



Ohio Revised Code

Section 5747.38 Pass-through entity income tax.

Effective: June 14, 2022

Legislation: Senate Bill 246 - 134th General Assembly

(A) As used in this section and section 5747.39 of the Revised Code and in other sections of Chapter 5747. of the Revised Code in the context of the tax imposed under this section:

- (1) "Electing pass-through entity" means a qualifying pass-through entity that elects to be subject to the tax levied under this section for a taxable year pursuant to division (C) of this section.
- (2) "Owner" means a person that is a partner, member, shareholder, or investor in an electing pass-through entity for any portion of the taxable year.
- (3) "Income" means the sum of owners' distributive shares of the income, gain, expense, or loss of an electing pass-through entity for the taxable year, as reported for federal income tax purposes.
- (4) "Qualifying taxable income" means the sum of the following:
 - (a) The portion of an electing pass-through entity's income that is business income, subject to the applicable adjustments in divisions (A)(2) to (7) of section 5733.40 of the Revised Code, multiplied by the fraction described in division (B)(1) of that section;
 - (b) The portion of the electing pass-through entity's income that is nonbusiness income allocated to this state under section 5747.20 of the Revised Code.

(B) For the same purposes for which the tax is levied under section 5747.02 of the Revised Code, a tax is hereby levied on each electing pass-through entity on the entity's qualifying taxable income for the taxable year, at the following rates:

- (1) For an electing pass-through entity's taxable year that begins in 2022, five per cent;
- (2) For an electing pass-through entity's taxable year that begins in 2023 and in any year thereafter,



the rate equal to the tax rate imposed on taxable business income under division (A)(4)(a) of section 5747.02 of the Revised Code applicable to that taxable year.

(C) A pass-through entity that is not a disregarded entity, as defined in section 5733.01 of the Revised Code, may elect to be subject to the tax levied under this section by filing with the tax commissioner a form prescribed by the commissioner making such election on or before the deadline to file the return under section 5747.42 of the Revised Code for the taxable year. Such election applies only to the taxable year for which the election is made and is, once made, irrevocable for that year.

(D) The tax levied under this section shall be calculated without regard to any deductions or credits otherwise permitted to be claimed by an owner of the electing pass-through entity in computing the owner's aggregate tax liability under section 5747.02 of the Revised Code.

(E) The tax levied under this section is intended to comply with the provisions of internal revenue service notice 2020-75 in which such tax paid by an electing pass-through entity is deductible to the entity for federal income tax purposes.

(F) The tax commissioner shall adopt rules to administer the tax levied under this section. Such rules shall include a description of how the adjustments to income under divisions (A)(36) and (S)(15) of section 5747.01 of the Revised Code and the credit under section 5747.39 of the Revised Code apply to direct or indirect owners of an electing pass-through entity based on various ownership structures. Any rule adopted under this section is not a regulatory restriction for the purpose of section 121.95 of the Revised Code.