



## Ohio Revised Code

### Section 5733.055 Deducting expenses and costs paid to related member.

Effective: March 27, 2020

Legislation: House Bill 197 - 133rd General Assembly

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(A) As used in this section:

(1) "Ceiling amount" means the excess of the amount described in division (A)(1)(a) of this section over the amount described in division (A)(1)(b) of this section:

(a) The amount of income allocated and apportioned to this state in accordance with this chapter but without regard to and without application of the adjustments required by this section;

(b) The amount of income allocated and apportioned to this state in accordance with this chapter but without regard to and without application of the adjustments required by both this section and division (I)(13) of section 5733.04 of the Revised Code.

(2) "Income adjustment amount" means the sum of the amounts described in divisions (A)(2)(a) and (b) of this section:

(a) The related member's net interest income actually allocated and apportioned to other states that impose a tax on or measured by income, in accordance with the other states' allocation and apportionment rules;

(b) The related member's net intangible income actually allocated and apportioned to other states that impose a tax on or measured by income, in accordance with the other states' allocation and apportionment rules.

For purposes of division (A)(2) of this section, "other states" does not include those states under whose laws the taxpayer files or could have elected to file with the related member, or the related member files or could have elected to file with another related member, a combined income tax report or return, a consolidated income tax report or return, or any other report or return where such report or return is due because of the imposition of a tax measured on or by income and such report



or return results in the elimination of the tax effects from transactions directly or indirectly between either the taxpayer and the related member or between the related member and another corporation if such other corporation, during a one-hundred-twenty-month period commencing three years prior to the beginning of the tax year, directly or indirectly paid, accrued, or incurred intangible expenses and costs or interest expenses and costs to an entity described in divisions (C)(1) to (5) of section 5733.042 of the Revised Code.

(3) "Intangible expenses and costs" has the same meaning as in division (A)(3) of section 5733.042 of the Revised Code.

(4) "Interest expenses and costs" has the same meaning as in division (A)(4) of section 5733.042 of the Revised Code.

(5) "Intangible income and revenue" are those amounts earned or received by a related member from a taxpayer for the taxpayer's use of intangible property. Such amounts include, but are not limited to, royalty, patent, technical, and copyright fees, licensing fees, and other similar income and revenue.

(6) "Interest income and revenue" are those amounts earned or received by a related member from a taxpayer to the extent such amounts are allowed as deductions under section 163 of the Internal Revenue Code for purposes of determining the taxpayer's taxable income under the Internal Revenue Code.

(7) "Net intangible income" means intangible income and revenue reduced by intangible expenses and costs paid or accrued directly or indirectly to a related member described in any of divisions (C)(1) to (7) of section 5747.042 of the Revised Code.

(8) "Net interest income" means interest income and revenue reduced by interest expenses and costs paid or accrued directly or indirectly to a related member described in any of divisions (C)(1) to (7) of section 5733.042 of the Revised Code.

(B) Except as set forth in division (C) of this section, a deduction from the corporation's net income allocated and apportioned to this state shall be allowed in an amount equal to the income adjustment amount described in division (A)(2) of this section. However, in no case shall the deduction be



greater than the ceiling amount described in division (A)(1) of this section.

(C) The deduction provided by division (B) of this section is available to the taxpayer only if the taxpayer establishes with clear and convincing evidence that the intangible expenses and costs and the interest expenses and costs paid, accrued, or incurred by the corporation to a related member did not have as a principal purpose the avoidance of any portion of the tax imposed by section 5733.06 of the Revised Code.