



Ohio Revised Code

Section 5733.402 Exemption for pass-through entity distributing income and gain to investing entity.

Effective: September 16, 1998

Legislation: House Bill 770 - 122nd General Assembly

(A) Notwithstanding section 5733.40, 5733.41, 5747.41, or 5747.43 of the Revised Code, but subject to divisions (B), (C), and (D) of this section, for taxable years beginning after 1997, a qualifying pass-through entity, hereinafter the "exempt entity," is not subject to the taxes imposed by and required to be paid under those sections with respect to distributive shares of income and gain that pass through from the qualifying pass-through entity to another qualifying pass-through entity, hereinafter the "investing entity," if the investing entity irrevocably acknowledges that it has nexus with this state under the Constitution of the United States during the exempt entity's entire taxable year.

(B)(1) Division (A) of this section does not apply to the extent that the investing entity fails to make a good faith and reasonable effort to comply on a reasonably timely basis with section 5733.41 and sections 5747.41 to 5747.453 of the Revised Code.

(2) The investing entity and the exempt entity bears the burden of establishing by a preponderance of the evidence that the investing entity made a good faith and reasonable effort to comply on a reasonably timely basis with section 5733.41 and sections 5747.41 to 5747.453 of the Revised Code.

(3) This section does not modify, reduce, abate, defer, postpone, or bar the imposition of and the required payment of any fee, interest, or penalty otherwise due under Title LVII of the Revised Code.

(C) Except as otherwise provided in division (D) of this section, nothing in this section shall be construed to deny the application of division (A) of this section to the distributive share of income and gain of an investing entity that, with respect to that distributive share, is itself an exempt entity with respect to another qualifying pass-through entity, hereinafter the "upper level investing entity," if the upper level investing entity irrevocably acknowledges that it has nexus with this state under the Constitution of the United States during the investing entity's entire taxable year. Division (B) of this



section also applies to the upper level investing entity. This division applies regardless of the number of levels of investing entities.

(D) An investing entity or upper level investing entity does not include an investment pass-through entity as defined in section 5733.401 of the Revised Code, and division (A) of this section does not apply with respect to any distributive shares of income or gain that pass through to an investment pass-through entity.