



Ohio Revised Code Section 718.86 Consolidated returns.

Effective: September 29, 2017

Legislation: House Bill 49 - 132nd General Assembly

(A) As used in this section:

(1) "Affiliated group of corporations" means an affiliated group as defined in section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.

(2) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

(3) "Consolidated federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. "Consolidated federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (A)(1) of this section.

(4) "Incumbent local exchange carrier" has the same meaning as in section 4927.01 of the Revised Code.

(5) "Local exchange telephone service" has the same meaning as in section 5727.01 of the Revised Code.

(B)(1) A taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated tax return for a taxable year if at least one member of the affiliated group of corporations is subject to a tax imposed in accordance with section 718.04 of the Revised Code in that taxable year and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five-year period beginning with



the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated tax returns under division (B)(2) of this section or a taxpayer receives permission from the tax commissioner. The tax commissioner shall approve such a request for good cause shown.

(2) An election to discontinue filing consolidated tax returns under this section must be made on or before the fifteenth day of the fourth month of the year following the last year of a five-year consolidated tax return election period in effect under division (B)(1) of this section. The election to discontinue filing a consolidated tax return is binding for a five-year period beginning with the first taxable year of the election.

(3) An election made under division (B)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(4) When a taxpayer makes the election allowed under section 718.80 of the Revised Code, a valid election made by the taxpayer under division (B)(1) or (2) of section 718.06 of the Revised Code is binding upon the tax commissioner for the remainder of the five-year period.

(5) When an election made under section 718.80 of the Revised Code is terminated, a valid election made under this section is binding upon the tax administrator for the remainder of the five-year period.

(C) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated tax return for that taxable year if the tax commissioner determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to a municipal corporation. A taxpayer that is required to file a consolidated tax return for a taxable year shall file a consolidated tax return for all subsequent taxable years unless the taxpayer requests and receives written permission from the commissioner to file a separate return or a taxpayer has experienced a change in circumstances.

(D) A taxpayer shall prepare a consolidated tax return in the same manner as is required under the



United States department of treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(E)(1) Except as otherwise provided in divisions (E)(2), (3), and (4) of this section, corporations that file a consolidated tax return shall compute adjusted federal taxable income, as defined in section 718.81 of the Revised Code, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated tax return shall make any adjustment otherwise required under division (B) of section 718.81 of the Revised Code to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.

(3) If the net profit or loss of a pass-through entity having at least eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

(a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in section 718.82 of the Revised Code, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in section 718.82 of the Revised Code, include the property, payroll, and gross receipts of the pass-through entity in the



computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.

(4) If the net profit or loss of a pass-through entity having less than eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:

(a) The corporation filing the consolidated tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in section 718.82 of the Revised Code, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation;

(b) The pass-through entity shall be subject to municipal income taxation as a separate taxpayer in accordance with sections 718.80 to 718.95 of the Revised Code on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(F) Corporations filing a consolidated tax return shall make the computations required under section 718.82 of the Revised Code by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(G) Each corporation filing a consolidated tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts applicable under section 718.80 to 718.95 or Chapter 5703. of the Revised Code to the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.