



Ohio Revised Code

Section 5733.0611 Credit relating to tax on qualifying pass-through entities.

Effective: June 26, 2003

Legislation: House Bill 95 - 125th General Assembly

(A) There is hereby allowed a nonrefundable credit against the tax imposed under section 5733.06 of the Revised Code. The credit shall be equal to the taxpayer's proportionate share of the lesser of either the tax due or the tax paid by any qualifying entity under section 5733.41 of the Revised Code for the qualifying taxable year of the qualifying entity that ends in the taxable year of the taxpayer. The taxpayer shall claim the credit for the taxpayer's taxable year in which ends the qualifying entity's qualifying taxable year.

In claiming the credit and determining its proportionate share of the tax due and the tax paid by the qualifying entity, the person claiming the credit shall follow the concepts set forth in subchapter K of the Internal Revenue Code. Nothing in this division shall be construed to limit or disallow pass-through treatment of a pass-through entity's income, deductions, credits, or other amounts necessary to compute the tax imposed and the credits allowed under this chapter.

The credit shall be claimed in the order required under section 5733.98 of the Revised Code. Any unused credit shall be allowed as a credit in the ensuing tax year. Any such amount allowed as a credit in an ensuing tax year shall be deducted from the balance carried forward to the next ensuing tax year.

(B) Any person that is not a taxpayer solely by reason of division (A) or (C) of section 5733.09 of the Revised Code or a person described in section 501(c) of the Internal Revenue Code or division (F) of section 3334.01 of the Revised Code, but that would be entitled to claim the nonrefundable credit under this section if that person were a taxpayer, may file an application for refund pursuant to section 5733.12 of the Revised Code. Upon proper application for refund under that section, the tax commissioner shall issue a refund in the amount of the credit to which that person would have been entitled under division (A)(1) of this section if the person had been a taxpayer, and as if the credit were a refundable credit.

(C) If an organization described in section 401(a) of the Internal Revenue Code or a trust or fund is



entitled to a proportionate share of the lesser of either the tax due or the tax paid by any qualifying entity under section 5733.41 of the Revised Code, and if that proportionate share is then or could be allocable to an exempt person as defined in division (D) of this section, then the organization, trust, or fund may file an application for refund with respect to such allocable amounts pursuant to section 5733.12 of the Revised Code. Upon proper application for refund under that section, the tax commissioner shall issue a refund in the amount of the credit to which the organization, trust, or fund would have been entitled under division (A)(1) of this section had the organization, trust, or fund been a taxpayer, and as if the credit were a refundable credit. To the extent that such an organization, trust, or fund is permitted to apply for a refund under this division, or to the extent that such an organization, trust, or fund has applied for such a refund, exempt persons are not entitled to the credit authorized under this section or section 5747.059 of the Revised Code.

(D)(1) For the purposes of division (C) of this section only, "exempt person" means any of the following:

(a) A person that is or may be the beneficiary of a trust if the trust is subject to Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code.

(b) A person that is or may be the beneficiary of or the recipient of payments from a nuclear decommissioning reserve fund, a designated settlement fund, or any other trust or fund established to resolve and satisfy claims that may otherwise be asserted by the beneficiary or a member of the beneficiary's family. Sections 267(c)(4), 468A(e), and 468B(d)(2) of the Internal Revenue Code apply to the determination of whether such a person is an exempt person under division (D) of this section.

(c) A person, other than a person that is treated as a C corporation for federal income tax purposes, who is or may be the beneficiary of a trust that, under its governing instrument, is not required to distribute all of its income currently. Division (D)(1)(c) of this section applies only if the trust irrevocably agrees that for the taxable year during or for which the trust distributes any of its income to any of the beneficiaries, the trust is a qualifying trust as defined in section 5733.40 of the Revised Code and will pay the estimated tax, and will withhold and pay the withheld tax as required under section 5733.41 and sections 5747.40 to 5747.453 of the Revised Code.



(2) An exempt person does not include any person that would not qualify as an exempt person under the doctrines of "economic reality," "sham transaction," "step doctrine," or "substance over form." Notwithstanding section 5703.56 of the Revised Code to the contrary, an organization, trust, or fund described in division (C) of this section bears the burden of establishing by a preponderance of the evidence that any transaction giving rise to a claim for a refundable credit under this section does not have as a principal purpose a claim for that credit. Nothing in this section shall be construed to limit solely to this section the application of the doctrines referred to in division (D)(2) of this section.

(E) Nothing in this section shall be construed to allow a refund more than once with respect to the taxes imposed under section 5733.41 or 5747.41 of the Revised Code.