



Ohio Revised Code

Section 5751.53 Credit against tax for amortizable net operating losses.

Effective: March 30, 2006

Legislation: House Bill 530 - 126th General Assembly

(A) As used in this section:

- (1) "Net income" and "taxable year" have the same meanings as in section 5733.04 of the Revised Code.
- (2) "Franchise tax year" means "tax year" as defined in section 5733.04 of the Revised Code.
- (3) "Deductible temporary differences" and "taxable temporary differences" have the same meanings as those terms have for purposes of paragraph 13 of the statement of financial accounting standards, number 109.
- (4) "Qualifying taxpayer" means a taxpayer under this chapter that has a qualifying Ohio net operating loss carryforward equal to or greater than the qualifying amount.
- (5) "Qualifying Ohio net operating loss carryforward" means an Ohio net operating loss carryforward that the taxpayer could deduct in whole or in part for franchise tax year 2006 under section 5733.04 of the Revised Code but for the application of division (H) of this section. A qualifying Ohio net operating loss carryforward shall not exceed the amount of loss carryforward from franchise tax year 2005 as reported by the taxpayer either on a franchise tax report for franchise tax year 2005 pursuant to section 5733.02 of the Revised Code or on an amended franchise tax report prepared in good faith for such year and filed before July 1, 2006.
- (6) "Disallowed Ohio net operating loss carryforward" means the lesser of the amounts described in division (A)(6)(a) or (b) of this section, but the amounts described in divisions (A)(6)(a) and (b) of this section shall each be reduced by the qualifying amount.
 - (a) The qualifying taxpayer's qualifying Ohio net operating loss carryforward;



(b) The Ohio net operating loss carryforward amount that the qualifying taxpayer used to compute the related deferred tax asset reflected on its books and records on the last day of its taxable year ending in 2004, adjusted for return to accrual, but this amount shall be reduced by the qualifying related valuation allowance amount. For the purposes of this section, the "qualifying related valuation allowance amount" is the amount of Ohio net operating loss reflected in the qualifying taxpayer's computation of the valuation allowance account, as shown on its books and records on the last day of its taxable year ending in 2004, with respect to the deferred tax asset relating to its Ohio net operating loss carryforward amount.

(7) "Other net deferred tax items apportioned to this state" is the product of (a) the amount of other net deferred tax items and (b) the fraction described in division (B)(2) of section 5733.05 for the qualifying taxpayer's franchise tax year 2005.

(8)(a) Subject to divisions (A)(8)(b) to (d) of this section, the "amount of other net deferred tax items" is the difference between (i) the qualifying taxpayer's deductible temporary differences, net of related valuation allowance amounts, shown on the qualifying taxpayer's books and records on the last day of its taxable year ending in 2004, and (ii) the qualifying taxpayer's taxable temporary differences as shown on those books and records on that date. The amount of other net deferred tax items may be less than zero.

(b) For the purposes of computing the amount of the qualifying taxpayer's other net deferred tax items described in division (A)(8)(a) of this section, any credit carryforward allowed under Chapter 5733. of the Revised Code shall be excluded from the amount of deductible temporary differences to the extent such credit carryforward amount, net of any related valuation allowance amount, is otherwise included in the qualifying taxpayer's deductible temporary differences, net of related valuation allowance amounts, shown on the qualifying taxpayer's books and records on the last day of the qualifying taxpayer's taxable year ending in 2004.

(c) No portion of the disallowed Ohio net operating loss carryforward shall be included in the computation of the amount of the qualifying taxpayer's other net deferred tax items described in division (A)(8)(a) of this section.

(d) In no event shall the amount of other net deferred tax items apportioned to this state exceed



twenty-five per cent of the qualifying Ohio net operating loss carryforward.

(9) "Amortizable amount" means:

(a) If the qualifying taxpayer's other net deferred tax items apportioned to this state is equal to or greater than zero, eight per cent of the sum of the qualifying taxpayer's disallowed Ohio net operating loss carryforward and the qualifying taxpayer's other net deferred tax items apportioned to this state;

(b) If the amount of the qualifying taxpayer's other net deferred tax items apportioned to this state is less than zero and if the absolute value of the amount of qualifying taxpayer's other net deferred tax items apportioned to this state is less than the qualifying taxpayer's disallowed net operating loss, eight per cent of the difference between the qualifying taxpayer's disallowed net operating loss carryforward and the absolute value of the qualifying taxpayer's other net deferred tax items apportioned to this state;

(c) If the amount of the qualifying taxpayer's other net deferred tax items apportioned to this state is less than zero and if the absolute value of the amount of qualifying taxpayer's other net deferred tax items apportioned to this state is equal to or greater than the qualifying taxpayer's disallowed net operating loss, zero.

(10) "Books and records" means the qualifying taxpayer's books, records, and all other information, all of which the qualifying taxpayer maintains and uses to prepare and issue its financial statements in accordance with generally accepted accounting principles.

(11)(a) Except as modified by division (A)(11)(b) of this section, "qualifying amount" means fifty million dollars per person.

(b) If for franchise tax year 2005 the person was a member of a combined franchise tax report, as provided by section 5733.052 of the Revised Code, the "qualifying amount" is, in the aggregate, fifty million dollars for all members of that combined franchise tax report, and for purposes of divisions (A)(6)(a) and (b) of this section, those members shall allocate to each member any portion of the fifty million dollar amount. The total amount allocated to the members who are qualifying taxpayers



shall equal fifty million dollars.

(B) For each calendar period beginning prior to January 1, 2030, there is hereby allowed a nonrefundable tax credit against the tax levied each year by this chapter on each qualifying taxpayer, on each consolidated elected taxpayer having one or more qualifying taxpayers as a member, and on each combined taxpayer having one or more qualifying taxpayers as a member. The credit shall be claimed in the order specified in section 5751.98 of the Revised Code and is allowed only to reduce the first one-half of any tax remaining after allowance of the credits that precede it in section 5751.98 of the Revised Code. No credit under division (B) of this section shall be allowed against the second one-half of such remaining tax.

Except as otherwise limited by divisions (C) and (D) of this section, the maximum amount of the nonrefundable credit that may be used against the first one-half of the remaining tax for each calendar year is as follows:

- (1) For calendar year 2010, ten per cent of the amortizable amount;
- (2) For calendar year 2011, twenty per cent of the amortizable amount, less all amounts previously used;
- (3) For calendar year 2012, thirty per cent of the amortizable amount, less all amounts previously used;
- (4) For calendar year 2013, forty per cent of the amortizable amount, less all amounts previously used;
- (5) For calendar year 2014, fifty per cent of the amortizable amount, less all amounts previously used;
- (6) For calendar year 2015, sixty per cent of the amortizable amount, less all amounts previously used;
- (7) For calendar year 2016, seventy per cent of the amortizable amount, less all amounts previously used;



used;

(8) For calendar year 2017, eighty per cent of the amortizable amount, less all amounts previously used;

(9) For calendar year 2018, ninety per cent of the amortizable amount, less all amounts previously used;

(10) For each of calendar years 2019 through 2029, one hundred per cent of the amortizable amount, less all amounts used in all previous years.

In no event shall the cumulative credit used for calendar years 2010 through 2029 exceed one hundred per cent of the amortizable amount.

(C)(1) Except as otherwise set forth in division (C)(2) of this section, a refundable credit is allowed in calendar year 2030 for any portion of the qualifying taxpayer's amortizable amount that is not used in accordance with division (B) of this section against the tax levied by this chapter on all taxpayers.

(2) Division (C)(1) of this section shall not apply and no refundable credit shall be available to any person if during any portion of the calendar year 2030 the person is not subject to the tax imposed by this chapter.

(D) Not later than June 30, 2006, each qualifying taxpayer, consolidated elected taxpayer, or combined taxpayer that will claim for any year the credit allowed in divisions (B) and (C) of this section shall file with the tax commissioner a report setting forth the amortizable amount available to such taxpayer and all other related information that the commissioner, by rule, requires. If the taxpayer does not timely file the report or fails to provide timely all information required by this division, the taxpayer is precluded from claiming any credit amounts described in divisions (B) and (C) of this section. Unless extended by mutual consent, the tax commissioner may, until June 30, 2010, audit the accuracy of the amortizable amount available to each taxpayer that will claim the credit, and adjust the amortizable amount or, if appropriate, issue any assessment or final determination, as applicable, necessary to correct any errors found upon audit.



(E) For the purpose of calculating the amortizable amount, if the tax commissioner ascertains that any portion of that amount is the result of a sham transaction as described in section 5703.56 of the Revised Code, the commissioner shall reduce the amortizable amount by two times the adjustment.

(F) If one entity transfers all or a portion of its assets and equity to another entity as part of an entity organization or reorganization or subsequent entity organization or reorganization for which no gain or loss is recognized in whole or in part for federal income tax purposes under the Internal Revenue Code, the credits allowed by this section shall be computed in a manner consistent with that used to compute the portion, if any, of federal net operating losses allowed to the respective entities under the Internal Revenue Code. The tax commissioner may prescribe forms or rules for making the computations required by this division.

(G)(1) Except as provided in division (F) of this section, no person shall pledge, collateralize, hypothecate, assign, convey, sell, exchange, or otherwise dispose of any or all tax credits, or any portion of any or all tax credits allowed under this section.

(2) No credit allowed under this section is subject to execution, attachment, lien, levy, or other judicial proceeding.

(H)(1)(a) Except as set forth in division (H)(1)(b) of this section and notwithstanding division (I)(1) of section 5733.04 of the Revised Code to the contrary, each person timely and fully complying with the reporting requirements set forth in division (D) of this section shall not claim, and shall not be entitled to claim, any deduction or adjustment for any Ohio net operating loss carried forward to any one or more franchise tax years after franchise tax year 2005.

(b) Division (H)(1)(a) of this section applies only to the portion of the Ohio net operating loss represented by the disallowed Ohio net operating loss carryforward.

(2) Notwithstanding division (I) of section 5733.04 of the Revised Code to the contrary, with respect to all franchise tax years after franchise tax year 2005, each person timely and fully complying with the reporting requirements set forth in division (D) of this section shall not claim, and shall not be entitled to claim, any deduction, exclusion, or adjustment with respect to deductible temporary differences reflected on the person's books and records on the last day of its taxable year ending in



2004.

(3)(a) Except as set forth in division (H)(3)(b) of this section and notwithstanding division (I) of section 5733.04 of the Revised Code to the contrary, with respect to all franchise tax years after franchise tax year 2005, each person timely and fully complying with the reporting requirements set forth in division (D) of this section shall exclude from Ohio net income all taxable temporary differences reflected on the person's books and records on the last day of its taxable year ending in 2004.

(b) In no event shall the exclusion provided by division (H)(3)(a) of this section for any franchise tax year exceed the amount of the taxable temporary differences otherwise included in Ohio net income for that year.

(4) Divisions (H)(2) and (3) of this section shall apply only to the extent such items were used in the calculations of the credit provided by this section.