

## Miscellaneous Federal Tax Adjustments

### Form IT 4708, lines 31 and 39

Calendar year taxpayers must add back the charitable contribution deduction, if any, relating to January, 2005 contributions to the Indian Ocean tsunami relief effort and claimed on the 2004 federal income tax return.

**Reason:** The Ohio General Assembly enacted amendments to Ohio Revised Code sections 5747.01 and 5733.04 which Governor Taft signed on December 30, 2004. The amendments became effective on that date (see Substitute House Bill 362, 125<sup>th</sup> General Assembly). Because of these amendments, all changes to the Internal Revenue Code enacted on or before December 30, 2004 apply to calendar year taxpayers filing the Ohio individual & fiduciary income tax, the Ohio pass-through entity tax, and the Ohio franchise tax (the web instructions for the 2005 form FT 1120 provide additional information for fiscal year corporate taxpayers). As a result, calendar year taxpayers are not required to reverse the effects of any Internal Revenue Code changes enacted by December 30, 2004.

Please note that the federal law allowing calendar year businesses to deduct in taxable year 2004 their January, 2005 contributions to the Indian Ocean tsunami relief effort was enacted subsequent to December 30, 2004. Since the federal law allowing this deduction was enacted after the December 30, 2004 date on which the applicable Ohio tax law was last amended, taxpayers must compute Ohio taxable income for their taxable year ending in 2004 as if that federal law had never been enacted. Thus, each calendar year business taxpayer which made any January, 2005 contributions to the Indian Ocean tsunami relief effort and which claimed those contributions as a deduction on its 2004 federal income tax return must add back on its 2004 Ohio tax return the amount of such deduction.

Please note that the Ohio tax add-back and deduction for IRC sections 168(k) and the 179 depreciation adjustments remain in effect in accordance with Ohio Revised Code sections 5747.01(A)(20), 5747.01(A)(21), 5733.04(I)(17), and 5733.04(I)(18).

For more information see the Department's December 2004 individual income tax information release entitled, *Income and Franchise Tax Updates* available through our website at **[www.tax.ohio.gov](http://www.tax.ohio.gov)**.

## 2004 Ohio Form IT 4708 General Instructions

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

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

**This return must be accompanied by (i) the K-1 for each investor whether or not the investor participates in filing this composite return, (ii) a list of investors, and their social security numbers or federal employer identification numbers, who are participating in the filing of this return (alternatively, indicate those investors on the K-1s), and (iii) a copy of the approved I.R.S. extension, if applicable.**

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

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

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

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

If any of the facts, figures, computations or attachments required in a pass-through entity's annual report to determine the taxes imposed by O.R.C. section 5747.08(D) must be altered as the result of an adjustment to the pass-through entity's federal income tax return, whether the adjustment is initiated by the pass-through entity or the I.R.S., and such alteration affects the pass-through entity's tax liability, the pass-through entity must file an amended report with the tax commissioner in such form as the commissioner requires. The amended report must be filed not later than 60 days after the adjustment has been agreed to or finally determined for federal income tax purposes or any federal income tax deficiency or refund, or the abatement or credit resulting therefrom, has been assessed or paid, whichever occurs first. **Caution:** The I.R.S. informs us of all changes it makes to your federal return. To avoid penalties, be sure to file your Ohio amended return within 60 days of the final determination of the federal change.

- (1) In the case of an underpayment, the amended report shall be accompanied by payment of an additional tax and interest due and is a report subject to assessment under O.R.C. section 5747.13 for the purpose of assessing any additional tax due under this division, together with any applicable penalty and interest. The amended report must not reopen those facts, figures, computations or attachments from a previously filed report no longer subject to assessment that are not affected, either directly or indirectly, by the adjustment to the pass-through entity's federal income tax return.
- (2) In the case of an overpayment, an application for refund may be filed under this division within the 60-day period prescribed for filing the amended report even if it is filed beyond the period prescribed in division (B) of O.R.C. section 5747.11 if it otherwise conforms to the requirements of that section. An application filed under this division may claim refund of overpayments resulting from alterations to only those facts, figures, computations or attachments required in the pass-through entity's annual report that are affected, either directly or indirectly, by the adjustment to the pass-through entity's federal income tax return unless it is also filed within the time prescribed in division (B) of O.R.C. section 5747.11. The application shall not reopen those facts, figures, computations or attachments that are not affected, either directly or indirectly, by the adjustment to the pass-through entity's federal income tax return.

### Rounding to Whole Dollars

The money amounts on form IT 4708 and accompanying schedules must be shown as whole dollar amounts by eliminating amounts less than 50 cents and increasing amounts from 50 cents to 99 cents to the next highest dollar.

If an investor participates in the filing of this form, then for the pass-through entity's taxable year the investor is not a "qualifying investor," and for that taxable year, the pass-through en-

tity is not subject to the 5% withholding tax or 8.5% entity tax (Ohio form IT 1140) with respect to the distributive share of income passing through from the pass-through entity to each investor participating in the filing of this form.

### **Filing Date**

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

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

Example: A pass-through entity having a January 31, 2004 fiscal year end and electing to file this return must do so by April 15, 2005 (not April 15, 2004).

### **Extended Due Date**

If the pass-through entity has received from the IRS an extension of time to file and if the IRS-granted extended due date is later than the April 15th filing date, then the filing date for the IT 4708 is extended to the same date. **Note:** An extension of time to file is not an extension of time to pay. Use Ohio form IT 4708EXT to make extension payments. Tax remaining unpaid on April 15 is subject to both interest and failure-to-timely-pay penalties. Interest-penalty may also apply to estimated payments not timely paid (see “Estimated Tax Payments for Next Year,” below).

### **Payment Date Postmark**

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

### **Interest on Underpayments and Overpayments**

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

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

During calendar year 2004 interest accrues on underpayments and overpayments at the rate of 4% per annum. During calendar year 2005, interest accrues on underpayments and overpayments at the rate of 5% per annum.

### **Penalties**

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

imposes penalties for failure to pay timely and/or fully.

### **Records To Be Maintained**

Every pass-through entity must maintain books and records that substantiate any information reported on form IT 4708. These books and records must be available for inspection by agents of the Ohio Department of Taxation for a period of four years from later of the date form IT 4708 was filed or the date the form was required to be filed.

### **Assessments**

The tax commissioner may issue an assessment against the pass-through entity for any deficiency within four years after the later of the final date the return subject to assessment was required to be filed or the date the return was filed. However, both the assessment statute of limitations and the refund statute of limitations may be extended for an agreed-upon period if both the pass-through entity and the tax commissioner consent in writing to the extension by signing form IT Waiver.

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

### **Estimated Tax Payments for Next Year**

The pass-through entity must make estimated tax payments on the year 2005 form IT 4708ES for the entity's taxable year ending in year 2005 if the year 2005 Ohio composite annual income tax after nonrefundable credits is more than \$500.

### **Due Dates for Estimated Tax Payments**

*Calendar year pass-through entities* – April 15, June 15, and September 15 of the calendar year and January 15 of the immediately following calendar year.

*Fiscal year pass-through entities* – April 15, June 15, and September 15 of the calendar year in which ends the fiscal year of the pass-through entity and January 15 of the immediately following calendar year.

Example: A pass-through entity has a November 30 fiscal year end. For the fiscal year ending November 30, 2005 the estimates would be due on April 15, 2005; June 15, 2005; September 15, 2005; and January 17, 2006. These estimates would be based upon either (i) income for the fiscal year ending November 30, 2004 or (ii) income (or annualized income) for the fiscal year ending November 30, 2005.

### **Which Form Should I Use: IT 1140 or IT 4708?**

Pass-through entities having as equity investors only non-resident individuals and nonresident trusts can generally choose to file either form IT 1140 or form IT 4708. The pass-through entity makes the choice (pass-through entities having other persons as equity investors generally must file form

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

Example: A pass-through entity whose equity investors are comprised solely of nonresident individuals has a January 31 fiscal year end. For the fiscal year beginning February 1, 2003 and ending January 31, 2004 the pass-through entity elects to file form IT 4708 for the 2004 year (this return would be due April 15, 2005). For the fiscal year beginning February 1, 2004 and ending January 31, 2005 the pass-through entity elects to file form IT 1140 – also for the 2004 year (this return would be due May 15, 2005). For the fiscal year beginning February 1, 2005 and ending January 31, 2006 the pass-through entity elects to file form IT 4708 for the 2006 year (this return would be due April 15, 2007). With this fact pattern the pass-through entity will not file a 2005 Ohio return, but the pass-through entity will have reported all periods of income.

### **2004 Ohio Form IT 4708 Line Instructions**

#### **Schedule I – Taxable Income, Tax, Payments and Net Tax Due Calculations**

##### **Line 4 – Allocable Net Nonbusiness Income Everywhere**

Generally, income is apportionable business income. Non-business income, if any, is allocable only as provided by O.R.C. sections 5747.20 through 5747.231. If you show income on this line, please provide (i) a schedule or a statement indicating the type and the amount for each item of income and (ii) a statement explaining why the income is not business income.

##### **Line 8 – Allocable Income To Ohio**

See line 4 of the instructions, above.

##### **Line 11 – Nonrefundable Business Credits**

Nonrefundable business credits claimed on this composite return are limited to the proportionate share amounts for those investors included in this composite return and must be calculated on the business credit summary worksheet that is part of Schedule E. Schedule E is available from the department's web site ([www.tax.ohio.gov](http://www.tax.ohio.gov)) or at any of our offices listed on the last page of this instruction booklet.

If you do have nonrefundable business credits, please complete the proper schedule(s), attach a copy of the Schedule E business credit summary worksheet, and enter the amount of the credit on Schedule I, line 11.

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

##### **Line 13 – Interest Penalty on Payment of Estimated Tax**

If the amount on line 12 is greater than \$500, the pass-through entity will owe an interest penalty unless the year 2004 timely paid Ohio composite annual return estimated income tax payments (form IT 4708ES) and last year's overpayment credited to the current year equal or exceed either of the following:

- 90% of the 2004 Ohio income tax (line 12, year 2004 form IT 4708) **or**
- 100% of the 2003 Ohio income tax (line 12, year 2003 form IT 4708).

To compute an interest penalty, the pass-through entity will need to complete form IT 2210 (available on our web site at [www.tax.ohio.gov](http://www.tax.ohio.gov)). Enter any interest penalty due on Schedule I, line 13 and attach form IT 2210 to the return.

##### **Line 14 – Ohio Estimated Tax IT 4708ES Payments**

Enter on line 14 the total amount of the 2004 composite annual return estimated tax payments paid with form IT 4708ES.

##### **Line 15 – IT 1140ES Payments Transferred to This Form**

If for the taxable year the pass-through entity has used Ohio form IT 1140ES (Estimated Ohio 5% Withholding Tax and 8.5% Entity Tax Payment for Pass-through Entities and Trusts) to make estimated payments in connection with the pass-through entity 5% withholding tax and/or the 8.5% entity tax, the pass-through entity can elect to apply some or all of those form IT 1140ES payments to satisfy the tax due on this form, Ohio form IT 4708. If the pass-through entity so elects, please indicate on Schedule I, line 15 the total amount to be transferred from form IT 1140ES to form IT 4708 for the same taxable year.

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

##### **Line 16 – IT 4708ES Payments Transferred to Form IT 1140**

The pass-through entity can also elect to transfer form IT 4708ES payments ("Ohio Composite Annual Return Estimated Tax Payments") to Ohio form IT 1140 ("Tax Return for Pass-Through Entities and Trusts") for the same taxable year. To the extent that the pass-through entity elects to make such transfers, please indicate on this 2004 form IT 4708, Schedule I, line 16 the total amount to be transferred from the IT 4708ES payments to form IT 1140 for the same taxable year.

##### **Line 18 – Amount of 2003 Overpayment Credited to 2004**

Enter on Schedule I, line 18 the amount of the 2003 overpayment that was credited to the 2004 tax liability (see line 23 on the 2003 form IT 4708).

##### **Line 19 – Refundable Credits**

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

##### **Refundable Business Jobs Credit**

If you claim the refundable business jobs credit provided by O.R.C. section 5747.058, **attach a copy of the certificate of verification issued by the Department of Development.** The amount of the credit equals the amount of Ohio income

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

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

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

### **Pass-through Entity Credit**

If this pass-through entity has invested in a partnership or limited liability company that filed Ohio form IT 4708 on behalf of this pass-through entity or Ohio form IT 1140, then this pass-through entity is entitled to a refundable credit equal to this pass-through entity's proportionate share of the tax that the investee partnership or investee limited liability company paid on behalf of this pass-through entity for that investee's taxable year ending within or with this pass-through's taxable year end. This pass-through entity shall claim the credit for the pass-through entity's taxable year in which or with which ends the taxable year of the investee partnership or investee limited liability company. **Please attach a copy of the I.R.S. form K-1 setting forth the credit amount, which this pass-through entity received from another pass-through entity.** See O.R.C. sections 5747.059 and 5747.08(J).

### **Schedule II – Income and Adjustments**

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

### **Line 27 – Reciprocity Agreements**

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

### **Line 31 – Depreciation Adjustments and Miscellaneous Federal Tax Adjustments**

In determining Ohio taxable income a pass-through entity that for federal income tax purposes directly or indirectly claims I.R.C. section 168(k) bonus depreciation must add back five-sixths of that bonus depreciation claimed for the taxable year. In each of the five subsequent taxable years the pass-through entity can deduct one-fifth of the amount previously added back.

The pass-through entity must also add back five-sixths of the qualifying I.R.C. section 179 depreciation expense. "Qualifying I.R.C. section 179 depreciation expense" is the excess of (1) the amount of depreciation expenses directly or indirectly allowed to the pass-through entity under I.R.C. section 179, and (2) more than \$25,000 (the amount of depreciation expense directly or indirectly allowed to the pass-through entity under I.R.C. section 179 as that section existed on December 31, 2002). In each of the five subsequent taxable years the pass-through entity can deduct one-fifth of the amount previously added back.

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

In addition, if the pass-through entity is an equity investor in a pass-through entity that has claimed I.R.C. section 168(k) bonus depreciation and/or I.R.C. section 179 depreciation, and if, because of the federal passive activity loss limitation rules or because of the federal at-risk limitation rules, the pass-through entity is unable to fully deduct a loss passing through from another pass-through entity to the pass-through entity, then to the extent that the pass-through entity does not recognize the loss, the pass-through entity can defer making the "5/6 add-back" until the taxable year or years for which the pass-through entity deducts the pass-through entity loss and receives a federal tax benefit from the bonus depreciation amount and/or I.R.C. section 179 amount claimed by the other pass-through entity. Of course, the pass-through entity cannot begin claiming the related five-subsequent-years deduction until the first taxable year immediately following the taxable year for which the pass-through entity makes the 5/6 add-back.

For detailed information regarding this adjustment, see the department's July 31, 2002 information release (revised October 2003) entitled "Recently Enacted Ohio Legislation Affects Depreciation Deductions for Taxable Years Ending in 2002 and Thereafter" by visiting: [www.tax.ohio.gov](http://www.tax.ohio.gov) and clicking on "Releases" at the top of the home page.

At the time this instruction booklet was produced, there were changes made by Congress to the I.R.C. that may impact the computation of your tax. If applicable, you must enter any necessary adjustments on this line. For more information, see our Web site at [www.tax.ohio.gov](http://www.tax.ohio.gov).

### Line 32 – Other Income (Loss)

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

### Line 33 – Pass-through Entity Add-back

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

### Schedule III – Deductions

The allowable deductions in arriving at federal adjusted gross income reflected on lines 38 through 46 are the combined amounts from the federal K-1s for the taxable year for only those investors that participate in the filing of form IT 4708. DO NOT include any deductions that have been already used to reduce any income items set forth in Schedule II.

**Note:** Charitable contributions are not an allowable deduction on this form.

### Line 39 – Deduct 1/5 Depreciation and Miscellaneous Federal Tax Adjustments

For each of the five taxable years following the taxable year for which the pass-through entity makes the 5/6 add-back (see line 31, above), the pass-through entity can deduct one-fifth of the add-back amount.

At the time this instruction booklet was produced, there were changes made by Congress to the I.R.C. that may impact the computation of your tax. If applicable, you must enter any necessary adjustments on this line. For more information, see our Web site at [www.tax.ohio.gov](http://www.tax.ohio.gov).

### Line 40 – Net Federal Interest and Dividends Exempt from State Taxation

For purposes of this adjustment, "net federal interest" is defined as federal interest less any expenses taken on the federal tax return that would not have been allowed under I.R.C. section 265 if such interest were exempt from federal income tax. The January 9, 1992 Ohio Department of Taxation information release lists federal obligations, the interest from which is deductible. You can obtain a copy of the release by accessing the department's Web site address: [www.tax.ohio.gov](http://www.tax.ohio.gov).

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

### Schedule IV – Apportionment Formula

**Note:** When calculating the apportionment ratio, a pass-through entity that has invested in another pass-through entity must apply the "aggregate" (conduit) theory of taxation.

That is, the character of all income and deductions (and adjustments to income and deductions) realized by a pass-through entity in which the pass-through entity has invested retains that character when recognized by the pass-through entity. Furthermore, the pass-through entity's factors generally must include the proportionate share of each lower-tiered pass-through entity's property, payroll and sales. See O.R.C. sections 5733.057 and 5747.231.

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

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

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

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

- Construction in progress.
- Property relating to, or used in connection with, the production of nonbusiness income. See O.R.C. section 5733.05(B)(2) as amended by Amended Substitute House Bill 95, 125<sup>th</sup> General Assembly, applicable to taxable years ending on or after June 26, 2003.
- The original cost of property within Ohio with respect to which the state of Ohio has issued an Air Pollution, Noise Pollution, or an Industrial Water Pollution Control Certificate. See O.R.C. section 5733.05(B)(2)(a).
- The original cost of real property and tangible property (or in the case of property that the corporation is renting from others, eight times its net annual rental rate) within Ohio that is used exclusively during the taxable year for qualified research.

Do not include in column 1 but do include in column 2 the original cost of qualifying improvements to land or tangible personal property in an enterprise zone for which the tax-

payer holds a Tax Incentive Qualification Certificate issued by the Department of Development.

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

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

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

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

**Line 1(b) – Rented Property**

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

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

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

**Line 1(c), Column 3 – Property Ratio**

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

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

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

**Payroll Factor**

The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the pass-through entity, and the denominator of which is the total compensation paid both within and without this state during the taxable year by the pass-through entity. As used below, the term "compensation" means any form of remuneration paid to an employee for personal services. Do not include in column 1 (within Ohio) or in column 2 (total everywhere) the following:

- Compensation paid in Ohio to employees who are primarily engaged in qualified research.
- Compensation paid to employees to the extent that the compensation relates to the production of nonbusiness income allocable under O.R.C section 5733.051 (see O.R.C. section 5733.05(B)(2) as amended by Amended Substitute House Bill 95, 125<sup>th</sup> General Assembly applicable to taxable years ending on or after June 26, 2003).
- Compensation that an S corporation paid to any "investor" included in this report if the investor directly or indirectly owned at least 20% of the S corporation at any time during the year. O.R.C. section 5733.40(A) (7).

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

**Line 2, Column 1 – Payroll Within Ohio**

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

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

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

**Line 2, Column 2 – Payroll Total Everywhere**

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

**Line 2, Column 3 – Payroll Ratio**

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

**Line 2, Column 5 – Weighted Payroll Ratio**

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

**Sales Factor**

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

**The sales factor specifically excludes receipts attributable to nonbusiness income allocable under section O.R.C section 5733.051 (see O.R.C. section 5733.05(B)(2)**

as amended by Amended Substitute House Bill 95, 125<sup>th</sup> General Assembly and the tax commissioner's April 2004 information release entitled "Sales Factor Situsing Revisions").

The following receipts are not includable in either the numerator or the denominator of the sales factor even if the receipts arise from transactions, activities and sources in the regular course of a trade or business (see O.R.C. section 5733.05(B)(2)(c) as amended by Substitute House Bill 127, 125<sup>th</sup> General Assembly):

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

**Note:** Income from receipts excluded from the sales factor is not presumed to be nonbusiness income. For taxable years ending on or after June 26, 2003, all income, gain, loss and expense is presumed to be apportionable business income – even if the related receipts are excluded from the sales factor. A pass-through entity reporting any allocable income from Schedule 1, lines 4 and 8 must attach to the report (i) a detailed statement setting forth support that rebuts the presumption, (ii) a list of the states for which the pass-through entity treats the income as business income, and (iii) the reasons for such treatment in the other state(s).

For taxable years ending on or after December 11, 2003, the law specifically **includes** in the sales factor the following amounts when arising from transactions, activities and sources in the regular course of a trade or business: (1) receipts from sales of tangible personal property, (2) receipts from the sale of real property inventory (such as lots developed and sold by a real estate developer), (3) rents and royalties from tangible personal property, (4) rents and royalties from real property, (5) receipts from the sale, exchange, disposition or other grant of the right to use trademarks, trade names, patents, copyrights and similar intellectual property, (6) receipt from the sale of services and other receipts not expressly excluded from the factor. These amounts are situsable to Ohio as set out below.

### **Line 3, Column 1 – Sales Within Ohio**

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

- **Receipts from sales of tangible personal property, less returns and allowances, received by the purchaser in Ohio.** In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed is considered as the place at which such property is received by the purchaser. Direct delivery in Ohio, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in Ohio, and direct delivery outside Ohio to a person or firm designated by a purchaser does not constitute delivery to the purchaser in Ohio, regardless of where title passes or other conditions of sale. Customer pick-up sales are situsable to the final destination after all transportation (including customer transportation) has been completed. See *Dupps Co. v. Lindley* (1980), 62 Ohio St. 2d 305.

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

- **Receipts from sales of real property inventory in Ohio.**
- **Rents and royalties from tangible personal property to the extent the property was used in Ohio.**
- **Rents and royalties from real property located in Ohio.**
- **Receipts from the sale, exchange, disposition or other grant of the right to use trademarks, trade names, patents, copyrights and similar intellectual property are situsued to Ohio to the extent that the receipts are based on the amount of use of that property in Ohio.** If the receipts are not based on the amount of use of that property, but rather on the right to use the property and the payor has the right to use the property in Ohio, then the receipts from the sale, exchange, disposition or other grant of the right to use such property are situsued to Ohio to the extent the receipts are based on the right to use the property in Ohio.
- **Receipts from the performance of services and receipts from any other sales not excluded from the sales factor** and not otherwise situsued within or without Ohio under the above situsing provisions are situsable to Ohio in the proportion to the purchaser's benefit, with respect to the sale, in Ohio to the purchaser's benefit, with respect to the sale, everywhere. The physical location where the purchaser ultimately uses or receives the benefit of what was purchased is paramount in determining the proportion of the benefit in Ohio to the benefit everywhere. **For taxable years ending on or after December 11, 2003, the "cost of performance" provision is no longer the law.**

**Line 3, Column 2 – Sales Everywhere**

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

**Line 3, Column 3 – Sales Ratio**

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

**Line 3, Column 5 – Weighted Sales Ratio**

Multiply the sales ratio on line 3, column 3 by the sales factor weighting of 60 percent.

**Line 3, Column 5 – Total Weighted Apportionment Ratio**

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

**K-1 Information:**

The entity filing this return should attach to this return K-1 information.

The K-1 information is any of the following:

- A paper copy of the federal schedule K-1s that this entity will issue to each investor in this entity. The K-1s must indicate the amount of Ohio form IT 4708 tax paid (net of overpayments) that, for Ohio purposes, will pass through as a credit from this pass-through entity to each investor. (See “Tax Credit Available to Investors” below.)
- A paper listing showing the name, address and federal identification number or social security number for each investor in this entity. The paper listing must indicate the amount of Ohio form IT 4708 tax paid (net of overpayments) that, for Ohio purposes, will pass through as a credit from this pass-through entity to each investor whose income is included in this report.
- Magnetic media meeting the specifications that the I.R.S. requires for transmission of information by electronic media (for more information, see I.R.S. publication 1524). The magnetic media must set forth the name, address and federal identification number or social security number for each investor in this entity and indicate the amount of Ohio form IT 4708 tax paid (net of overpayments) that, for Ohio purposes, will pass through as a credit from this pass-through entity to each investor whose income is included in this report. (See “Tax Credit Available to Investors” below.)
- A 3.5 inch diskette in ASCII Comma Delimited Format with the fields in the following order:
  1. Federal employer identification number of the pass-through entity.
  2. Name of the pass-through entity.
  3. Name of investor in this entity.
  4. Federal employer identification number or social security number of the investor set forth in field number 3.

5. Street address of the investor set forth in field number 3.
6. City of the investor set forth in field number 3.
7. State of the investor set forth in field number 3.
8. ZIP code of the investor set forth in field number 3.
9. The amount of Ohio form IT 4708 tax paid (net of overpayments) that will pass through as a credit from this pass-through entity to each investor whose income is included in this report set forth in field number 3. (See “Tax Credit Available to Investors” below.)

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

Preparers using magnetic media must affix to the outside of the magnetic media a label containing the following information in large type or print: (i) the name and federal employer identification number of the pass-through entity, (ii) the phrase, “IT 4708 K-1 Information,” and (iii) the phrase, “Taxable Year Ending in 2004.”

**Tax Credit Available to Investors**

Prior to issuing to investors whose income is included in this report the I.R.S. form K-1, this pass-through entity should indicate on each I.R.S. form K-1 the investor’s portion of the net Ohio form IT 4708 tax paid by this pass-through entity for the taxable year, even if the tax is paid after the end of the taxable year. The investor can claim this amount as a credit on form IT 1040, IT 1041 or IT 4708. Investors claiming the credit on form IT 1040, IT 1041 or IT 4708 should attach to that form a copy of the K-1. O.R.C. section 5747.08(J) sets forth the conditions for claiming this credit.

**Preparer’s Signature**

I.R.S. Notice 2004-54 provides for alternative preparer-signature procedures for federal income tax paper returns that paid practitioners prepare on behalf of their clients. Paid preparers can follow those same procedures with respect to the following Ohio paper returns: Ohio school district and individual income tax returns, Ohio withholding tax returns (employer and pass-through entity) and Ohio corporation franchise tax reports. Statutory authority: O.R.C. sections 5703.262(B) and 5747.08(F).

**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 your providing us your social security number is mandatory. O.R.C. sections 5703.05 and 5747.08 authorize our asking you for this information. We need your social security number in order to administer this tax. Your failure to supply any information requested on a tax form prescribed by the tax commissioner may result in the imposition of penalties for failing to file a complete tax return or the denial of a license application, if applicable.

# Taxpayer Assistance

## By Internet



**Ohio Department of Taxation  
Internet Web site – [www.state.oh.us/tax/](http://www.state.oh.us/tax/)**

**Tax Forms  
Instructions  
Information Releases  
E-mail us**

## By Phone



**Toll Free Telephone Numbers:**

**Toll Free Business Taxpayer Service** 1-888-405-4039  
**Toll Free Form Requests** 1-800-282-1782  
**Toll Free Registration Unit** 1-888-405-4089

## Written



**Ohio Department of Taxation  
Taxpayer Services Mailing Address:**

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

## Walk-in



**Ohio Department of Taxation  
Taxpayer Service Locations:**

**Taxpayer Service Center Hours**  
Office hours: 8:00 a.m. – 5:00 p.m.  
Monday through Friday  
**See location listing in next column.**

### Ohio Department of Taxation Taxpayer Service Centers

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

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

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

**Columbus Taxpayer Service Center**  
800 Freeway Drive North  
Columbus, OH 43229

**OR**

30 East Broad St., 20th Floor  
Columbus, OH 43215

**Dayton Taxpayer Service Center**  
Centre City Offices  
40 S. Main St., 5th Floor  
Dayton, OH 45402-2043

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

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

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

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

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