



Ohio

2001

Pass-Through Entity
and Trust Tax Return

IT-1140

General Instructions



Ohio Department of
TAXATION

P.O. Box 181140
Columbus, Ohio 43218-1140

**Instructions for Ohio Form IT-1140
Tax Return for Pass-through Entities & Trusts
For Taxable Years Beginning in 2001**

Important note:

You can disregard these instructions if any of the following is applicable for the entire taxable year:

- The entity is a trust whose beneficiaries are limited to full-year Ohio resident individuals and/or Ohio resident estates, or
- The entity is a trust which has no real estate located in Ohio, no tangible personal property located in Ohio, and no direct or indirect investments in (i) S corporations having nexus with Ohio, (ii) partnerships having nexus with Ohio, and (iii) limited liability companies having nexus with Ohio if none of the limited liability companies are treated as partnerships for federal income tax purposes, or
- The entity is an S corporation, a partnership, or a limited liability company treated as a partnership for federal income tax purposes, and such entity's investors are limited to full-year Ohio resident individuals, Ohio estates, and/or corporations which are timely paying the Ohio corporation franchise tax, or
- The entity is an S corporation, partnership, or limited liability company treated as a partnership for federal income tax purposes, and the entity is filing the Ohio form IT-4708 ("Pass-through Entity Composite Income Tax Return") on behalf of all its investors who are not full-year Ohio resident individuals or Ohio resident estates.

General Instructions:

These instructions provide a general overview of the annual filing and payment requirements for pass-through entities and trusts. For detailed information, see Ohio Revised Code ("ORC") sections 5733.40, 5733.41, and 5747.40 through 5747.453. You can also call 1-614-438-5317 (Ohio Relay Number 1-800-750-0750) for additional assistance.

For taxable years beginning after December 31, 1998 each "qualifying pass-through entity" (defined on page 2) doing business in Ohio or otherwise having nexus with Ohio under the Constitution of the United States is subject to a 5% withholding tax and an 8.5% entity tax based upon the qualifying investors' share of the qualifying pass-through entity's profits apportioned to Ohio (see "Who is a Qualifying Investor?" on page 2).

Similarly, each "qualifying trust" (defined on page 2) is subject to a 5% withholding tax based upon distributions of certain types of income (discussed on page 2) to individuals who are nonresidents of Ohio for any portion of the trust's taxable year. **This yearly income tax return, the Ohio form IT-1140, is due on the fifteenth day of the fourth month following the end of the qualifying pass-through entity's or qualifying trust's taxable year.** However, the tax is due only if the "adjusted qualifying amount" exceeds \$1,000 (see Schedule B, line 9 and Schedule D, line 3).

Extension of Time to File:

If the qualifying pass-through entity or the qualifying trust has an extension of time to file its federal tax return (IRS form 1065 or 1120S or 1041), then the qualifying pass-through entity or qualifying trust has the same extension of time to file the Ohio form IT-1140.

However, there is no extension of time for payment of the 5% withholding tax or the 8.5% entity tax. Late payments are subject to interest, penalties, and interest penalties. If the qualifying pass-through entity or qualifying trust has secured from the IRS an extension of time to file, use Ohio form IT-1140ES (for taxable years beginning in 2001) to remit any 5% withholding tax and/or 8.5% entity tax due but not paid as of the unextended due date.

Estimated Tax Payments for Taxable Year Beginning in 2002

If the qualifying pass-through entity or qualifying trust has nexus with Ohio during any portion of its taxable year beginning in 2002, the qualifying pass-through entity or qualifying trust must make estimated payments during the taxable year only if (i) the sum of the "adjusted qualifying amounts" for all the qualifying investors for the taxable year beginning in 2001 exceeds \$10,000 **and** (ii) the sum of the "adjusted qualifying amounts" for all the qualifying investors for the taxable year beginning in 2002 exceeds \$10,000. For the calculation of the **adjusted qualifying amount** see Ohio form IT-1140ES Worksheet #1 (line 9) and Ohio form IT-1140ES Worksheet #3 (line 3) which follow these instructions.

These estimated payments are due on the fifteenth day of the month following the last day of each quarter of the taxable year. Late payments of estimated tax are subject to interest penalties. Form IT-1140ES must accompany each estimated payment. Form IT-1140ES

(for taxable years beginning in 2002) and the related worksheets follow these instructions.

Definitions:

A **qualifying pass-through entity** is generally an S corporation, a partnership, or a limited liability company treated as a partnership for federal income tax purposes. However, a qualifying pass-through entity does not include the following:

- Entities having no qualifying investors (see “Who is a Qualifying Investor?” on page 2),
- Pension plans and charities (an entity exempt from federal income tax pursuant to Internal Revenue Code section 501(a) or 501(c)),
- Publicly-traded partnerships (a partnership with equity securities registered with the U. S. Securities Exchange Commission under section 12 of the *Securities Exchange Act of 1934*),
- Entities which are real estate investment trusts, regulated investment companies, or real estate mortgage investment conduits,
- Any entity treated as a “disregarded entity” for federal income tax purposes (see the “Check the Box” U.S. Treasury regulations), and
- Qualified Subchapter S subsidiary corporations (however, if the parent S corporation has qualifying investors, the parent S corporation is a pass-through entity which must compute the tax on a consolidated basis with all its QSSS subsidiaries).

A **qualifying trust** is generally any trust which meets all three of the following requirements during the trust’s taxable year:

- The trust must file the IRS Form 1041, U.S. Income Tax Return for Estates and Trusts,
- The trust has at least one beneficiary who is neither a full-year Ohio resident individual nor an Ohio resident estate, and
- The trust makes a distribution to a nonresident beneficiary, and the distribution relates either to real estate located in Ohio or to tangible personal property located in Ohio.

Who is A Qualifying Investor ?

According to ORC section 5733.40(I), a **qualifying investor** is any qualifying pass-through entity investor other than those pass-through entity investors listed below:

1. Investors which are pension plans or charities (investors which are exempt from federal income tax pursuant to Internal Revenue Code section 501(a) or 501(c)).
2. Investors which are electing small business trusts, but only if the electing small business trust does not also qualify as a grantor trust. See the department’s January 19, 2000 individual income tax information release available at www.state.oh.us/tax/.
3. Investors which are publicly-traded partnerships (investors which are partnerships with equity securities registered with the U. S. Securities Exchange Commission under section 12 of the *Securities Exchange Act of 1934*).
4. Investors which are colleges or universities (investors which are “institutions of higher education” as defined in the Ohio Revised Code section 3334.01(F)).
5. Investors which are public utilities in Ohio and required to pay the Ohio gross receipts excise tax.
6. Investors which are insurance companies, fraternal corporations, beneficial corporations, bond investment corporations, health maintenance organizations, or any other corporation required to file an annual report with the Ohio superintendent of insurance.
7. Investors which are dealers in intangibles as defined in the Ohio Revised Code section 5725.01(B).
8. Investors which are real estate investment trusts, regulated investment companies, or real estate mortgage investment conduits.
9. Investors who are individuals and residents of Ohio for the pass-through entity’s entire taxable year.
10. Investors which are estates that are residents of Ohio for the pass-through entity’s entire taxable year.

11. Nonresident individuals on whose behalf the qualifying pass-through entity files Ohio form IT-4708, "Annual Composite Income Tax Return for Investors in Pass-through Entities."
12. Investors that are financial institutions required to pay the corporation franchise tax in accordance with Ohio Revised Code section 5733.06(D) on the first day of January of the calendar year immediately following the last day of the financial institution's calendar or fiscal year in which ends the qualifying pass-through entity's taxable year.
13. Investors which are themselves qualifying pass-through entities if those qualifying pass-through entities' investors during the three-year period beginning twelve months prior to the first day of the entity's taxable year are limited to those investors set forth in items #1 through #12, above (or any combination thereof).
14. Investors which are themselves pass-through entities but only if the owners of those other pass-through entities are limited to (i) individuals who are full-year residents of Ohio, (ii) estates domiciled in Ohio, (iii) nonresident individuals on whose behalf those other pass-through entities file Ohio form IT-4708, "Pass-through Entity Composite Income Tax Return", and (iv) nonresident estates on whose behalf those other pass-through entities file Ohio form IT-4708, "Pass-through Entity Composite Income Tax Return."
15. Investors which satisfy all the following:
- The investor submits a written statement to the qualifying pass-through entity stating that the investor irrevocably agrees that the investor has nexus with Ohio and is subject to and liable for the corporation franchise tax calculated under section 5733.06 of the Ohio Revised Code with respect to the investor's distributive share of income attributable to the pass-through entity,
 - The investor makes a good faith and reasonable effort to fully comply with all of the corporation franchise tax reporting and paying requirements set forth in chapter 5733 of the Ohio Revised Code, and
 - Neither the investor nor the qualifying pass-through entity carries out, at any time, any transactions either with any related members of the investor or with any related member of the entity where such transactions either result in or would result in a reduction or deferral of the Ohio corporation franchise tax.
16. Investors which are either trusts or funds whose beneficiaries are limited to the following during the taxable year of the qualifying pass-through entity:
- Persons that are or may be beneficiaries of a pension plan trust, profit sharing trust, a stock bonus plan trust, or similar retirement trust, or
 - Persons that are or may be beneficiaries of or the recipients of payments from a trust or fund that is a nuclear decommissioning reserve fund, a designated settlement fund, or any other similar trust or fund established to resolve and satisfy similar injury claims, or
 - Persons who are or may be the beneficiaries of a complex trust but only if the trust irrevocably agrees in writing that, for the taxable year during or for which the trust distributes any of its income to any of its beneficiaries who are individuals residing outside Ohio, the trust will be withholding tax as required under the Ohio Revised Code sections 5747.41 through 5747.453.
17. Investors which are corporations paying the Ohio corporation franchise tax but only if all the other investors in the qualifying pass-through entity are limited to: i) other corporations which are paying the Ohio corporation franchise tax and/or (ii) corporations which would be paying the Ohio corporation franchise tax if they were not eligible for the Ohio corporation franchise tax exemption set forth in ORC section 5733.09 (see the second sentence of the third paragraph of ORC section 5733.41).
18. Investors which are "investment pass-through entities" (defined on page 4), but only if the investment pass-through entity provide to the qualifying pass-through entity the name, address, and social security number for each person who has invested in the investment pass-through entity (discussed in item "B" on page 4).

Special Rules

- A. The 8.5% tax does not apply to any pass-through entity to the extent the pass-through entity's distributive shares of income and gain pass through from that en-

tity to another pass-through entity (hereinafter referred to as the “investing entity”) if the investing entity (i) is not an investment pass-through entity (defined below), (ii) irrevocably acknowledges that it has nexus with this state under the U.S. Constitution during the taxable year, (iii) makes a good faith and reasonable effort to comply with both the 8.5% entity tax law and the 5% withholding tax law, and (iv) includes in its apportionment factors (see Schedule C) its proportionate share of each lower-tiered pass-through entity’s property, payroll and sales. See Ohio Revised Code section 5733.402.

B. Neither the 8.5% entity tax nor the 5% withholding tax applies to an investment pass-through entity’s items of income listed below.

An investment pass-through entity is a pass-through entity having for its qualifying taxable year at least 90% of its assets represented by intangible assets and having for its qualifying taxable year at least 90% of its gross income from one or more of the following sources:

- All transaction fees in connection with the acquisition, ownership, or disposition of intangible property.
- Loan fees.
- Financing fees.
- Consent fees.
- Waiver fees.
- Application fees.
- Net management fees (management fees which the pass-through entity earns or receives from all sources reduced by the management fees which the pass-through entity incurs or pays to any person but only if such management fees do not exceed 5% of the pass-through entity’s profit).
- Dividend income
- Interest income
- Net capital gains from the sale or exchange of intangible property, and
- All types and classifications of income attributable to distributive shares of income from other pass-through entities.

The percentages are based upon quarterly averages calculated during the pass-through entity’s taxable year. Furthermore, for purposes of determining if a pass-through entity is an investment pass-through entity, intangible assets include investments in other pass-through entities. See Ohio Revised Code section 5733.402.

C. An investor (subsequently referred to as a “deemed investor”) in an investment pass-through entity shall be deemed to be an investor in any other qualifying pass-through entity in which the investment pass-through entity is a direct investor.

Each deemed investor’s portion of the qualifying pass-through entity’s adjusted qualifying amount will be the adjusted qualifying amount which would otherwise pass-through from the qualifying pass-through entity to the investment pass-through entity multiplied by the percentage of the deemed investor’s direct ownership in the investment pass-through entity.

Thus, the qualifying pass-through entity must pay the 5% withholding tax and 8.5% entity tax as if the investors in the investment pass-through entity were actual investors in the qualifying pass-through entity (hence, “deemed investors”). However, this rule applies only to the extent the investment pass-through entity provides on a timely basis to the qualifying pass-through entity the name, address, and social security number or federal identification number for each investor in the investment pass-through entity.

If the investment pass-through entity does not provide on a timely basis to the qualifying pass-through entity the name, address, and social security number or federal identification number for each investor in the investment pass-through entity, then the qualifying pass-through entity must pay the 8.5% entity tax with respect to the distributive share of income and gain passing through from the qualifying pass-through entity to the investment pass-through entity (if the investment pass-through entity is a qualifying investor).

If the taxable year of the investment pass-through entity ends on a day which is different than the last day of the qualifying pass-through entity’s taxable year, then this rule applies to those persons who are the direct investors in the investment pass-through entity on the last day of the qualifying pass-through entity’s taxable year ending within the investment pass-through entity’s taxable year. See Ohio Revised Code section 5747.401.

Calculating the Tax

The tax is due only if the adjusted qualifying amount exceeds \$1,000 (see Schedule B, line 9 and Schedule D, line 3). The tax is generally calculated as follows:

- A 5% withholding tax is applied to the adjusted qualifying amounts for all qualifying investors in qualifying pass-through entities who are non-resident individuals for any portion of the qualifying pass-through entity's taxable year (see Schedule B) and
- An 8.5% entity tax is applied to the adjusted qualifying amounts for all qualifying investors other than nonresident individuals (see Schedule B).
- A 5% withholding tax is applied to the adjusted qualifying amounts of the qualifying trust's beneficiaries who are nonresident individuals for any portion of the qualifying trust's taxable year (see Schedule D).

Required Attachments to Form IT-1140

All qualifying pass-through entities must attach to form IT-1140 the following:

- Schedules B and C and
- "K-1 Information" (discussed below).

Qualifying trusts must attach to form IT-1140 the following:

- Schedule D and
- "K-1 Information" (discussed below).

K-1 Information

Each qualifying pass-through entity and each qualifying trust must attach to this return the "K-1 Information" which is any of the following:

- A "paper" copy of the federal schedules K-1's which the qualifying pass-through entity or qualifying trust will issue to each qualifying investor or qualifying beneficiary. The K-1's **must indicate the net amount of tax credits which will pass through from the qualifying pass-through entity or qualifying trust to each qualifying investor or qualifying beneficiary** (see "Tax Credits Available to Certain Investors and Beneficiaries", on the next page).
- A "paper" listing showing the name, address, and federal identification number or social security number for each qualifying investor and each qualifying beneficiary. The listing **must indicate the net**

amount of tax credits which will pass through from the qualifying pass-through entity or qualifying trust to each qualifying investor or qualifying beneficiary (see "Tax Credits Available to Certain Investors and Beneficiaries" on the next page).

- Magnetic media meeting the specifications which the Internal Revenue Service requires for the transmission of information by magnetic media (for more information, see IRS publications 1524 and 1525). The magnetic media **must set forth the name, address, and federal identification number or social security number for each qualifying investor and indicate the net amount of tax credits which will pass through from the qualifying pass-through entity or qualifying trust to each qualifying investor or qualifying beneficiary** (see "Tax Credits Available to Certain Investors and Beneficiaries" on the next page).

A 3.5 inch diskette in ASCII Comma Delimited Format with the fields in the following order:

1. Federal employer identification number of the qualifying pass-through entity or trust.
2. Name of qualifying pass-through entity or trust.
3. Name of a qualifying investor or qualifying beneficiary.
4. Federal employer identification number or social security number of the qualifying investor or qualifying beneficiary set forth in field number 3.
5. Street address of the qualifying investor or qualifying beneficiary set forth in field number 3.
6. City of the qualifying investor or qualifying beneficiary set forth in field number 3.
7. State of the qualifying investor or qualifying beneficiary set forth in field number 3.
8. Zip code of the qualifying investor or qualifying beneficiary set forth in field number 3.
9. The **net amount of tax credits which will pass through from the qualifying pass-through entity or qualifying trust to the qualifying investor or qualifying beneficiary set forth in field number 3** (see "Tax Credits Available to Certain Investors and Beneficiaries" on the next page).

If there is more than one qualifying investor or more than one qualifying beneficiary, repeat the sequence set forth in fields number 1 through number 9. You must repeat all nine fields for each additional qualifying investor or qualifying beneficiary.

If you use magnetic media, please affix to the outside of the magnetic media a label containing the following information in large print: (i) the name and federal employer identification number of the qualifying pass-through entity or qualifying trust, (ii) the phrase, "IT-1140 K-1 Information," and (iii) the phrase, "Taxable Year Beginning in 2001."

Tax Credits Available to Certain Investors and Beneficiaries

Ohio Revised Code sections 5733.0611 and 5747.059 provide that qualifying investors (see page 2 of these instructions) can claim an income tax or franchise tax credit based upon the investor's proportionate share of the 5% withholding tax or the 8.5% entity tax which was paid on or with respect to the qualified investor's direct or indirect investment in the qualifying pass-through entity. ORC section 5747.059 also provides for a similar credit for nonresident individual qualifying beneficiaries with respect to the 5% withholding tax which a qualifying trust has withheld in connection with that nonresident individual qualifying beneficiary.

In order for qualifying investors and qualifying beneficiaries to claim these credits, the qualifying investor or the qualifying beneficiary must attach to the corporation franchise tax report (Ohio form FT-1120 or FT-1120FI) or to the Ohio franchise tax request for refund (Ohio form FT-REF) or to the Ohio income tax return (Ohio form IT-1040 or IT-1041E or IT-4708) a copy of the IRS form K-1 which indicates the amount of the 8.5% entity tax and/or 5% withholding tax with respect to which the qualifying investor or qualifying beneficiary seeks to claim a credit. **Accordingly, each qualifying pass-through entity or qualifying trust must separately state on the form K-1, which the qualifying pass-through entity or qualifying trust will issue to the qualifying investor or qualifying beneficiary, the following information:**

- The qualifying investor's or beneficiary's proportionate share of the 5% withholding tax and/or 8.5% entity tax which the qualifying pass-through entity or qualifying trust paid (net of refunds shown on this return and net of amounts

shown on Schedule A, line 2b, which have been transferred to Ohio form IT-4708) and

- The qualifying investor's or beneficiary's proportionate share of the 5% withholding tax and/or 8.5% entity tax which passes through from another pass-through entity or trust to the qualifying pass-through entity or qualifying trust (and then passes on to the qualifying investor or qualifying beneficiary).

Note: If this pass-through entity or trust has invested in a partnership or limited liability company which also filed Ohio form IT-1140, then this pass-through entity or trust is not entitled to a refundable credit equal to this pass-through entity's or trust proportionate share of tax which the investee partnership or investee limited liability company paid on behalf of this pass-through entity or trust. This pass-through entity or trust cannot claim the credit as an estimated payment for this pass-through entity's or trust's taxable year.

Responsible Party Liability

Ohio Revised Code section 5747.453 imposes personal liability for failure to pay the 5% withholding tax. Set forth below is that section of the law:

An employee or beneficiary of, or investor in, a qualifying entity having control or supervision of, or charged with the responsibility for, filing returns and making payments, or any trustee or other fiduciary, officer, member, or manager of the qualifying entity who is responsible for the execution of the qualifying entity's fiscal responsibilities, is personally liable for the failure to file any report or to pay any tax due as required by sections 5747.40 to 5747.453 of the Revised Code. The dissolution, termination, or bankruptcy of a qualifying entity does not discharge a responsible trustee's, fiduciary's, officer's, member's, manager's, employee's, investor's, or beneficiary's liability for failure of the qualifying entity to file any report or pay any tax due as required by those sections. The sum due for the liability may be collected by assessment in the manner provided in section 5747.13 of the Revised Code.

“Amounts which are not Subject to a Tax on or Measured by Net Income” (see Schedule B, line 2 and Schedule D, line 2)

ORC section 5733.40(A)(2) provides that distributive shares of income from qualifying pass-through entities and distributions from qualifying trusts shall be reduced by “any amount which, pursuant to the Constitution of the United States, the Constitution of Ohio, or any federal law is not subject to a tax on or measured by net income.” Set forth below is a partial listing of such items of income:

- Federal interest income which under federal law is exempt from state tax measured on or by net income (see the Department’s January 9, 1992 information release entitled “Corporate Franchise Tax and Personal Income Tax Information Release” which lists most types of federal interest income which is exempt). You can obtain a copy of the release by accessing the Department’s website address: www.state.oh.us/tax/.
- All income which the qualifying pass-through entity earns if the qualifying pass-through entity claims an exemption under U.S. Public Law 86-272 and if the qualifying pass-through entity has no related members having nexus with Ohio under the Constitution of the United States for any portion of a qualifying pass-through entity’s qualifying taxable year (see ORC section 5733.042(A)(6) for the definition of “related member”).
- An investment pass-through entity’s items of income listed on page 4.

Apportionment Factors — Schedule C

Note: When calculating the 5% withholding tax and the 8.5% entity tax, the qualifying pass-through entity and qualifying trust which has invested in a partnership or an S corporation must apply the “aggregate” (conduit) theory of taxation. That is, the character of all income and deductions (and adjustments to income and deductions) realized by an S corporation or a partnership or a limited liability company (treated as a partnership for federal income tax purposes) in which the qualifying pass-through entity or qualifying trust has invested retains that character for purposes of the withholding tax and the entity tax when recognized by the qualifying pass-through entity. Furthermore, the qualifying pass-

through entity and qualifying trust must include in its apportionment ratio its proportionate share of each lower-tiered pass-through entity’s property, payroll and sales. See Ohio Revised Code sections 5733.057 and 5747.231.

Property Factor — Schedule C

The property factor is a fraction the numerator of which is the average value of property in this state during the taxable year, and the denominator of which is the average value of property everywhere during such year.

Line 1(a) – Property owned by the qualifying pass-through entity is valued at its original cost, and the average is determined by averaging the original cost at the beginning and at the end of the taxable year. The Tax Commissioner may require the averaging of monthly values during the taxable year if such average more reasonably reflects the average value of the qualifying pass-through entity’s property. Enter in column “(1)” the Ohio portion; enter in column “(2)” the entire (everywhere) amount.

Line 1(b) – Enter the value of the qualifying pass-through entity’s real and tangible personal property rented and used in the trade or business in Ohio (column 1) and everywhere (column 2) during the taxable year by multiplying the qualifying pass-through entity’s net rental expense (rental expense less subrental receipts) by eight.

Do not include in either column “(1)” or in column “(2)” the following:

- Construction in progress.
- 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 and tangible property (or, in the case of property which the qualifying pass-through entity is renting from others, eight times the net rental expense) within Ohio which is used **ex-**

clusively during the taxable year for qualified research. “Qualified research “ is defined as laboratory research, experimental research, and other similar types of research; research in developing or improving a product; or research in developing or improving the means of producing a product. It does not include market research, consumer surveys, efficiency surveys, management studies, ordinary testing or inspection of materials or products for quality control, historical research or literary research. “Product” as used in this paragraph does not include services or intangible property.

Payroll Factor — Schedule C

The payroll factor is a fraction the numerator of which is the total compensation in this state by the pass-through entity during the taxable year, and the denominator of which is the total compensation everywhere by the pass-through entity during such year.

Compensation means any form of remuneration paid to an employee for personal services. For purposes of the payroll factor, “payroll” does not include compensation that an S corporation paid to any “qualifying investor” if the qualifying investor directly or indirectly owned at least 20% of the S corporation at any time during the year. Ohio Revised Code section 5733.40(l) defines “qualifying investor.” The definition of “qualifying investor” excludes full-year Ohio residents and individuals and estates participating in the filing of this return. Do not include compensation paid in this state to employees who are primarily engaged in qualified research. Compensation is paid in Ohio if any of the following applies:

1. The recipient’s service is performed entirely within Ohio; or
2. The recipient’s service is performed both within and without Ohio, but the service performed without Ohio is incidental to the recipient’s service within Ohio; or
3. Some of the recipient’s service is performed within Ohio and either (i) the recipient’s base of operation or, if there is no base of operations, the place from which the recipient’s service is directed or controlled is within Ohio or (ii) the recipient’s base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the recipient’s residence is in Ohio.

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

Sales Factor — Schedule C

The sales factor is a fraction the numerator of which is the total sales in this state by the qualifying pass-through entity during the taxable year, and the denominator of which is the total sales everywhere by the qualifying pass-through entity during such year. In determining the numerator and denominator of the sales factor, receipts from the sale or other disposal of a capital asset or an asset described in section 1231 of the Internal Revenue Code shall be eliminated.

The total of such gross receipts from sales reflecting business done in Ohio includes, but is not limited to, the following:

1. Sales of tangible personal property, less returns and allowances, received by the purchaser in Ohio. To the extent that the value of business done in Ohio is measured by sales of tangible personal property, it means sales where such property is received in Ohio by the purchaser. In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed is considered as the place at which such property is received by the purchaser. Direct delivery in Ohio, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in Ohio, and direct delivery outside Ohio to a person or firm designated by a purchaser does not constitute delivery to the purchaser in Ohio, regardless of where title passes or other conditions of sale.
2. Customer pick-up sales are situsable to the final destination after all transportation (including customer transportation) has been completed. See

Dupps Co. v Lindley (1980), 62 Ohio St. 2d 305. Revenue from servicing, processing, or modifying tangible personal property is situated to the destination state as a sale of tangible personal property (rather than situated as service revenue). See *Custom Deco, Inc. v Limbach*, BTA Case No. 86-C-1024, June 2, 1989.

Sales other than sales of tangible personal property are situated to Ohio under either of the following circumstances:

- a. If the income-producing activity is performed entirely within Ohio, or
- b. If the income producing activity is performed both within and without Ohio and a greater proportion of the income producing activity is performed within Ohio than any other state, based on cost of performance.

If the income-producing activity involves the performance of personal services both within and without Ohio, the services performed in each state will constitute a separate income-producing activity. In such case the gross receipts for the performance of services attributable to Ohio shall be measured by the ratio which the time spent in performing such services in Ohio bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligations which give rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligations as, for example, time expended in negotiating the contract, is excluded from the computations.

The term "income-producing activity" means, with respect to each separate item of income, the transaction and activity directly engaged in by the taxpayer in the regular course of its trade or business for the purpose of obtaining gains or profits. Such activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. The term "cost of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the taxpayer's trade or business.

Payment Transfers – Schedule A, Lines 2a and 2b.

If the pass-through entity or trust has used Ohio form IT-4708ES to make estimated payments in connection with the pass-through entity composite income tax, the pass-through entity or trust can elect to apply some or all of those IT-4708ES payments to satisfy the tax due on Ohio form IT-1140. If the pass-through entity or trust so elects, please indicate on form IT-1140, Schedule A, line 2a the amount to be transferred from the IT-4708ES payments to form IT-1140. Please attach to form IT-1140 a schedule setting forth (i) the dates on which the pass-through entity or trust made IT-4708ES payments and (ii) the amount of each payment transferred.

The pass-through entity or trust can also elect to transfer IT-1140ES payments to Ohio form IT-4708 ("Pass-through Entity Composite Income Tax Return"). To the extent that the pass-through entity or trust elects to make such transfers, please indicate on form IT-1140, Schedule A, line 2b the amount to be transferred from the IT-1140ES payments to the form IT-4708. When the pass-through entity or trust files form IT-4708, the pass-through entity or trust should attach to that form a schedule setting forth (i) the dates of the IT-1140ES payments and (ii) the amount of each payment transferred.

Federal Privacy Act Notice

Because we are requesting your social security account number, the Federal Privacy Act of 1974 requires us to inform you that giving us your social security number is mandatory. Our legal right to ask for this information is supported under the Tax Reform Act of 1986. Your social security number is needed for the Tax Commissioner to administer this tax. Failure to supply any information requested on a tax form prescribed by the Tax Commissioner may result in the denial of your license application, if applicable, or the imposition of penalties for failing to file a complete tax return.



Ohio Department of
TAXATION

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