preceding taxable year or 80% of the combined tax liability for the current taxable year.

For the first taxable year a taxpayer is subject to Chapter 5745 municipal income tax the taxpayer's required estimated tax remittances are based solely on the current tax-

able year and not on the liability for the preceding taxable year. R.C. 5745.04(B).

Please check the box on Ohio form Muni-ES indicating the quarter for which the taxpayer is making the estimated payment. As noted earlier, 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 15th day of the month following the due date of the taxpayer's federal income tax 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 must pay the additional amount** 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 and the municipality's tax rate. 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 R.C. 5745.04. Please direct questions regarding the EFT payment program to the Ohio Treasurer of State's office at 30 East Broad Street, 9th floor, Columbus Ohio 43266-0421 or telephone that office toll free at 1-877-338-6446.

In computing your 2006 estimated municipal income tax liability and estimated payments please follow the line instructions beginning on page 6 of these instructions. In addition, please consider the following:

- A taxpayer may not deduct municipal NOLs carried forward from taxable years in which the taxpayer was not subject to Chapter 5745 municipal income tax.
- For those Ohio municipalities for which the taxpayer's Chapter 5745 municipal income tax for the taxable year that began in 2005 was less than the taxpayer's payments for that taxable year the taxpayer may reduce its estimated payments by the overpayment carried forward from 2005 to the extent that the overpayment was not refunded.

Note: The taxpayer's overpayment shown for a particular municipality on the taxpayer's Chapter 5745 originally filed report will not be refunded unless, upon the written request of the taxpayer, the tax commissioner determines that the taxpayer's overpayment for the municipality will likely exceed the estimated taxes payable to the municipality during the ensuing twelve months. For additional information, see "Overpayment shown on original return" on page 5.

Interest on underpayments and overpayments. 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 R.C. 5703.47 from the date prescribed for its payment until it is paid or until the day an assessment is issued under R.C. 5745.12, whichever occurs first. **The interest rate on underpayments is the same as the interest rate on overpayments.** However, overpayments carried forward from an earlier year do not generate interest. **During calendar year 2006 interest on both underpayments and overpayments accrues at the rate of 6% per annum** (based on the rounded federal short term rate of 3% plus the additional 3% prescribed by R.C. 5703.47(B)). See R.C. 5703.47 and the tax commissioner's October 17, 2005 administrative journal entry.

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 charged.
- Penalty may be imposed for failure to file or timely file a return. 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 return up to 50% of the tax required to be shown on the return.
- Additional penalties may be imposed for filing a frivolous or fraudulent return and for filing a fraudulent refund claim.

R.C. 5745.08.

Reporting federal changes. If amendments or adjustments to the taxpayer's federal income tax return by the taxpayer, by the Internal Revenue Service or by the tax commissioner affect 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 return 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 returns which reflect overpayments as well as to amended returns which reflect underpayments. If the amended return reflects an underpayment, the amended return must be accompanied by payment of any additional tax and interest. If the amended return reflects an overpayment, the amended return must be accompanied by a statement that sets forth the full and complete reason for the overpayment. See *Abitibi-Price Corporation and Subsidiaries v. Tracy*, BTA No. 98-N-401 (3-12-01).

Disclosure of tax information to municipalities. Effective December 18, 2003 administrative rule 5703-27-01 – “Providing Municipal Income Tax Information” governs tax return information that the tax commissioner can share with the municipalities in which the taxpayer is subject to tax and the terms and conditions under which the tax commissioner can provide that information. The rule prohibits disclosure of taxpayer returns or information to any person other than a properly authorized officer, employee, or agent of a municipality. Furthermore, the only taxpayer information that the tax commissioner can share with a municipality is that information necessary for the properly authorized officers, employees, or agents of the municipality to ascertain the municipality's share of a taxpayer's net income to be apportioned to that municipality.

Net operating loss carryforward. For each taxable year in which the taxpayer has negative Ohio net income the taxpayer's net operating loss (NOL) for each municipality is determined in the same manner that positive Ohio net income would have been apportioned to the municipality. The NOL for each municipality may be carried forward and applied to subsequent net income in that municipality to reduce that income to zero or until the NOL has been fully used as a deduction. The NOL apportioned to a municipality in any taxable year may be applied against the income apportioned to that municipality for five taxable years following the loss year after which time the unused portion of any remaining NOL is lost. R.C. 5745.02(C).

A taxpayer's Chapter 5745 municipal NOLs may be carried forward to a later year only if the taxpayer was subject to **the Chapter 5745 municipal income tax** for the year in which the loss was generated. As such, the following municipal NOL carryforward provisions apply:

- If the taxpayer is an electric company, its NOLs generated in taxable years ending before January 1, 2002 may not be carried forward and deducted because electric companies were not subject to Chapter 5745 municipal income tax for taxable years ending before 2002.
- If the taxpayer is an electric light company that is not an electric company, its NOLs generated in taxable years before the taxable year that includes December 31, 2002 and before the first taxable year to which the taxpayer's Chapter 5745 election applies may not be carried forward and deducted. The first taxable year for which an electric light company that is not an electric company can elect to be a Chapter 5745 taxpayer is the taxable year that includes December 31, 2002 (see section 7 of Senate Bill 287, 123rd General Assembly).
- If the taxpayer is a telephone company, its NOLs generated in taxable years beginning before January 1, 2004 may not be carried forward and deducted because telephone companies were not subject to Chapter 5745 municipal income tax for taxable years ending before 2004. Furthermore, in determining its NOL carried forward from the taxable year ending in 2004 a telephone company must multiply the loss by 50%. R.C. 5745.01(C)(2).

Overpayment shown on original return. An overpayment shown for a particular municipality on the taxpayer's originally filed report will generally not be refunded. Instead, for each municipality for which the originally filed municipal income tax return reflects an overpayment, the taxpayer may claim an overpayment carryforward for that municipality on the taxpayer's municipal income tax return for the following year.

However, if, upon written request of the taxpayer, the tax commissioner determines that the overpayment for that municipality is likely to exceed the taxpayer's estimated taxes payable to that municipality during the ensuing twelve months, the tax commissioner will notify the municipality and the municipality will refund to the taxpayer the entire overpayment (including the overpaid administrative fee) within ninety days after receiving such notice. Not later than the first day of March, June, September, or December immediately following the Department of Taxation's issuance of the notice, the Department, through the Director of Budget and Management, will reimburse the municipality for the Department's administrative fee that the municipality refunded to the taxpayer.

Interest accrues on the amount to be refunded and is payable at the rate per annum prescribed by R.C. 5703.47 from the 91st day after the municipality receives the notice until the day the municipality refunds the overpayment. See R.C. 5745.05.

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 R.C. 5745.12, must file an amended return 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 return to which the payment relates are deemed to have been made on the due date or extended due date of the return. 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 overpayment to which the taxpayer is entitled and will notify each municipality of the amount by which the taxpayer overpaid the municipality. Within ninety days after receiving notification of the overpayment each such municipality must refund to the taxpayer the entire overpayment (including the overpaid administrative fee relating to the overpaid tax). Not later than the first day of March, June, September, or December immediately following the Department of Taxation's issuance of the notice, the Department of Taxation (through the Director of Budget and Management) will reimburse the municipality for the administrative fee that the municipality refunded to the taxpayer.

Any portion of the refund not issued by the municipality within ninety days after the municipality receives the tax commissioner's notice bears interest at the rate per annum prescribed by R.C. 5703.47 from the ninetieth day after the municipality receives the notice until the day the municipality pays or credits the refund. Interest on an illegal or erroneous assessment is paid at the rate per annum prescribed by R.C. 5703.47 from the date the taxpayer pays the illegal or erroneous assessment until the day the municipality refunds the overpayment.

Upon the taxpayer's written request, the municipality will credit the overpayment against the taxpayer's estimated tax payments to the municipality for an ensuing taxable year.

Uniform application for refund procedure. R.C. 5703.70 establishes a uniform application for refund procedure applicable to Chapter 5745 municipal income tax and various other taxes that the tax commissioner administers. If a taxpayer properly files an application for refund (that is, an amended return showing an overpayment along with a complete explanation of the amendment) 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. 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 the applicant neither requests a hearing nor provides additional information within the sixty-day period described in #2, then (a) the commissioner will take no further action, (b) the refund denial becomes final and (c) the taxpayer may not appeal to the Board of Tax Appeals the tax commissioner's decision to deny all or a portion of the claimed overpayment.
4. If the applicant requests a hearing within the sixty-day period described in #2, the commissioner must assign a time and place for a hearing. After the hearing, the commissioner may make such adjustments to the refund as the commissioner finds proper and must issue a final determination. The taxpayer may appeal the commissioner's final determination to the Board of Tax Appeals pursuant to R.C. 5717.02.
5. If the applicant does not request a hearing within the sixty-day period described in #2 but does provide additional information within that period, then the commissioner (a) must review the information, (b) may make such adjustments to the refund as the commissioner finds proper and (c) must issue a final determination. The taxpayer may appeal the commissioner's final determination to the Board of Tax Appeals pursuant to R.C. 5717.02.

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

- The final date the return 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 taxpayer and the tax commissioner consent in writing to the extension.

An amended Chapter 5745 municipal income tax return filed as a result of an adjustment to the taxpayer's federal income tax return is deemed a return subject to assessment (see "Reporting federal changes" on page 4 of these instructions). However, the amended return does not reopen those facts, figures, computations, or attachments from a previously filed return 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 NOL 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, interest accrues on the assessment at the rate prescribed in R.C. 5703.47 from the date the tax commissioner issues the assessment until the taxpayer pays the assessment.

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 of Taxation receives the petition is considered the date filed. The petition must specify the items of the assessment objected to and the reasons for those objections. However, a taxpayer who has timely filed a petition for reassessment may raise additional written objections to the assessment at any time prior to the date of the tax commissioner's final determination. If a taxpayer fails to file the petition for reassessment within the sixty-day period described above, the tax commissioner will dismiss the petition because the tax commissioner has no jurisdiction to consider a late-file petition.

Uniform petition for reassessment procedure. R.C. 5703.60 establishes a uniform petition for reassessment procedure applicable to Chapter 5745 municipal income tax and various other taxes that the tax commissioner administers. If the taxpayer has properly filed a petition for reassessment, the 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, the 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 law please see page 18 of the 2006 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. By filing a petition with the tax commissioner within sixty days after the tax commissioner issues the notice, 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. The municipality must file the petition either personally or by certified mail and must indicate the municipality's objections to the adjustments.

Upon receipt of such a petition and if a municipality requests a hearing, the tax commissioner will assign a time and place for the hearing and notify the petitioner of the time and place 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 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 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. R.C. 5745.15.

Line Instructions

Schedule 1 – Ohio Net Income

Line 1 - Federal taxable income before NOL deduction and special deductions. Enter the taxpayer's federal taxable income before NOL deduction and special deductions as reported on the taxpayer's federal income tax return.

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 Chapter 5745 municipal income tax.

Line 2 – Adjustment for amendments to the IRC.

Note: As explained in the paragraphs below, the instructions for Schedule 1, line 2 of the 2006 Chapter 5745 municipal income tax form were revised on June 2, 2006 to reflect amendment to the definition of “Internal Revenue Code” enacted by Amended Substitute House Bill 530 (House Bill 530), 126th Ohio General Assembly. The instructions were again revised on June 6, 2007 to reflect the subsequent amendment to the definition of “Internal Revenue Code” enacted by Amended Substitute House Bill 699 (House Bill 699), 126th Ohio General Assembly.

Prior to the enactment of House Bill 530, R.C. 5745.01(H) defined "Internal Revenue Code" for purposes of the Chapter 5745 municipal income tax, as the Internal Revenue Code as it existed on December 31, 2001. As a consequence of that definition prior law required municipal income taxpayers to adjust their federal taxable income before net operating loss deduction and special deductions² for purposes of the Chapter 5745 municipal income tax by reversing the effects of amendments to the Internal Revenue Code enacted by Congress after December 31, 2001. That is, for purposes of computing the Chapter 5745 municipal income tax, taxpayers were required to recompute their federal taxable income before net operating loss deduction and special deductions by applying the Internal Revenue Code as it existed on December 31, 2001.

House Bill 530 amended the R.C. 5745.01(H) definition of “Internal Revenue Code” by eliminating reference to a date specific and by adding “as amended.” House Bill 530 also enacted new R.C. section 5701.11 which defines the term “Internal Revenue Code ‘as amended’” for all of Title 57 of the Ohio Revised Code. (Chapter 5745 is included in Title 57.) The House Bill 530 version of R.C. 5701.11 defined the term “Internal Revenue Code as amended” as being the Internal Revenue Code as it existed on March 30, 2006, the effective date of R.C. 5701.11 as enacted by House Bill 530. See section 818.03 of House Bill 530.

House Bill 699 subsequently amended R.C. 5701.11 and adopted all the changes to the Internal Revenue Code enacted by Congress from March 30, 2006 through December 28, 2006, the effective date of House Bill 699’s amendment to R.C. 5701.11

The Chapter 5745 municipal income tax effects of House Bill 530’s enactment of R.C. 5701.11 and House Bill 699’s subsequent amendment to that section may require the taxpayer to adjust its federal taxable income as reported for federal income tax purposes. Show on Schedule 1, line 1 of the Chapter 5745 municipal income tax return federal taxable income as reported for federal income tax purposes. Show the adjustment, if required, on Schedule 1, line 2.

If the taxpayer’s federal taxable income as reported for federal income tax purposes is greater than the taxpayer’s federal tax-

able income that would have been reported had the IRC as of the applicable date specified in R.C. 5701.11 been used in determining federal taxable income, show the adjustment as a negative amount (in parenthesis). On the other hand, if the taxpayer’s federal taxable income as reported for federal income tax purposes is less than the taxpayer’s federal taxable income that would have been reported had the IRC as of the applicable date specified in R.C. 5701.11 been used in determining federal taxable income, show the adjustment as a positive amount. Set forth below are the possibilities for various taxable years:

- If the taxpayer’s taxable year beginning in 2006 ended after December 28, 2006, then for Chapter 5745 municipal income tax purposes the taxpayer must adjust its federal taxable income starting point by reversing the effects of Internal Revenue Code changes (if any) enacted after December 28, 2006.
- If the taxpayer’s taxable year beginning in 2006 ended on or before December 28, 2006, then for Chapter 5745 municipal income tax purposes the **taxpayer can make an irrevocable election to apply the Internal Revenue Code in effect for the taxpayer’s taxable year.** Taxpayers can exercise this irrevocable election by (i) entering on Schedule 1, line 1 the taxpayer’s federal taxable income before net operating loss deduction and special deductions and (ii) entering -0- on Schedule 1, line 2, that is, *not* making the “IRC Adjustment” on Schedule 1, line 2 to reverse the effects of changes to the Internal Revenue Code not adopted by the Ohio General Assembly as of the taxpayer’s taxable year end. If the taxpayer’s taxable year beginning in 2006 ended before December 28, 2006 and if the **taxpayer does not make the election, then the taxpayer must adjust its federal taxable income starting point as discussed in the two immediately following paragraphs.**

If the taxpayer’s taxable year beginning in 2006 ended after March 30, 2006 and before December 28, 2006 and the taxpayer does not make the election, then on Schedule 1, line 2 the taxpayer must adjust its federal taxable income starting point to reverse the effects of changes to the Internal Revenue Code enacted after March 30, 2006, (the date prior to the ending date of the taxpayer’s taxable year that the Ohio General Assembly last adopted the changes to the Internal Revenue Code by enacting R.C. 5701.11).

If the taxpayer’s taxable year beginning in 2006 ended before March 30, 2006 and the taxpayer does not make the election, then on Schedule 1, line 2 the taxpayer must adjust its federal taxable income starting point to reverse the effects of changes to the Internal Revenue Code enacted after December 31, 2001.

Note: Each time the General Assembly amends R.C. 5701.11 the General Assembly adopts the version of the Internal Revenue Code as it exists on the date set forth in the amendment and that version of the Internal Revenue Code applies for Ohio tax purposes until the General Assembly subsequently adopts a more current version by later amending R.C. 5701.11. (Amendments to the Internal Revenue Code do not automati-

² Federal taxable income before net operating loss deduction and special deductions is the starting point for determining Chapter 5745 municipal income tax.

cally apply for Ohio tax purposes. If for Ohio tax purposes the federal amendments were applied without amending R.C. 5701.11, the General Assembly would be unconstitutionally delegating its legislative authority to the U.S. Congress.)

Line 4 – Net intangible income. Enter the taxpayer’s intangible income as defined in R.C. 718.01 less expenses incurred in the production of that intangible income to the extent that the income and expenses are used in computing federal taxable income. R.C. 5745.01(G)(1) and (G)(2) and 718.01.

Line 6 – Book-tax difference (for electric companies). By following the definitions and concepts set out in R.C. 5733.0510 and in the franchise tax supplemental schedules for electric companies and combined companies, determine the book-tax difference for each asset that (i) the electric company showed on its books on December 31, 2000 and (ii) the electric company sold or otherwise disposed of in a taxable transaction during the taxable year. Enter on line 6 the net book-tax difference from all such assets sold or disposed of in taxable transactions during the taxable year. If the net book-tax difference is a positive amount (that is, the assets’ net book value on December 31, 2000 is greater than the assets’ adjusted basis), enter the book-tax difference as a negative amount (in parenthesis). If the net book-tax difference 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 the book-tax difference as a positive amount.

Please note the following:

- If the taxpayer is an "electric light company that is not an electric company", the book-tax difference adjustment does not apply.
- **If the taxpayer is a “telephone company”, the book-tax difference adjustment begins to apply in the taxable year that ends in 2009.** Furthermore, the book tax difference adjustment for telephone companies is computed differently from the book-tax difference adjustment for electric light companies. R.C. 5733.0511(B) and 5745.01(G)(5).
- Unlike the franchise tax book-tax difference adjustment for electric companies, the municipal income tax book-tax difference adjustment for electric companies applies to assets located outside Ohio even if for franchise tax purposes the gain or loss from the sale of those assets was allocated outside Ohio. R.C. 5745.01(G)(3).

Line 7 – Adjusted federal taxable income. Add lines 5 and 6

Schedule 2 – Ohio Apportionment Ratio
R.C. 5745.02(B)

The Chapter 5745 Ohio apportionment ratio and the Chapter 5745 municipal apportionment ratio are 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 computer program for the Chapter 5745 municipal income tax return will compute the Ohio ratio by dividing the sum of the remaining factors by the lesser number of factors whose denominator is not zero.

- The numerator and denominator of the Chapter 5745 municipal income tax Ohio property factor include the following amounts whether or not such amounts are included in the franchise tax property factor:
 - 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 that the taxpayer is renting from others, eight times its net annual rental rate) within Ohio that is used exclusively during the taxable year for qualified research.
 - The original cost of rental property owned by the taxpayer and leased to others.
 - 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 include 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 includes 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.
- The numerator and denominator of the Chapter 5745 municipal income tax Ohio sales factor includes gross rents, royalties and technical assistance fees whether or not such amounts are excluded from the Ohio franchise tax sales factor.
- Sales, other than sales of electricity and tangible personal property for all taxable years ending in 2004, are situated based on the “cost of performance” standard. The franchise tax sales factor amendments enacted by Substitute House Bill 127, 125th General Assembly (effective December 11, 2003) do not apply to the Chapter 5745 municipal income tax.

Assuming that the taxpayer’s Chapter 5745 taxable year is the same as the taxpayer’s franchise tax taxable year 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 R.C. 5745.02(C)

For each Ohio municipality that 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 in Schedule 2 above and the franchise tax siting 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," 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. R.C. 5745.02(D). 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. R.C. 5727.01(L).

The tax commissioner may adopt rules providing for **alternative apportionment methods for a telephone company.** R.C. 5745.02(G).

For each municipality the computer program will then compute the following:

- The taxpayer's property factor 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 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 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; and
- The apportionment ratio 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).

tionment 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 (l) 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 represents business activity in Ohio or among Ohio's municipalities. R.C. 5745.02(G).

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 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 return, a timely filed amended return, or a timely filed petition for reassessment. R.C. 5745.02(E).

Schedule 4 - Municipal Income Tax Computation

Municipal income before NOL deduction – column (d). For each municipality that 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). If Ohio net income as reported on Schedule 1 of the 2002, 2003, 2004 and/or 2005 Chapter 5745 municipal income tax return was a loss, enter in column (e) for each municipality the sum of the following amounts: (i) the portion of the 2002 NOL not used on the 2003, 2004 and/or 2005 returns and, (ii) the portion of the 2003 NOL not used on the 2004 and/or 2005 returns, (iii) the 2004 NOL not used on the 2005 return and (iv) the 2005 NOL. Taxpayers may not deduct municipal NOLs generated in taxable years before becoming a Chapter 5745 taxpayer. Accordingly a telephone company may not claim a Chapter 5745 municipal income tax deduction for its taxable years ending before 2004 because telephone companies were not subject to municipal income tax for such years. NOLs may be carried forward for five taxable years following the year in which the loss was generated after which time any unused portion of the loss may not be carried forward.

Municipal income – column (f). The program will compute municipal income by subtracting the municipal NOL carryforward deduction (column (e)) from municipal income before NOL deduction (column (d)).

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 NOL 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, then the taxpayer may claim as a credit against the taxpayer'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). R.C. 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 beginning in 2005 – column (k). Enter the taxpayer's overpayment carryforward for each municipality as reflected in column (o) of the taxpayer's 2005 Chapter 5745 municipal income tax return unless the taxpayer actually received from the municipality the taxpayer's overpayment to the municipality.

Note: The taxpayer's overpayment for a particular municipality will not be refunded unless, upon the written request of the taxpayer, the tax commissioner determines that the taxpayer's overpayment for a particular municipality will likely exceed the amount of estimated taxes payable to that municipality during the ensuing twelve months. If the tax commissioner makes that determination, the tax commissioner will notify the municipality and the municipality will refund the excess to the taxpayer. See page 5 for more detail.

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 beginning in 2006.

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)) plus 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 by electronic funds transfer as prescribed by the Ohio Treasurer of State. R.C. 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 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 refund to the taxpayer the entire overpayment. See page 5 for more detail.