

# AN ACT

To amend sections 113.061, 718.01, 718.02, 718.08, 5703.053, 5703.19, and 5703.21, and to enact sections 718.011, 5745.01 to 5745.03, 5745.031, 5745.04, 5745.041, and 5745.05 to 5745.16 of the Revised Code to prescribe a uniform set of procedures and remedies regarding municipal taxation of electric light company income, to provide for the collection of municipal taxes on those companies by the state, and to authorize the Tax Commissioner to discuss with other states the development of a system to collect and administer sales and use taxes from remote sellers.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 113.061, 718.01, 718.02, 718.08, 5703.053, 5703.19, and 5703.21 be amended and sections 718.011, 5745.01, 5745.02, 5745.03, 5745.031, 5745.04, 5745.041, 5745.05, 5745.06, 5745.07, 5745.08, 5745.09, 5745.10, 5745.11, 5745.12, 5745.13, 5745.14, 5745.15, and 5745.16 of the Revised Code be enacted to read as follows:

Sec. 113.061. The treasurer of state shall adopt rules in accordance with Chapter 119. of the Revised Code governing the remittance of taxes by electronic funds transfer as required under sections 5727.311, 5727.83, 5733.022, 5735.062, 5739.032, 5739.122, 5741.121, 5745.04, and 5747.072 of the Revised Code and any other section of the Revised Code under which a person is required to remit taxes by electronic funds transfer. The rules shall govern the modes of electronic funds transfer acceptable to the treasurer of state and under what circumstances each mode is acceptable, the content and format of electronic funds transfers, the coordination of payment by electronic funds transfer and filing of associated tax reports and returns, the remittance of taxes by means other than electronic funds transfer by persons otherwise required to do so but relieved of the requirement by the treasurer of state, and any other matter that in the opinion of the treasurer

of state facilitates payment by electronic funds transfer in a manner consistent with those sections.

Upon failure by a person, if so required, to remit taxes by electronic funds transfer in the manner prescribed under section 5727.83, 5733.022, 5735.062, 5739.032, 5739.122, 5741.121, 5745.04, or 5747.072 of the Revised Code and rules adopted under this section, the treasurer of state shall notify the tax commissioner of such failure if the treasurer of state determines that such failure was not due to reasonable cause or was due to willful neglect, and shall provide the tax commissioner with any information used in making that determination. The tax commissioner may assess an additional charge as specified in the respective section of the Revised Code governing the requirement to remit taxes by electronic funds transfer.

The treasurer of state may implement means of acknowledging, upon the request of a taxpayer, receipt of tax remittances made by electronic funds transfer, and may adopt rules governing acknowledgments. The cost of acknowledging receipt of electronic remittances shall be paid by the person requesting acknowledgment.

The treasurer of state, not the tax commissioner, is responsible for resolving any problems involving electronic funds transfer transmissions.

Sec. 718.01. (A) As used in this chapter:

(1) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.

(2) "Schedule C" means internal revenue service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

(3) "Form 2106" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(4) "Intangible income" means income of any of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Revised Code.

(B) No municipal corporation with respect to that income that it may tax shall tax such income at other than a uniform rate.

(C) No municipal corporation shall levy a tax on income at a rate in excess of one per cent without having obtained the approval of the excess by a majority of the electors of the municipality voting on the question at a general, primary, or special election. The legislative authority of the municipal corporation shall file with the board of elections at least seventy-five days before the day of the election a copy of the ordinance together with a resolution specifying the date the election is to be held and

directing the board of elections to conduct the election. The ballot shall be in the following form: "Shall the Ordinance providing for a ... per cent levy on income for (Brief description of the purpose of the proposed levy) be passed?"

FOR THE INCOME TAX  
AGAINST THE INCOME TAX"

In the event of an affirmative vote, the proceeds of the levy may be used only for the specified purpose.

(D)(1) Except as otherwise provided in division (D)(2) of this section, no municipal corporation shall exempt from a tax on income, compensation for personal services of individuals over eighteen years of age or the net profit from a business or profession.

(2) The legislative authority of a municipal corporation may, by ordinance or resolution, exempt from a tax on income any compensation arising from the grant, sale, exchange, or other disposition of a stock option; the exercise of a stock option; or the sale, exchange, or other disposition of stock purchased under a stock option.

(E) Nothing in this section shall prevent a municipal corporation from permitting lawful deductions as prescribed by ordinance. If a taxpayer's taxable income includes income against which the taxpayer has taken a deduction for federal income tax purposes as reportable on the taxpayer's form 2106, and against which a like deduction has not been allowed by the municipal corporation, the municipal corporation shall deduct from the taxpayer's taxable income an amount equal to the deduction shown on such form allowable against such income, to the extent not otherwise so allowed as a deduction by the municipal corporation. In the case of a taxpayer who has a net profit from a business or profession that is operated as a sole proprietorship, no municipal corporation may tax or use as the base for determining the amount of the net profit that shall be considered as having a taxable situs in the municipal corporation, a greater amount than the net profit reported by the taxpayer on schedule C filed in reference to the year in question as taxable income from such sole proprietorship, except as otherwise specifically provided by ordinance or regulation.

(F) ~~No~~ A municipal corporation shall not tax any of the following:

(1) The military pay or allowances of members of the armed forces of the United States and of members of their reserve components, including the Ohio national guard;

(2) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or

tax-exempt activities;

(3) Except as otherwise provided in division (G) of this section, intangible income;

(4) Compensation paid under section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually. Such compensation in excess of one thousand dollars may be subjected to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

(5) Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306. of the Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the municipal corporation, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation;

(6) The income of a public utility when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Revised Code, except starting January 1, 2002, the income of an electric company or combined company, as defined in section 5727.01 of the Revised Code, may be taxed by a municipal corporation. ~~For a combined company, only the income attributed from the activity of an electric company shall be subject to taxation by a municipal corporation. The income of an electric company or combined company, subject to taxation by a municipal corporation shall be computed by taking into account the adjustments provided by division (I)(16) of section 5733.04 Chapter 5745.~~ of the Revised Code.

(7) On and after January 1, 2003, items excluded from federal gross income pursuant to section 107 of the Internal Revenue Code;

(8) On and after January 1, 2001, compensation paid to ~~an individual for personal services performed within the municipal corporation, if the individual does not reside in the municipal corporation, performs such personal services in the municipal corporation on twelve or fewer days in the calendar year, and, if the individual is an employee, the principal place of business of the individual's employer is located outside the municipal corporation. Division (F)(8) of this section does not apply to professional entertainers or professional athletes or to promoters of professional entertainment or sports events and their employees, as reasonably defined by the municipal corporation~~ a nonresident individual to the extent prohibited under section 718.011 of the Revised Code.

(G) Any municipal corporation that taxes any type of intangible income on March 29, 1988, pursuant to Section 3 of Amended Substitute Senate Bill No. 238 of the 116th general assembly, may continue to tax that type of income after 1988 if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 vote in favor thereof at an election held on November 8, 1988.

(H) Nothing in this section or section 718.02 of the Revised Code shall authorize the levy of any tax on income that a municipal corporation is not authorized to levy under existing laws or shall require a municipal corporation to allow a deduction from taxable income for losses incurred from a sole proprietorship or partnership.

Sec. 718.011. on and after January 1, 2001, a municipal corporation shall not tax the compensation of an individual if all of the following apply:

(A) the individual does not reside in that municipal corporation.

(b) the compensation is paid for personal services performed by the individual in that municipal corporation on twelve or fewer days in the calendar year.

(c) in the case of an individual who is an employee, the principal place of business of the individual's employer is located outside that municipal CORPORATION and the individual pays tax on compensation described in division (B) of this section to the municipal corporation, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual.

(D) the individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the municipal corporation.

Sec. 718.02. (A) This section does not apply to electric companies or combined companies, or to electric light companies for which an election made under section 5745.031 of the Revised Code is in effect.

(A) In the taxation of income that is subject to municipal income taxes, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of a municipal corporation disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the municipal corporation, then only such portion shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation. In the absence of such records, net profit from a business or profession conducted both within and without the boundaries of a

icipal corporation shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation in the same proportion as the average ratio of:

(1) The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in such municipal corporation during the taxable period to the average net book value of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

(2) Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in such municipal corporation to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation described in division (F)(8) of section 718.01 that is not taxable by the municipal corporation under section 718.011 of the Revised Code;

(3) Gross receipts of the business or profession from sales made and services performed during the taxable period in such municipal corporation to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

If the foregoing allocation formula does not produce an equitable result, another basis may be substituted, under uniform regulations, so as to produce an equitable result.

(B) As used in division (A) of this section, "sales made in a municipal corporation" mean:

(1) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes if shipped or delivered from a stock of goods within such municipal corporation;

(2) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes even though transported from a point outside such municipal corporation if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion;

(3) All sales of tangible personal property shipped from a place within such municipal corporation to purchasers outside such municipal

poration regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

Sec. 718.08. (A) As used in this section:

(1) "Estimated tax liability" means the amount that a taxpayer estimates to be the taxpayer's liability for a municipal corporation's income tax for a year prior to applying any credits, estimated tax payments, or withheld taxes for the year.

(2) "Fiscal year taxpayer" means a taxpayer that reports municipal income tax on the basis of a twelve-month period that does not coincide with the calendar year.

(B) Beginning January 1, 2003, a municipal corporation that requires taxpayers who are individuals to remit payment of estimated taxes may require such taxpayers to remit such payments only as prescribed by divisions (B)(1) to (4) of this section, subject to divisions (C) and (E)(1) and (2) of this section:

(1) Not more than twenty-two and one-half per cent of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the thirtieth day of April or the day on which the annual tax return for the prior year is required to be filed disregarding any extension, as prescribed by ordinance or rule of the municipal corporation;

(2) Not more than forty-five per cent of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the thirty-first day of July;

(3) Not more than sixty-seven and one-half per cent of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the thirty-first day of October;

(4) Not more than ninety per cent of the taxpayer's estimated tax liability for the ~~previous~~ year referred to in division (B)(1), (2), and (3) of this section shall be required to have been remitted on or before the thirty-first day of January.

(C) Any amount deducted and withheld for taxes from the compensation of an individual shall be considered as estimated taxes paid in equal amounts on each of the payment dates prescribed by division (B) of this section.

(D) Beginning January 1, 2003, a municipal corporation requiring taxpayers that are not individuals to remit payments of estimated taxes may require such taxpayers to remit such payments only as prescribed by divisions (D)(1) to (4) of this section, subject to division (E)(2) of this section:

(1) Not more than twenty-two and one-half per cent of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the day on which the annual tax return for the prior year is required to be filed disregarding any extension or, in the case of a fiscal year taxpayer, the fifteenth day of the fourth month of the taxpayer's taxable year;

(2) Not more than forty-five per cent of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the fifteenth day of June or, in the case of a fiscal year taxpayer, the fifteenth day of the sixth month of the taxpayer's taxable year;

(3) Not more than sixty-seven and one-half per cent of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the fifteenth day of September or, in the case of a fiscal year taxpayer, the fifteenth day of the ninth month of the taxpayer's taxable year;

(4) Not more than ninety per cent of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the fifteenth day of December or, in the case of a fiscal year taxpayer, the fifteenth day of the twelfth month of the taxpayer's taxable year.

(E) A municipal corporation shall not impose any penalty, interest, interest penalty, or other similar assessment or charge against a taxpayer for the late payment or nonpayment of estimated tax liability in either of the following circumstances:

(1) The taxpayer is an individual who resides in the municipal corporation but was not domiciled there on the first day of January of the current calendar year;

(2) The taxpayer has remitted, pursuant to division (B) or (D) of this section, an amount at least equal to one hundred per cent of the taxpayer's tax liability for the preceding year as shown on the return filed by the taxpayer for the preceding year, provided that the return for the preceding year reflected a twelve-month period and the taxpayer filed a return for the preceding year.

Sec. 5703.053. As used in this section, "postal service" means the United States postal service.

An application to the tax commissioner for a tax refund under ~~sections~~ section 4307.05, 4307.07, 5727.28, 5727.91, 5728.061, 5735.122, 5735.13, 5735.14, 5735.141, 5735.142, 5739.07, 5741.10, 5743.05, 5743.53, 5745.11, 5749.08, ~~and~~ or 5753.06 of the Revised Code or division (B) of section 5703.05 of the Revised Code, or a fee refunded under section 3734.905 of the Revised Code, that is received after the last day for filing under such

section shall be considered to have been filed in a timely manner if:

(A) The application is delivered by the postal service and the earliest postal service postmark on the cover in which the application is enclosed is not later than the last day for filing the application;

(B) The application is delivered by the postal service, the only postmark on the cover in which the application is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the application, and the application is received within seven days of such last day; or

(C) The application is delivered by the postal service, no postmark date was affixed to the cover in which the application is enclosed or the date of the postmark so affixed is not legible, and the application is received within seven days of the last day for making the application.

Sec. 5703.19. (A) To carry out the purposes of the laws that ~~he~~ the tax commissioner is required to administer, the ~~tax~~ commissioner or any person employed by ~~him~~ the commissioner for that purpose, upon demand, may inspect books, accounts, records, and memoranda of any person or public utility subject to those laws, and may examine under oath any officer, agent, or employee of that person or public utility. Any person other than the commissioner who makes a demand pursuant to this section shall produce ~~his~~ the person's authority to make the inspection.

(B) If a person or public utility receives at least ten days' written notice of a demand made under division (A) of this section and refuses to comply with that demand, a penalty of five hundred dollars shall be imposed upon the person or public utility for each day the person or public utility refuses to comply with the demand. Penalties imposed under this division may be assessed and collected in the same manner as assessments made under Chapter 3769., 4305., 5727., 5728., 5733., 5735., 5739., 5743., 5745., 5747., 5749., or 5753., or sections 3734.90 to 3734.9014, of the Revised Code.

Sec. 5703.21. (A) Except as provided in divisions (B); and (C); ~~(D)~~; ~~(E)~~; ~~(F)~~; ~~and~~ ~~(G)~~ of this section, no agent of the department of taxation, except in the agent's report to the department or when called on to testify in any court or proceeding, shall divulge any information acquired by the agent as to the transactions, property, or business of any person while acting or claiming to act under orders of the department. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the department.

(B)(1) For purposes of an audit pursuant to section 117.15 of the Revised Code, or an audit of the department pursuant to Chapter 117. of the Revised Code, or an audit, pursuant to that chapter, the objective of which is

to express an opinion on a financial report or statement prepared or issued pursuant to division (A)(7) or (9) of section 126.21 of the Revised Code, the officers and employees of the auditor of state charged with conducting the audit shall have access to and the right to examine any state tax returns and state tax return information in the possession of the department to the extent that the access and examination are necessary for purposes of the audit. Any information acquired as the result of that access and examination shall not be divulged for any purpose other than as required for the audit or unless the officers and employees are required to testify in a court or proceeding under compulsion of legal process. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the auditor of state.

(2) As provided by section 6103(d)(2) of the Internal Revenue Code, any federal tax returns or federal tax information that the department has acquired from the internal revenue service, through federal and state statutory authority, may be disclosed to the auditor of state solely for purposes of an audit of the department.

(C) Division (A) of this section does not prohibit ~~divulging~~ any of the following:

(1) Divulging information contained in applications, complaints, and related documents filed with the department under section 5715.27 of the Revised Code or in applications filed with the department under section 5715.39 of the Revised Code.;

~~(D) Division (A) of this section does not prohibit the department of taxation providing~~ (2) Providing information to the division of child support within the department of job and family services, or a child support enforcement agency, pursuant to division (G)(2) of section 5101.31 of the Revised Code.;

~~(E) Division (A) of this section does not prohibit the disclosure~~ (3) Disclosing to the board of motor vehicle collision repair registration of any information in the possession of the department that is necessary for the board to verify the existence of an applicant's valid vendor's license and current state tax identification number under section 4775.07 of the Revised Code.;

~~(F) Division (A) of this section does not prohibit the department from providing~~ (4) Providing information to the administrator of workers' compensation pursuant to section 4123.591 of the Revised Code.;

~~(G) Division (A) of this section does not prohibit the department of taxation from providing~~ (5) Providing to the attorney general information the department obtains under division (J) of section 1346.01 of the Revised

Code:

(6) Permitting properly authorized officers, employees, or agents of a municipal corporation from inspecting reports or information pursuant to rules adopted under section 5745.16 of the Revised Code.

Sec. 5745.01. As used in this chapter:

(A) "Electric company" and "combined company" have the same meanings as in section 5727.01 of the Revised Code.

(B) "Electric light company" has the same meaning as in section 4928.01 of the Revised Code, and includes the activities of a combined company as an electric company, but excludes nonprofit companies and municipal corporations.

(C) "Taxpayer" means an electric light company subject to taxation by a municipal corporation in this state for a taxable year, excluding an electric light company that is not an electric company or a combined company and for which an election made under section 5745.031 of the Revised Code is not in effect with respect to the taxable year. If such a company is a qualified subchapter S subsidiary as defined in section 1361 of the Internal Revenue Code or a disregarded entity, the company's parent S corporation or owner is the taxpayer for the purposes of this chapter and is hereby deemed to have nexus with this state under the Constitution of the United States for the purposes of this chapter.

(D) "Disregarded entity" means an entity that, for its taxable year, is by default, or has elected to be, disregarded as an entity separate from its owner pursuant to 26 C.F.R. 301.7701-3.

(E) "Taxable year" of a taxpayer is the taxpayer's taxable year for federal income tax purposes.

(F) "Federal taxable income" means taxable income, before operating loss deduction and special deductions, as required to be reported for the taxpayer's taxable year under the Internal Revenue Code.

(G) "Adjusted federal taxable income" means federal taxable income adjusted as follows:

(1) Deduct intangible income as defined in section 718.01 of the Revised Code to the extent included in federal taxable income;

(2) Add expenses incurred in the production of such intangible income;

(3) If the taxpayer is a qualifying taxpayer under section 5733.0510 of the Revised Code, deduct the amount by which the taxpayer reduced its net income to the extent that amount is included in federal taxable income, or add the amount by which the taxpayer increased its net income, for the taxable year under division (B)(1) of that section, subject to divisions (B)(3), (4), and (5) of that section to the extent those divisions apply to the

adjustments in division (B)(1) of that section for the taxable year. A taxpayer shall not deduct or add any amount under division (G)(3) of this section that the taxpayer deducted or added under division (G)(1) or (2) of this section.

For the purposes of division (G)(3) of this section, "net income" has the same meaning as in section 5733.04 of the Revised Code.

(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(I) "Ohio net income" means the amount determined under division (B) of section 5745.02 of the Revised Code.

Sec. 5745.02. (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, (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)(a) Sales of electricity shall be situated in this state as provided in section 5733.059 of the Revised Code.

(b) For all other sales, 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. 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, 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)(b) 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.

(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 paid by the taxpayer to its employees during the taxable year that is subject to income tax withholding by the municipal corporation by (b) the total amount of compensation paid in this

state by the taxpayer to its employees 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 consumer, 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.

(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 division (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.

Sec. 5745.03. (A) For each taxable year, each taxpayer shall file an annual report with the treasurer of state not later than the fifteenth day of the fourth month after the end of the taxpayer's taxable year, and shall remit with that report the amount of tax due as shown on the report less the amount paid for the year under section 5745.04 of the Revised Code. the remittance shall be made in the form prescribed by the treasurer of state, including electronic funds transfer if the amount payable with the report exceeds one thousand dollars. The treasurer of state shall credit ninety-eight and one-half per cent of such remittances to the MUNICIPAL income tax fund, which is hereby created in the state treasury, and credit the remainder to the municipal income tax administrative fund, which is hereby created in the state treasury. the treasurer of state shall indicate on the report the date it was filed and the amount remitted, and IMMEDIATELY shall transmit the report to the tax commissioner.

(B) Any taxpayer that has been granted an extension for filing a federal income tax return may request an extension for filing the return required under this section by filing with the tax commissioner a copy of the taxpayer's request for the federal filing extension. The request shall be filed not later than the last day for filing the return as required under division (A) of this section. If such a request is properly and timely filed, the tax commissioner shall extend the last day for filing the return required under this section for the same period for WHICH the federal filing extension was granted. The tax commissioner may deny the filing extension request only if the taxpayer fails to timely file the request, fails to file a copy of the federal extension request, owes past due taxes, interest, or penalty under this chapter, or has failed to file a required report or other document for a prior taxable year. The granting of an extension under this section does not extend the last day for paying taxes without penalty pursuant to this chapter unless the tax commissioner extends the payment date.

(C) The annual report shall include statements of the following facts as of the last day of the taxpayer's taxable year:

(1) the name of the taxpayer;

(2) the name of the state or country under the laws of which it is incorporated;

(3) the location of its principal office in this state and, in the case of a taxpayer organized UNDER the laws of another state, the principal place of business in this state and the name and address of the officer or agent of the taxpayer in charge of the business conducted in this state;

(4) the names of the PRESIDENT, secretary, treasurer, and statutory

agent in this STATE, with the post-office address of each:

(5) The date on which the taxpayer's taxable year begins and ends;

(6) The taxpayer's federal taxable income during the taxpayer's taxable year;

(7) Any other information the tax commissioner requires for the proper administration of this chapter.

(D) The tax commissioner may require any reports required under this chapter to be filed in an electronic format.

(E) A municipal corporation may not require a taxpayer required to file a report under this section to file a report of the taxpayer's income, but a municipal corporation may require a taxpayer to report to the municipal corporation the value of the taxpayer's real and tangible personal property situated in the municipal corporation, compensation paid in the municipal corporation to employees by the taxpayer, and sales made in the municipal corporation by the taxpayer, to the extent necessary for the municipal corporation to compute the taxpayer's municipal property, payroll, and sales factors for the municipal corporation.

(F) On or before the thirty-first day of January each year, each municipal corporation imposing a tax on income shall certify to the tax commissioner the rate of the tax in effect on the first day of January of that year. If any municipal corporation fails to certify its income tax rate as required by this division, the tax commissioner shall notify the director of budget and management, who, upon receiving such notification, shall withhold from each payment made to the municipal corporation under section 5745.05 of the Revised Code fifty per cent of the amount of the payment otherwise due the municipal corporation under that section as computed on the basis of the tax rate most recently certified until the municipal corporation certifies the tax rate in effect on the first day of January of that year.

The tax rate used to determine the tax payable to a municipal corporation under this section for a taxpayer's taxable year shall be the tax rate in effect in a municipal corporation on the first day of January in that taxable year. If a taxpayer's taxable year is for a period less than twelve months that does not include the first day of January, the tax rate used to determine the tax payable to a municipal corporation under this section for the taxpayer's taxable year shall be the tax rate in effect in a municipal corporation on the first day of January in the preceding taxable year.

Sec. 5745.031. An electric light company that is not an electric company or a combined company may elect to be a taxpayer for the purposes of this chapter if not less than fifty per cent of the company's total

sales in this state consist of electricity, as determined under section 5733.059 of the Revised Code, and other energy commodities during the taxpayer's most recently concluded taxable year. the company shall make the election by application in writing to the tax commissioner before the first day of the first taxable year to which the election is to apply. The election is effective for five consecutive taxable years and, once made, is irrevocable for the five taxable years for which the election was made.

The failure of such a company to make an election under this section shall not be construed to exempt or exclude such a company from the income tax of any municipal corporation.

Sec. 5745.04. (A) as used in this section, "combined tax liability" means the total of a taxpayer's income tax liabilities to all municipal corporations in this state for a taxable year.

(B) Beginning in 2003, each taxpayer shall file a declaration of estimated tax report with, and remit estimated taxes to, the treasurer of state at the times and in the amounts PRESCRIBED in divisions (b)(1) to (4) of this section, except as provided in division (c) of this section:

(1) Not less than twenty-five per cent of the combined tax liability for the preceding taxable year or twenty per cent of the combined tax liability for the current taxable year shall have been remitted not later than the fifteenth day of the fourth month after the end of the preceding taxable year;

(2) Not less than fifty per cent of the combined tax liability for the preceding taxable year or forty per cent of the combined tax liability for the current taxable year shall have been remitted not later than the fifteenth day of the sixth month after the end of the preceding taxable year;

(3) Not less than seventy-five per cent of the combined tax liability for the preceding taxable year or sixty per cent of the combined tax liability for the current taxable year shall have been remitted not later than the fifteenth day of the ninth month after the end of the preceding taxable year;

(4) Not less than one hundred per cent of the combined tax liability for the preceding taxable year or eighty per cent of the combined tax liability for the current taxable year shall have been remitted not later than the fifteenth day of the twelfth month after the end of the preceding taxable year.

(C) Each taxpayer shall report on the declaration of estimated tax report the portion of the remittance that the taxpayer estimates that it owes to each municipal corporation for the taxable year.

(D) Upon receiving a declaration of estimated tax report and remittance of estimated taxes under this section, the treasurer of state shall credit ninety-eight and one-half per cent of the remittance to the municipal income

tax fund and credit the remainder to the municipal income tax administrative fund, and shall transmit the report to the tax commissioner.

(E) If any remittance of estimated taxes is for one thousand dollars or more, the taxpayer shall make the remittance by electronic funds transfer as prescribed by section 5745.04 of the Revised Code.

(F) Notwithstanding section 5745.08 or 5745.09 of the Revised Code, no PENALTY or interest shall be imposed on a taxpayer if the declaration of estimated tax report is properly filed, and the estimated tax is remitted, within the time prescribed by division (B) of this section.

Sec. 5745.041. Any taxpayer required by section 5745.03 or 5745.04 of the Revised Code to remit tax payments by electronic funds transfer shall remit such payments to the treasurer of state in the manner prescribed by rules adopted by the treasurer under section 113.061 of the Revised Code. Except as otherwise provided in this paragraph, the payment of taxes by electronic funds transfer does not affect a taxpayer's obligation to file reports under this chapter. If a taxpayer remits estimated tax payments in a manner, designated by rule of the treasurer of state, that permits the inclusion of all information necessary for the treasurer of state to process the payment, the taxpayer is not required to file the declaration of estimated tax report as otherwise required under section 5745.04 of the Revised Code.

The treasurer of state, in consultation with the tax commissioner, may adopt rules governing the format for reporting and paying estimated taxes by electronic funds transfer.

A taxpayer required to remit taxes by electronic funds transfer may apply to the treasurer of state in the manner prescribed by the treasurer to be excused from that requirement. The treasurer of state may excuse the taxpayer from the requirement for good cause shown for the period of time requested by the taxpayer or for a portion of that period. The treasurer shall notify the tax commissioner and the taxpayer of the treasurer's decision as soon as is practicable.

If a taxpayer required by this section to remit taxes by electronic funds transfer remits those taxes by some means other than by electronic funds transfer as prescribed by this section and the rules adopted by the treasurer of state, and the treasurer determines that such failure was not due to reasonable cause or was due to willful neglect, the treasurer shall notify the tax commissioner of the failure to remit by electronic funds transfer and shall provide the commissioner with any information used in making that determination. The tax commissioner may collect an additional charge by assessment in the manner prescribed by section 5745.12 of the Revised Code. The additional charge shall equal five per cent of the amount of the

taxes or estimated tax payments required to be paid by electronic funds transfer, but shall not exceed five thousand dollars. Any additional charge assessed under this section is in addition to any other penalty or charge imposed under this chapter, and shall be considered as revenue arising from municipal income taxes collected under this chapter. The tax commissioner may remit all or a portion of such a charge and may adopt rules governing such remission.

No additional charge shall be assessed under this section against a taxpayer that has been notified of its obligation to remit taxes under this section and that remits its first two tax payments after such notification by some means other than electronic funds transfer. The additional charge may be assessed upon the remittance of any subsequent tax payment that the taxpayer remits by some means other than electronic funds transfer.

Sec. 5745.05. (A) Prior to the first day of March, June, September, and December, the tax commissioner shall certify to the director of budget and management the amount to be paid to each municipal corporation, as indicated on the declaration of estimated tax reports and annual reports received under sections 5745.03 and 5745.04 of the Revised Code, less any amounts previously distributed for the taxable year. Not later than the first day of March, June, September, and December, the director of budget and management shall provide for payment of the amount certified to each municipal corporation from the municipal income tax fund, plus a pro rata share of any investment earnings accruing to the fund since the previous payment under this section apportioned among municipal corporations entitled to such payments in proportion to the amount certified by the tax commissioner.

(B) If the tax commissioner determines that the amount of tax paid by a taxpayer and distributed to a municipal corporation under this section for a taxable year exceeds the amount payable to that municipal corporation under this chapter after accounting for amounts remitted with the annual report and as estimated taxes, the tax commissioner shall permit the taxpayer to credit the excess against the taxpayer's payments to the municipal corporation of estimated taxes remitted for an ensuing taxable year under section 5745.04 of the Revised Code. If, upon the written request of the taxpayer, the tax commissioner determines that the excess to be so credited is likely to exceed the amount of estimated taxes payable by the taxpayer to the municipal corporation during the ensuing twelve months, the tax commissioner shall so notify the municipal corporation and the municipal corporation shall issue a refund of the excess to the taxpayer within ninety days after receiving such a notice. Interest shall accrue on the

amount to be refunded and is payable to the taxpayer at the rate per annum prescribed by section 5703.47 of the Revised Code from the ninety-first day after the notice is received by the municipal corporation until the day the refund is paid.

Sec. 5745.06. (A) As used in this section:

(1) "Qualifying pass-through entity" means a pass-through entity, as defined in section 5733.04 of the Revised Code, that is a taxpayer under this chapter.

(2) "Qualifying taxpayer" means a taxpayer, that, during any portion of the taxable year of a qualifying pass-through entity, holds a direct ownership interest in that qualifying pass-through entity.

(B) There is hereby allowed a nonrefundable credit against the amount of tax payable under this chapter to a municipal corporation by a qualifying taxpayer. The credit shall equal the qualifying taxpayer's proportionate share of the lesser of the tax due from or the tax paid by a qualifying pass-through entity to that municipal corporation under this chapter for the entity's taxable year ending in the qualifying taxpayer's taxable year. The taxpayer shall claim the credit for the taxpayer's taxable year in which the qualifying pass-through entity's taxable year ends. In determining the taxpayer's proportionate share of the tax due or tax paid by the qualifying pass-through entity, the taxpayer shall follow the concepts set forth in SUBCHAPTERS J and K of the Internal Revenue Code.

If the amount of the credit claimed for a taxable year exceeds the amount of tax due to that municipal corporation for that year, the excess shall be allowed as a credit against the taxes payable to that municipal corporation for ensuing taxable years until the full amount of the credit is claimed. any amount of the credit claimed for a taxable year shall be deducted from the balance carried forward to the ensuing taxable year.

Sec. 5745.07. If the tax required to be paid under this chapter, or any portion of that tax, whether determined by the tax commissioner or the taxpayer, is not paid on or before the date prescribed for its payment, interest shall be assessed, collected, and paid, in the same manner as the tax, upon such unpaid amount at the rate per annum prescribed by section 5703.47 of the Revised Code from the date prescribed for its payment until it is paid or until the day an assessment is issued under section 5745.12 of the Revised Code, whichever occurs first.

Sec. 5745.08. (A) The following penalties shall apply under the circumstances indicated:

(1) If a taxpayer required to file a report or remit tax as required by this chapter fails to make and file the report within the time prescribed, including

any extensions of time granted by the tax commissioner, the tax commissioner may impose a penalty not exceeding the greater of fifty dollars per month or fraction of a month, not to exceed five hundred dollars, or five per cent per month or fraction of a month, not to exceed fifty per cent, of the tax required to be shown on the report, for each month or fraction of a month elapsing between the due date, including extensions of the due date, and the day on which the report is filed.

(2) If a taxpayer fails to pay any amount of estimated tax required to be paid under division (B) of section 5745.04 of the Revised Code by the dates prescribed for payment, the tax commissioner may impose a penalty not to exceed twice the interest charged under section 5745.09 of the Revised Code for the delinquent payment.

(3) If a taxpayer files what purports to be a report required by this chapter that does not contain information upon which the substantial correctness of the report may be judged or contains information that on its face indicates that the report is substantially incorrect, and the filing of the report in that manner is due to a position that is frivolous or a desire that is apparent from the report to delay or impede the administration of this chapter, a penalty of up to five hundred dollars may be imposed.

(4) If a taxpayer makes a fraudulent attempt to evade the reporting or payment of the tax required to be shown on any report required under this chapter, a penalty may be imposed not exceeding the greater of one thousand dollars or one hundred per cent of the tax required to be shown on the report.

(5) If any person makes a false or fraudulent claim for a refund under section 5745.11 of the Revised Code, a penalty may be imposed not exceeding the greater of one thousand dollars or one hundred per cent of the claim. Any penalty imposed under division (A)(5) of this section, any refund issued on the claim, and interest on any refund from the date of the refund, may be assessed under section 5745.12 of the Revised Code without regard to any time limitation for the assessment imposed by division (A) of that section.

(B) For the purposes of this section, the tax required to be shown on the report shall be reduced by the amount of any part of the tax paid on or before the date, including extensions of the date, prescribed for filing the report.

(C) Each penalty imposed under this section shall be in addition to any other penalty provided in this section. All or part of any penalty imposed under this section may be abated by the commissioner. The tax commissioner may adopt rules governing the imposition and abatement of

such penalties.

(D) All amounts collected under this section from a taxpayer shall be considered as taxes collected under this chapter and shall be credited and distributed to municipal corporations in the amounts found to be due such municipal corporations.

Sec. 5745.09. (A) In case of any underpayment of the estimated tax under section 5745.04 of the Revised Code, there shall be added to the tax an amount determined at the rate per annum prescribed by section 5703.47 of the Revised Code upon the amount of underpayment for the period of underpayment.

(B) The amount of the underpayment shall be the excess of division (B)(1) over division (B)(2) of this section:

(1) The amount of the estimated tax payment that would be required to be paid for the taxable year if the total estimated tax were equal to the total tax shown to be due on the annual report, or if no report was filed, the tax for such year:

(2) The amount, if any, of the estimated tax paid on or before the last day prescribed for such payment.

(C) The period of the underpayment shall run from the date the estimated tax payment was required to be made to the date on which such payment is made. For purposes of this section, a payment of estimated tax on any payment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the payment presently due.

(D) All amounts collected under this section shall be considered as taxes collected under this chapter and shall be credited and distributed to municipal corporations in the same proportions as the taxpayer's taxes are distributed for the reporting period under section 5745.05 of the Revised Code.

Sec. 5745.10. Except as otherwise provided in section 5703.053 of the Revised Code, if any report, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under this chapter is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such report, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the postmark stamped on the cover in which such report, claim, statement, or other document, or payment is mailed shall be deemed the date of delivery or the date of payment.

"The date of the postmark" means, in the event there is more than one

date on the cover, the earliest date imprinted on the cover by the post office.

Sec. 5745.11. An application to refund to a taxpayer the amount of taxes paid on any illegal, erroneous, or excessive assessment, with interest on that amount as provided by section 5745.07 of the Revised Code, shall be filed with the tax commissioner within three years after the date of the illegal, erroneous, or excessive payment of the tax, or within any additional period allowed by division (A) of section 5745.12 of the Revised Code. the application shall be filed in the form prescribed by the tax commissioner.

Upon the filing of a refund application, the tax COMMISSIONER shall determine the amount of refund due and certify the amount of the refund to each municipal corporation to which the overpayment was made. the municipal corporation shall issue a refund to the taxpayer, or, upon the taxpayer's written request, shall credit the amount of the refund against the taxpayer's estimated tax payments to the municipal corporation for an ensuing taxable year. any portion of the refund not issued within ninety days after the tax commissioner's notice is received by the municipal corporation shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the ninetieth day after such notice is received by the municipal corporation until the day the refund is paid or credited.

Sec. 5745.12. (A) If any taxpayer required to file a report under this chapter fails to file the report within the time prescribed, files an incorrect report, or fails to remit the full amount of the tax due for the period covered by the report, the tax commissioner may make an assessment against the taxpayer for any deficiency for the period for which the report or tax is due, based upon any information in the commissioner's possession.

The tax commissioner shall not make or issue an assessment against a taxpayer more than three years after the later of the final date the report subject to assessment was required to be filed or the date the report was filed. Such time limit may be extended if both the taxpayer and the commissioner consent in writing to the extension. Any such extension shall extend the three-year time limit in section 5745.11 of the Revised Code for the same period of time. There shall be no bar or limit to an assessment against a taxpayer that fails to file a report subject to assessment as required by this chapter, or that files a fraudulent report. The commissioner shall give the party assessed written notice of the assessment by personal service or certified mail.

(B) Unless the taxpayer to which the notice of assessment is directed files with the commissioner within sixty days after service thereof, either personally or by certified mail, a petition for reassessment in writing, signed by the authorized agent of the taxpayer assessed having knowledge of the

facts, and makes payment of the portion of the assessment required by division (E) of this section, the assessment shall become final, and the amount of the assessment shall be due and payable from the taxpayer to the treasurer of state. The petition shall indicate the taxpayer's objections, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to the assessment as the commissioner finds proper. The commissioner shall serve a copy of the final determination on the petitioner by personal service or by certified mail, and the commissioner's decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. Only objections decided on the merits by the board of tax appeals or a court shall be given collateral estoppel or res judicata effect in considering an application for refund of amounts paid pursuant to the assessment.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the taxpayer has an office or place of business in this state, the county in which the taxpayer's statutory agent is located, or Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment against the taxpayer assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for municipal income taxes," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

The portion of an assessment not paid within sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until the assessment is paid. Interest shall be paid in the same manner as the tax and may be collected by issuing an assessment under this section.

(D) All money collected under this section shall be credited and distributed to the municipal corporation to which the money is owed based on the assessment issued under this section.

(E) The portion of an assessment which must be paid upon the filing of a petition for reassessment shall be as follows:

(1) If the sole item objected to is the assessed penalty or interest, payment of the assessment excluding any penalty is required.

(2) If the taxpayer that is assessed failed to file, prior to the date of issuance of the assessment, the annual report required by section 5745.03 of the Revised Code, full payment of the assessment including penalty and interest is required.

(3) If the taxpayer that is assessed filed, prior to the date of issuance of the assessment, the annual report required by section 5745.03 of the Revised Code, and a balance of the taxes shown due on the reports as computed on the reports remains unpaid, payment of only that portion of the assessment representing the unpaid balance is required.

(4) If none of the conditions specified in divisions (E)(1) to (3) of this section apply, no payment is required.

(E) Notwithstanding the fact that a petition for reassessment is pending, the taxpayer may pay all or a portion of the assessment that is the subject of the petition. The acceptance of a payment by the treasurer of state does not prejudice any claim for refund upon final determination of the petition.

If upon final determination of the petition an error in the assessment is corrected by the commissioner, upon petition so filed or pursuant to a decision of the board of tax appeals or any court to which the determination or decision has been appealed, so that the amount due from the taxpayer under the corrected assessment is less than the portion paid, there shall be issued to the taxpayer, its assigns, or legal representative a refund in the amount of the overpayment as provided by section 5745.11 of the Revised Code, with interest on that amount as provided by section 5745.11 of the Revised Code.

Sec. 5745.13. If, upon examination of any books, records, reports, or other documents of a taxpayer, the tax commissioner determines that an adjustment shall be made in the portion of the taxpayer's income that is to be apportioned to a municipal corporation, the tax commissioner shall notify the taxpayer and each municipal corporation to the taxpayer's income has been adjusted.

Any municipal corporation to which such a notice is issued may request a review and redetermination of the taxpayer's federal taxable income, ohio net income, or the portion of ohio net income apportioned to the municipal corporation by filing a petition with the tax commissioner not later than sixty days after the tax commissioner issues the notice. the petition shall be filed either personally or by certified mail, and shall indicate the objections

of the municipal corporation.

Upon receiving such a petition, if a hearing is requested the tax commissioner shall assign a time and place for a hearing on the petition and shall notify the petitioner of the time and place of the hearing by ordinary mail. The tax commissioner may continue the hearing from time to time as necessary. The tax commissioner shall make any correction to the taxpayer's federal taxable income, Ohio net income, or apportionment of Ohio net income that the commissioner finds proper, and issue notice of any correction by ordinary mail to the petitioner, to each other municipal corporation affected by the correction of the apportionment, and to the taxpayer. The tax commissioner's decision on the matter is final, and is not subject to further appeal.

Sec. 5745.14. If any of the facts, figures, computations, or attachments required in a taxpayer's report to determine the tax due a municipal corporation must be altered as the result of an adjustment to the taxpayer's federal income tax return, whether the adjustment is initiated by the taxpayer, the internal revenue service, or the tax commissioner, and such alteration affects the taxpayer's tax liability to a municipal corporation, the taxpayer shall file an amended report with the tax commissioner in such form as the commissioner requires. The amended report shall be filed not later than one year after the adjustment has been agreed to or finally determined.

(B) In the case of an underpayment, the amended report shall be accompanied by payment of an additional tax and interest due and is a report subject to assessment under section 5745.12 of the Revised Code for the purpose of assessing any additional tax due under this division, together with any applicable penalty and interest. It shall not reopen those facts, figures, computations, or attachments from a previously filed report no longer subject to assessment that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return.

(C) In the case of an overpayment, an application for refund may be filed under section 5745.11 of the Revised Code within the one-year period prescribed for filing the amended report even if it is filed beyond the period prescribed by that section, if it otherwise conforms to the requirements of such section. An application filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the taxpayer's report that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return unless it is also filed within the time prescribed by section 5745.11 of the Revised Code. It shall not reopen those facts, figures,

computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return.

Sec. 5745.15. (A) Each taxpayer shall make its records, documents, returns, and reports open to inspection by the tax commissioner during normal business hours, and shall preserve those records, documents, returns, and reports for a period of three years after the date the return or report, or return or report to which such a record or document pertains, was required to be filed or actually was filed, whichever is later. The tax commissioner may consent in writing to the destruction of such records, documents, returns, or reports within that three-year period.

(B) The tax commissioner shall administer and enforce this chapter. In addition to any other powers conferred by law on the tax commissioner, the tax commissioner may prescribe all forms required to be filed under those sections, adopt rules that, in the opinion of the tax commissioner, are necessary to carry out those sections, and appoint and employ such personnel as may be necessary to carry out the tax commissioner's duties under those sections.

Sec. 5745.16. With respect to reports filed with the tax commissioner under this chapter, and any other information gained in the performance of the tax commissioner's duties prescribed by this chapter, the tax commissioner shall adopt rules governing the terms and conditions under which such reports or information shall be available for inspection by properly authorized officers, employees, or agents of the municipal corporation to which the taxpayer's Ohio net income is apportioned under division (D) of section 5745.02 of the Revised Code. The rules shall prohibit disclosure of such reports or information to any person other than a properly authorized officer, employee, or agent of a municipal corporation, and shall provide for disclosure of only such information as is necessary, in the opinion of the tax commissioner, for properly authorized officers, employees, or agents of a municipal corporation to ascertain the share of a taxpayer's net income to be apportioned to that municipal corporation.

As used in this division, "properly authorized officer, employee, or agent" means an officer, employee, or agent of a municipal corporation who is authorized by charter or ordinance of the municipal corporation to view or possess information referred to in section 718.13 of the Revised Code.

SECTION 2. That existing sections 113.061, 718.01, 718.02, 718.08, 5703.053, 5703.19, and 5703.21 of the Revised Code are hereby repealed.

SECTION 3. Sections 113.061, 718.01, 718.011, 718.02, 718.08, 5703.053, 5703.19, 5703.21, and 5745.01 to 5745.16 of the Revised Code, as amended or enacted by this act, take effect January 1, 2002.

SECTION 4. Notwithstanding division (B) of section 5745.04 of the Revised Code as enacted by this act:

(A) Each electric company and combined company, as defined in section 5727.01 of the Revised Code, shall file a declaration of estimated tax report and remit 20% of the combined tax liability for its taxable year ending in 2002 on the fifteenth day of the fourth, sixth, ninth, and twelfth month of that taxable year. The company shall indicate on the report the portion of the remittance that is payable to each municipal corporation to which the company estimates its Ohio net income will be apportioned for that taxable year under section 5745.02 of the Revised Code as enacted by this act. No penalty or interest shall be imposed on such a company if the estimated tax remitted under division (B) of this section is remitted within the time prescribed by that division and the total of the estimated taxes remitted equals at least 80% of the combined tax liability for the taxable year.

(B)(1) Except as otherwise provided in division (B)(2) of this section, each electric light company that is not an electric company or combined company as defined in section 5727.01 of the Revised Code and that paid a municipal corporation's income tax in 2001 shall file a declaration of estimated tax report and remit 25% of the company's combined tax liability for 2001, in lieu of the estimated combined tax liability for 2002, on the fifteenth day of the fourth, sixth, ninth, and twelfth month after the end of the company's taxable year ending in 2001. The company shall indicate on the report the portion of the remittance that is payable to each municipal corporation to which the company estimates its Ohio net income will be apportioned for that taxable year under section 5745.02 of the Revised Code as enacted by this act. No penalty or interest shall be imposed on such a company if the total of the estimated taxes remitted equals at least 80% of the combined tax liability for the taxable year ending in 2001 or 100% of the combined tax liability for the taxable year ending in 2000.

(2) Division (B)(1) of this section applies only to an electric light company described in that division that makes an election under section 5745.031 of the Revised Code that is in effect for tax year 2002.

SECTION 5. Notwithstanding sections 5745.03 and 5745.04 of the Revised Code, as enacted by this act, the Treasurer of State shall credit to the Municipal Income Tax Administrative Fund, from remittances received under those sections for taxable years ending in 2002 and 2003, the amount certified by the Tax Commissioner as the amount necessary to defray the Tax Commissioner's expenses of administering Chapter 5745. of the Revised Code for 2002 and 2003, respectively. The amount shall not exceed 5% of the remittances received for the respective year. The Tax Commissioner shall certify that amount to the Treasurer of State not later than January 31, 2002, and January 31, 2003, respectively.

SECTION 6. (A) The Tax Commissioner may discuss with other states the development of a multi-state, voluntary, and simplified system for the collection of the sales and use tax from remote sellers, and administration of such tax. The discussions shall focus on a system that will have the capability to determine whether a sale of goods or a service is taxable or tax exempt, the appropriate tax rate that applies to the sale, and the total tax due on the sale. The system shall provide a method for collecting and remitting sales and use taxes to this state, and may provide compensation for the costs of collecting and remitting such taxes. Discussions between the Tax Commissioner and other states may address the following:

- (1) The development of a Joint Request for Information from public and private parties governing the specifications for the system;
- (2) The mechanism for compensating parties for the development and operation of the system;
- (3) The establishment of minimum statutory measures necessary for state participation in the system;
- (4) Methods to preserve confidentiality of taxpayer information and the privacy rights of consumers.

Following these discussions, the Tax Commissioner may issue a Joint Request for Information.

(B) The Tax Commissioner may participate in a sales and use tax pilot project with other states and selected businesses to test means for simplifying administration of the sales and use tax, and may enter into joint agreements for that purpose. The agreements shall establish provisions for the administration, imposition, and collection of sales and use taxes resulting in revenues paid that are the same as would be paid under Chapters 5739. and 5741. of the Revised Code. All such agreements shall terminate

o later than December 31, 2001.

Parties to the agreements may be exempted from compliance with Chapters 5739. and 5741. of the Revised Code to the extent a different procedure is required by the agreements, except for confidentiality of taxpayer information under division (C) of this section.

(C) Return information submitted to any party acting for and on behalf of this state under division (A) or (B) of this section shall be treated as confidential taxpayer information. Disclosure of confidential taxpayer information necessary under division (A) or (B) of this section shall be pursuant to a written agreement between the Tax Commissioner and the party. The party shall be bound by the same requirements of confidentiality as the Department of Taxation and its agents under section 5703.21 of the Revised Code.

(D) The Tax Commissioner, by November 1, 2000, shall provide a report on the progress of multi-state discussions to the Governor, Speaker of the House of Representatives, President of the Senate, Minority Leaders of the House of Representatives and Senate, and chairpersons of the House of Representatives' and Senate's standing committees with primary responsibility for sales and use tax legislation. Not later than March 1, 2001, the Tax Commissioner shall provide a final report to these entities on the status of multi-state discussions held under this section. If a proposed system for the collection and administration of sales and use taxes has been agreed upon by participating states, the Tax Commissioner, in the final report, shall recommend whether this state should participate in the system and what legislation is needed to implement it.

SECTION 7. Section 5703.053 of the Revised Code is presented in this act as a composite of the sections as amended by both Am. Sub. H.B. 283 and Am. Sub. S.B. 3 of the 123rd General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such are the resulting versions in effect prior to the effective date of this act.

---

*Speaker* \_\_\_\_\_ *of the House of Representatives.*

---

*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

---

*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

---

*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

---

*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_