



Ohio Revised Code

Section 5745.02 Determining taxpayer's state net income and portion taxable by municipal corporation.

Effective: June 30, 2007

Legislation: House Bill 119 - 127th General Assembly

(A) The annual report filed under section 5745.03 of the Revised Code determines a taxpayer's Ohio net income and the portion of Ohio net income to be apportioned to a municipal corporation.

(B) A taxpayer's Ohio net income is determined by multiplying the taxpayer's adjusted federal taxable income by the sum of the property factor multiplied by one-third, the payroll factor multiplied by one-third, and the sales factor multiplied by one-third. If the denominator of one of the factors is zero, the remaining two factors each shall be multiplied by one-half instead of one-third; if the denominator of two of the factors is zero, the remaining factor shall be multiplied by one. The property, payroll, and sales factors shall be determined in the manner prescribed by divisions (B)(1), (2), and (3) of this section.

(1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented, and used in business in this state during the taxable year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented, and used in business everywhere during such year. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The average value of property shall be determined by averaging the values at the beginning and the end of the taxable year, but the tax commissioner may require the averaging of monthly values during the taxable year, if reasonably required to reflect properly the average value of the taxpayer's property.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere by the taxpayer during such year. Compensation means any form of remuneration paid to an employee for personal services. Compensation is paid in this state if: (a) the recipient's service is performed entirely within this state, (b) the recipient's service is performed



both within and without this state, but the service performed without this state is incidental to the recipient's service within this state, or (c) some of the service is performed within this state and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the recipient's residence is in this state.

(3) The sales factor is a fraction, the numerator of which is the total sales in this state by the taxpayer during the taxable year, and the denominator of which is the total sales by the taxpayer everywhere during such year. Sales of electricity shall be situated to this state in the manner provided under section 5733.059 of the Revised Code. In determining the numerator and denominator of the sales factor, receipts from the sale or other disposal of a capital asset or an asset described in section 1231 of the Internal Revenue Code shall be eliminated. Also, in determining the numerator and denominator of the sales factor, in the case of a reporting taxpayer owning at least eighty per cent of the issued and outstanding common stock of one or more insurance companies or public utilities, except an electric company, a combined company, or a telephone company, or owning at least twenty-five per cent of the issued and outstanding common stock of one or more financial institutions, receipts received by the reporting taxpayer from such utilities, insurance companies, and financial institutions shall be eliminated.

For the purpose of division (B)(3) of this section, sales of tangible personal property are in this state where such property is received in this state by the purchaser. In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in this state, and direct delivery outside this state to a person or firm designated by a purchaser does not constitute delivery to the purchaser in this state, regardless of where title passes or other conditions of sale.

Sales, other than sales of electricity or tangible personal property, are in this state if either the income-producing activity is performed solely in this state, or the income-producing activity is performed both within and without this state and a greater proportion of the income-producing



activity is performed within this state than in any other state, based on costs of performance.

For the purposes of division (B)(3) of this section, the tax commissioner may adopt rules to apportion sales within this state.

(C) The portion of a taxpayer's Ohio net income taxable by each municipal corporation imposing an income tax shall be determined by multiplying the taxpayer's Ohio net income by the sum of the municipal property factor multiplied by one-third, the municipal payroll factor multiplied by one-third, and the municipal sales factor multiplied by one-third, and subtracting from the product so obtained any "municipal net operating loss carryforward from prior taxable years." If the denominator of one of the factors is zero, the remaining two factors each shall be multiplied by one-half instead of one-third; if the denominator of two of the factors is zero, the remaining factor shall be multiplied by one. In calculating the "municipal net operating loss carryforward from prior taxable years" for each municipal corporation, net operating losses are apportioned in and out of a municipal corporation for the taxable year in which the net operating loss occurs in the same manner that positive net income would have been so apportioned. Any net operating loss for a municipal corporation may be applied to subsequent net income in that municipal corporation to reduce that income to zero or until the net operating loss has been fully used as a deduction. The unused portion of net operating losses for each taxable year apportioned to a municipal corporation may only be applied against the income apportioned to that municipal corporation for five subsequent taxable years. Net operating losses occurring in taxable years ending before 2002 may not be subtracted under this section.

A taxpayer's municipal property, municipal payroll, and municipal sales factors for a municipal corporation shall be determined as provided in divisions (C)(1), (2), and (3) of this section.

(1) The municipal property factor is the quotient obtained by dividing (a) the average value of real and tangible personal property owned or rented by the taxpayer and used in business in the municipal corporation during the taxable year by (b) the average value of all of the taxpayer's real and tangible personal property owned or rented and used in business during that taxable year in this state. The value and average value of such property shall be determined in the same manner provided in division (B)(1) of this section.



(2) The municipal payroll factor is the quotient obtained by dividing (a) the total amount of compensation earned in the municipal corporation by the taxpayer's employees during the taxable year for services performed for the taxpayer and that is subject to income tax withholding by the municipal corporation by (b) the total amount of compensation paid by the taxpayer to its employees in this state during the taxable year. Compensation has the same meaning as in division (B)(2) of this section.

(3) The municipal sales factor is a fraction, the numerator of which is the taxpayer's total sales in a municipal corporation during the taxable year, and the denominator of which is the taxpayer's total sales in this state during such year.

For the purpose of division (C)(3) of this section, sales of tangible personal property are in the municipal corporation where such property is received in the municipal corporation by the purchaser. Sales of electricity directly to the customer, as defined in section 5733.059 of the Revised Code, shall be considered sales of tangible personal property. In the case of the delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property ultimately is received after all transportation has been completed shall be considered as the place at which the property is received by the purchaser. Direct delivery in the municipal corporation, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in that municipal corporation, and direct delivery outside the municipal corporation to a person or firm designated by a purchaser does not constitute delivery to the purchaser in that municipal corporation, regardless of where title passes or other conditions of sale. Sales, other than sales of tangible personal property, are in the municipal corporation if either:

- (a) The income-producing activity is performed solely in the municipal corporation;
- (b) The income-producing activity is performed both within and without the municipal corporation and a greater proportion of the income-producing activity is performed within that municipal corporation than any other location in this state, based on costs of performance.

For the purposes of division (C)(3) of this section, the tax commissioner may adopt rules to apportion sales within each municipal corporation.



(D) If a taxpayer is a combined company as defined in section 5727.01 of the Revised Code, the municipal property, payroll, and sales factors under division (C) of this section shall be adjusted as follows:

(1) The numerator of the municipal property factor shall include only the value, as determined under division (C)(1) of this section, of the company's real and tangible property in the municipal corporation attributed to the company's activity as an electric company using the same methodology prescribed under section 5727.03 of the Revised Code for taxable tangible personal property.

(2) The numerator of the municipal payroll factor shall include only compensation paid in the municipal corporation by the company to its employees for personal services rendered in the company's activity as an electric company.

(3) The numerator of the municipal sales factor shall include only the sales of tangible personal property and services, as determined under division (C)(3) of this section, made in the municipal corporation in the course of the company's activity as an electric company.

(E)(1) If the provisions for apportioning adjusted federal taxable income or Ohio net income under divisions (B), (C), and (D) of this section do not fairly represent business activity in this state or among municipal corporations, the tax commissioner may adopt rules for apportioning such income by an alternative method that fairly represents business activity in this state or among municipal corporations.

(2) If any of the factors determined under division (B), (C), or (D) of this section does not fairly represent the extent of a taxpayer's business activity in this state or among municipal corporations, the taxpayer may request, or the tax commissioner may require, that the taxpayer's adjusted federal taxable income or Ohio net income be determined by an alternative method, including any of the alternative methods enumerated in division (B)(2)(d) of section 5733.05 of the Revised Code. A taxpayer requesting an alternative method shall make the request in writing to the tax commissioner either with the annual report, a timely filed amended report, or a timely filed petition for reassessment. When the tax commissioner requires or permits an alternative method under division (E)(2) of this section, the tax commissioner shall cause a written notice to that effect to be delivered to any municipal corporation that would be affected by application of the alternative method.



Nothing in this division shall be construed to extend any statute of limitations under this chapter.

(F)(1) The tax commissioner may adopt rules providing for the combination of adjusted federal taxable incomes of taxpayers satisfying the ownership or control requirements of section 5733.052 of the Revised Code if the tax commissioner finds that such combinations are necessary to properly reflect adjusted federal taxable income, Ohio net income, or the portion of Ohio net income to be taxable by municipal corporations.

(2) A taxpayer satisfying the ownership or control requirements of section 5733.052 of the Revised Code with respect to one or more other taxpayers may not combine their adjusted federal taxable incomes for the purposes of this section unless rules are adopted under division (F)(1) of this section allowing such a combination or the tax commissioner finds that such a combination is necessary to properly reflect the taxpayers' adjusted federal taxable incomes, Ohio net incomes, or the portion of Ohio net incomes to be subject to taxation within a municipal corporation.

(G) The tax commissioner may adopt rules providing for alternative apportionment methods for a telephone company.