related costs and values, exempted from taxation under the agreement.

(J) Enterprises may agree to give preference to residents of the zone within which the agreement applies relative to residents of this state who do not reside in the zone when hiring new employees under the agreement.

(K) An agreement entered into under this section may include a provision requiring the enterprise to create one or more temporary internship positions for students enrolled in a course of study at a school or other educational institution in the vicinity, and to create a scholarship or provide another form of educational financial assistance for students holding such a position in exchange for the student's commitment to work for the enterprise at the completion of the internship.

Sec. 5709.632. (A)(1) The legislative authority of a municipal corporation defined by the United States office of management and budget as a central city of a metropolitan statistical area <u>or designated as an urban cluster in a rural statistical area</u> may, in the manner set forth in section 5709.62 of the Revised Code, designate one or more areas in the municipal corporation as a proposed enterprise zone.

(2) With the consent of the legislative authority of each affected municipal corporation or of a board of township trustees, a board of county commissioners may, in the manner set forth in section 5709.62 of the Revised Code, designate one or more areas in one or more municipal corporations or in unincorporated areas of the county as proposed urban jobs and enterprise zones, except that a board of county commissioners may designate no more than one area within a township, or within adjacent townships, as a proposed urban jobs and enterprise zone.

(3)<u>(a)</u> The legislative authority or board of county

commissioners may petition the director of development for certification of the area as having the characteristics set forth in division (A)(3) of section 5709.61 of the Revised Code. Within sixty days after receiving such a petition, the director shall determine whether the area has the characteristics set forth in that division and forward the findings to the legislative authority or board of county commissioners. If the director certifies the area as having those characteristics and thereby certifies it as a zone, the legislative authority or board may enter into agreements with enterprises under division (B) of this section. Any enterprise wishing to enter into an agreement with a legislative authority or board of commissioners under this section and satisfying one of the criteria described in divisions (B)(1) to (5) of this section shall submit a proposal to the legislative authority or board on the form prescribed under division (B) of section 5709.62 of the Revised Code and shall review and update the estimates and listings required by the form in the manner required under that division. The legislative authority or board may, on a separate form and at any time, require any additional information necessary to determine whether an enterprise is in compliance with an agreement and to collect the information required to be reported under section 5709.68 of the Revised Code.

(b) The legislative authority of a city designated as an urban cluster in a rural statistical area that has, pursuant to this section, as amended by H.B. 95 of the 125th general assembly, designated one or more areas in the city as a proposed enterprise zone, shall not enter into an agreement under this section unless it has petitioned the director and the director has certified the proposed enterprise zone under division (A)(3)(a) of this section.

(B) Prior to entering into an agreement with an enterprise, the legislative authority or board of county commissioners shall determine whether the enterprise submitting the proposal is

qualified by financial responsibility and business experience to create and preserve employment opportunities in the zone and to improve the economic climate of the municipal corporation or municipal corporations or the unincorporated areas in which the zone is located and to which the proposal applies, and whether the enterprise satisfies one of the following criteria:

(1) The enterprise currently has no operations in this state and, subject to approval of the agreement, intends to establish operations in the zone;

(2) The enterprise currently has operations in this state and, subject to approval of the agreement, intends to establish operations at a new location in the zone that would not result in a reduction in the number of employee positions at any of the enterprise's other locations in this state;

(3) The enterprise, subject to approval of the agreement, intends to relocate operations, currently located in another state, to the zone;

(4) The enterprise, subject to approval of the agreement, intends to expand operations at an existing site in the zone that the enterprise currently operates;

(5) The enterprise, subject to approval of the agreement, intends to relocate operations, currently located in this state, to the zone, and the director of development has issued a waiver for the enterprise under division (B) of section 5709.633 of the Revised Code.

(C) If the legislative authority or board determines that the enterprise is so qualified and satisfies one of the criteria described in divisions (B)(1) to (5) of this section, the legislative authority or board may, after complying with section 5709.83 of the Revised Code and on or before ~~June 30, 2004~~ October 15, 2009, and, in the case of a board of commissioners, with the

consent of the legislative authority of each affected municipal corporation or of the board of township trustees, enter into an agreement with the enterprise under which the enterprise agrees to establish, expand, renovate, or occupy a facility in the zone and hire new employees, or preserve employment opportunities for existing employees, in return for the following incentives:

(1) When the facility is located in a municipal corporation, a legislative authority or board of commissioners may enter into an agreement for one or more of the incentives provided in division (C) of section 5709.62 of the Revised Code, subject to division (D) of that section;

(2) When the facility is located in an unincorporated area, a board of commissioners may enter into an agreement for one or more of the incentives provided in divisions (B)(1)(b), (B)(2), and (B)(3) of section 5709.63 of the Revised Code, subject to division (C) of that section.

(D) All agreements entered into under this section shall be in the form prescribed under section 5709.631 of the Revised Code. After an agreement under this section is entered into, if the legislative authority or board of county commissioners revokes its designation of the zone, or if the director of development revokes the zone's certification, any entitlements granted under the agreement shall continue for the number of years specified in the agreement.

(E) Except as otherwise provided in this division, an agreement entered into under this section shall require that the enterprise pay an annual fee equal to the greater of one per cent of the dollar value of incentives offered under the agreement or five hundred dollars; provided, however, that if the value of the incentives exceeds two hundred fifty thousand dollars, the fee shall not exceed two thousand five hundred dollars. The fee shall be payable to the legislative authority or board of commissioners

once per year for each year the agreement is effective on the days and in the form specified in the agreement. Fees paid shall be deposited in a special fund created for such purpose by the legislative authority or board and shall be used by the legislative authority or board exclusively for the purpose of complying with section 5709.68 of the Revised Code and by the tax incentive review council created under section 5709.85 of the Revised Code exclusively for the purposes of performing the duties prescribed under that section. The legislative authority or board may waive or reduce the amount of the fee charged against an enterprise, but such waiver or reduction does not affect the obligations of the legislative authority or board or the tax incentive review council to comply with section 5709.68 or 5709.85 of the Revised Code, respectively.

(F) With the approval of the legislative authority of a municipal corporation or the board of township trustees of a township in which a zone is designated under division (A)(2) of this section, the board of county commissioners may delegate to that legislative authority or board any powers and duties of the board to negotiate and administer agreements with regard to that zone under this section.

(G) When an agreement is entered into pursuant to this section, the legislative authority or board of commissioners authorizing the agreement shall forward a copy of the agreement to the director of development and to the tax commissioner within fifteen days after the agreement is entered into. If any agreement includes terms not provided for in section 5709.631 of the Revised Code affecting the revenue of a city, local, or exempted village school district or causing revenue to be foregone by the district, including any compensation to be paid to the school district pursuant to section 5709.82 of the Revised Code, those terms also shall be forwarded in writing to the director of development along

with the copy of the agreement forwarded under this division.

(H) After an agreement is entered into, the enterprise shall file with each personal property tax return required to be filed while the agreement is in effect, an informational return, on a form prescribed by the tax commissioner for that purpose, setting forth separately the property, and related costs and values, exempted from taxation under the agreement.

(I) An agreement entered into under this section may include a provision requiring the enterprise to create one or more temporary internship positions for students enrolled in a course of study at a school or other educational institution in the vicinity, and to create a scholarship or provide another form of educational financial assistance for students holding such a position in exchange for the student's commitment to work for the enterprise at the completion of the internship.

Sec. 5709.64. (A) If an enterprise has been granted an incentive for the current calendar year under an agreement entered pursuant to section 5709.62, 5709.63, or 5709.632 of the Revised Code, it may apply, on or before the thirtieth day of April of that year, to the director of development, on a form prescribed by the director, for a tax incentive qualification certificate. The enterprise qualifies for an initial certificate if, on or before the last day of the calendar year immediately preceding that in which application is made, it satisfies all of the following requirements:

(1) The enterprise has established, expanded, renovated, or occupied a facility pursuant to the agreement under section 5709.62, 5709.63, or 5709.632 of the Revised Code.

(2) The enterprise has hired new employees to fill nonretail positions at the facility, at least twenty-five per cent of whom at the time they were employed were at least one of the following:

(a) Unemployed persons who had resided at least six months in the county in which the enterprise's project site is located;

(b) JPTA eligible employees who had resided at least six months in the county in which the enterprise's project site is located;

(c) Participants of the Ohio works first program under Chapter 5107. of the Revised Code or the prevention, retention, and contingency program under Chapter 5108. of the Revised Code or recipients of general assistance under former Chapter 5113. of the Revised Code, ~~disability~~ financial assistance under Chapter 5115. of the Revised Code, or unemployment compensation benefits who had resided at least six months in the county in which the enterprise's project site is located;

(d) Handicapped persons, as defined under division (A) of section 3304.11 of the Revised Code, who had resided at least six months in the county in which the enterprise's project site is located;

(e) Residents for at least one year of a zone located in the county in which the enterprise's project site is located.

The director of development shall, by rule, establish criteria for determining what constitutes a nonretail position at a facility.

(3) The average number of positions attributable to the enterprise in the municipal corporation during the calendar year immediately preceding the calendar year in which application is made exceeds the maximum number of positions attributable to the enterprise in the municipal corporation during the calendar year immediately preceding the first year the enterprise satisfies the requirements set forth in divisions (A)(1) and (2) of this section. If the enterprise is engaged in a business which, because of its seasonal nature, customarily enables the enterprise to

operate at full capacity only during regularly recurring periods of the year, the average number of positions attributable to the enterprise in the municipal corporation during each period of the calendar year immediately preceding the calendar year in which application is made must exceed only the maximum number of positions attributable to the enterprise in each corresponding period of the calendar year immediately preceding the first year the enterprise satisfies the requirements of divisions (A)(1) and (2) of this section. The director of development shall, by rule, prescribe methods for determining whether an enterprise is engaged in a seasonal business and for determining the length of the corresponding periods to be compared.

(4) The enterprise has not closed or reduced employment at any place of business in the state for the primary purpose of establishing, expanding, renovating, or occupying a facility. The legislative authority of any municipal corporation or the board of county commissioners of any county that concludes that an enterprise has closed or reduced employment at a place of business in that municipal corporation or county for the primary purpose of establishing, expanding, renovating, or occupying a facility in a zone may appeal to the director to determine whether the enterprise has done so. Upon receiving such an appeal, the director shall investigate the allegations and make such a determination before issuing an initial or renewal tax incentive qualification certificate under this section.

Within sixty days after receiving an application under this division, the director shall review, investigate, and verify the application and determine whether the enterprise qualifies for a certificate. The application shall include an affidavit executed by the applicant verifying that the enterprise satisfies the requirements of division (A)(2) of this section, and shall contain such information and documents as the director requires, by rule,

to ascertain whether the enterprise qualifies for a certificate. If the director finds the enterprise qualified, the director shall issue a tax incentive qualification certificate, which shall bear as its date of issuance the thirtieth day of June of the year of application, and shall state that the applicant is entitled to receive, for the taxable year that includes the certificate's date of issuance, the tax incentives provided under section 5709.65 of the Revised Code with regard to the facility to which the certificate applies. If an enterprise is issued an initial certificate, it may apply, on or before the thirtieth day of April of each succeeding calendar year for which it has been granted an incentive under an agreement entered pursuant to section 5709.62, 5709.63, or 5709.632 of the Revised Code, for a renewal certificate. Subsequent to its initial certification, the enterprise qualifies for up to three successive renewal certificates if, on or before the last day of the calendar year immediately preceding that in which the application is made, it satisfies all the requirements of divisions (A)(1) to (4) of this section, and neither the zone's designation nor the zone's certification has been revoked prior to the fifteenth day of June of the year in which the application is made. The application shall include an affidavit executed by the applicant verifying that the enterprise satisfies the requirements of division (A)(2) of this section. An enterprise with ten or more supervisory personnel at the facility to which a certificate applies qualifies for any subsequent renewal certificates only if it meets all of the foregoing requirements and, in addition, at least ten per cent of those supervisory personnel are employees who, when first hired by the enterprise, satisfied at least one of the criteria specified in divisions (A)(2)(a) to (e) of this section. If the enterprise qualifies, a renewal certificate shall be issued bearing as its date of issuance the thirtieth day of June of the year of application. The director shall send copies of the initial

certificate, and each renewal certificate, by certified mail, to the enterprise, the tax commissioner, the board of county commissioners, and the chief executive of the municipal corporation in which the facility to which the certificate applies is located.

(B) If the director determines that an enterprise is not qualified for an initial or renewal tax incentive qualification certificate, the director shall send notice of this determination, specifying the reasons for it, by certified mail, to the applicant, the tax commissioner, the board of county commissioners, and the chief executive of the municipal corporation in which the facility to which the certificate would have applied is located. Within thirty days after receiving such a notice, an enterprise may request, in writing, a hearing before the director for the purpose of reviewing the application and the reasons for the determination. Within sixty days after receiving a request for a hearing, the director shall afford one and, within thirty days after the hearing, shall issue a redetermination of the enterprise's qualification for a certificate. If the enterprise is found to be qualified, the director shall proceed in the manner provided under division (A) of this section. If the enterprise is found to be unqualified, the director shall send notice of this finding, by certified mail, to the applicant, the tax commissioner, the board of county commissioners, and the chief executive of the municipal corporation in which the facility to which the certificate would have applied is located. The director's redetermination that an enterprise is unqualified may be appealed to the board of tax appeals in the manner provided under section 5717.02 of the Revised Code.

Sec. 5711.02. Except as otherwise provided by section 5711.13 of the Revised Code, <u>each year, beginning in tax year 2004,</u> each taxpayer <u>having taxable personal property with an aggregate</u>

taxable value in excess of ten thousand dollars shall make a return~~, annually,~~ to the county auditor of each county in which any taxable property~~, which~~ the taxpayer must return~~,~~ is required by this chapter to be listed ~~and~~. The taxpayer shall truly and correctly list ~~therein~~ on the return all taxable property so required to be listed, including property exempt under division (C)(3) of section 5709.01 of the Revised Code. Such returns shall be made on the blanks prescribed by the tax commissioner, which the county auditor shall supply at ~~his~~ the auditor's office along with blanks of the kind required for the county supplemental return required by section 5711.131 of the Revised Code ~~for the use of taxpayers~~. The county auditor shall mail or distribute such blanks prior to the fifteenth day of February to all persons known to ~~him~~ the auditor to be taxpayers and to all persons to whom the commissioner may direct blanks of either type to be mailed or distributed~~, and he~~. The county auditor may place listing and county supplemental blanks at convenient places in ~~his~~ the county. The failure of a taxpayer to receive or procure blanks shall not excuse ~~him~~ the taxpayer from making any return or county supplemental return. The individual required to make the return shall furnish all statements and documents, give all information required, answer all questions asked on the required blanks, and subscribe to the truth and correctness of all matters contained therein.

Sec. 5711.13. ~~A~~ Beginning in tax year 2004, each taxpayer having taxable property with an aggregate taxable value in excess of ten thousand dollars and required to be listed in more than one county shall make a combined return to the tax commissioner listing all its taxable property in this state, in conformity with sections 5711.01 to 5711.36 of the Revised Code, including property exempt under division (C)(3) of section 5709.01 of the Revised Code, but ~~it~~ the taxpayer shall not assign ~~its~~ property of

the kinds mentioned in section 5709.02 of the Revised Code to any particular taxing district or county. The tax commissioner shall assess the personal property of such taxpayer in the several taxing districts in which it is required ~~by~~ to be assessed under sections 5711.01 to 5711.36 of the Revised Code, ~~to be assessed,~~ and shall issue assessment certificates therefor to the proper county auditors at the time and in the manner required by section 5711.25 of the Revised Code. All other property of such taxpayer required to be so listed shall be entered on the intangible property tax list in the office of the treasurer of state~~,~~ and ~~taxed~~ shall be subject to taxation under section 5707.03 of the Revised Code. The commissioner shall assess all other property of each such taxpayer and, on or before the second Monday of August annually, shall certify the total value or amount of each kind thereof to the treasurer of state, who shall enter the value or amount on the intangible property tax list in ~~his~~ the treasurer of state's office in the manner provided in sections 5725.01 to 5725.26 of the Revised Code. Sections 5711.01 to 5711.36 of the Revised Code shall apply to and govern such taxpayer, its proper officers and representatives, the commissioner, and the county auditor as to all proceedings in the assessment of the property of such taxpayer.

Sec. 5711.22. (A) Deposits not taxed at the source shall be listed and assessed at their amount in dollars on the day they are required to be listed. Moneys shall be listed and assessed at the amount thereof in dollars on hand on the day that they are required to be listed. In listing investments, the amount of the income yield of each for the calendar year next preceding the date of listing shall, except as otherwise provided in this chapter, be stated in dollars and cents and the assessment thereof shall be at the amount of such income yield; but any property defined as investments in either division (A) or (B) of section 5701.06 of

the Revised Code that has not been outstanding for the full calendar year next preceding the date of listing, except shares of stock of like kind as other shares of the same corporation outstanding for the full calendar year next preceding the date of listing, or which has yielded no income during such calendar year shall be listed and assessed as unproductive investments, at their true value in money on the day that such investments are required to be listed.

Credits and other taxable intangibles shall be listed and assessed at their true value in money on the day as of which the same are required to be listed.

Shares of stock of a bank holding company, as defined in Title 12 U.S.C.A., section 1841, that are required to be listed for taxation under this division and upon which dividends were paid during the year of their issuance, which dividends are subject to taxation under the provisions of Chapter 5747. of the Revised Code, shall be exempt from the intangibles tax for the year immediately succeeding their issuance. If such shares bear dividends the first calendar year after their issuance, which dividends are subject to taxation under the provisions of Chapter 5747. of the Revised Code, it shall be deemed that the nondelinquent intangible property tax pursuant to division (A) of section 5707.04 of the Revised Code was paid on those dividends paid that first calendar year after the issuance of the shares.

(B)(1) Boilers, machinery, equipment, and personal property the true value of which is determined under division (B) of section 5711.21 of the Revised Code shall be listed and assessed at an amount equal to the sum of the products determined under divisions (B)(1)(a), (b), and (c) of this section.

(a) Multiply the portion of the true value determined under division (B)(1) of section 5711.21 of the Revised Code by the assessment rate in division (F) of this section;

(b) Multiply the portion of the true value determined under division (B)(2) of section 5711.21 of the Revised Code by the assessment rate in section 5727.111 of the Revised Code that is applicable to the production equipment of an electric company;

(c) Multiply the portion of the true value determined under division (B)(3) of section 5711.21 of the Revised Code by the assessment rate in section 5727.111 of the Revised Code that is applicable to the property of an electric company that is not production equipment.

(2) Personal property leased to a public utility or interexchange telecommunications company as defined in section 5727.01 of the Revised Code and used directly in the rendition of a public utility service as defined in division (P) of section 5739.01 of the Revised Code shall be listed and assessed at the same percentage of true value in money that such property is required to be assessed by section 5727.111 of the Revised Code if owned by the public utility or interexchange telecommunications company.

(C)(1) Merchandise or an agricultural product shipped from outside this state and held in this state in a warehouse or a place of storage without further manufacturing or processing and for storage only and for shipment outside this state, but that is taxable because it does not qualify as "not used in business in this state" under division (B)(1) or (2) of section 5701.08 of the Revised Code, shall be listed and assessed at a rate of twenty-five one-hundredths of its true value in money until reduced in accordance with the following schedule:

(a) For any year, subtract five one-hundredths from the rate at which such property was required to be listed and assessed in the preceding year, if the total statewide collection of all real and tangible personal property taxes for the second preceding year

exceeded the total statewide collection of all real and tangible personal property taxes for the third preceding year by more than the greater of four per cent or the rate of increase from the third to the second preceding years in the average consumer price index (all urban consumers, all items) prepared by the bureau of labor statistics of the United States department of labor;

(b) If no reduction in the assessment rate is made for a year, the rate is the same as for the preceding year.

(2) Each year until the year the assessment rate equals zero, the tax commissioner shall determine the assessment rate required under this division and shall notify all county auditors of that rate.

(3) Notwithstanding provisions to the contrary in division (B) of section 5701.08 of the Revised Code, during and after the year for which the assessment rate as calculated under this division equals zero, any merchandise or agricultural product shipped from outside this state and held in this state in any warehouse or place of storage, whether public or private, without further manufacturing or processing and for storage only and for shipment outside this state to any person for any purpose is not used in business in this state for property tax purposes.

(D)(1) Merchandise or an agricultural product owned by a qualified out-of-state person shipped from outside this state and held in this state in a public warehouse without further manufacturing or processing and for temporary storage only and for shipment inside this state, but that is taxable because it does not qualify as "not used in business in this state" under division (B)(1) or (2) of section 5701.08 of the Revised Code, shall be listed and assessed at a rate of twenty-five one-hundredths of its true value in money until reduced in accordance with the following schedule:

(a) For any year, subtract five one-hundredths from the rate at which such property was required to be listed and assessed in the preceding year, if the total statewide collection of all real and tangible personal property taxes for the second preceding year exceeded the total statewide collection of all real and tangible personal property taxes for the third preceding year by more than the greater of four per cent or the rate of increase from the third to the second preceding years in the average consumer price index (all urban consumers, all items) prepared by the bureau of labor statistics of the United States department of labor;

(b) If no reduction in the assessment rate is made for a year, the rate is the same as for the preceding year.

(2) Each year until the year the assessment rate equals zero, the tax commissioner shall determine the assessment rate required under this division and shall notify all county auditors of that rate.

(3) Notwithstanding provisions to the contrary in division (B) of section 5701.08 of the Revised Code, during and after the year for which the assessment rate as calculated under this division equals zero, any merchandise or agricultural product described in division (D)(1) of this section is not used in business in this state for property tax purposes.

(4) As used in division (D) of this section:

(a) "Qualified out-of-state person" means a person that does not own, lease, or use property, other than merchandise or an agricultural product described in this division, in this state, and does not have employees, agents, or representatives in this state;

(b) "Public warehouse" means a warehouse in this state that is not subject to the control of or under the supervision of the owner of the merchandise or agricultural product stored in it, or

staffed by the owner's employees, and from which the property is to be shipped inside this state.

(E) Personal property valued pursuant to section 5711.15 of the Revised Code and personal property required to be listed on the average basis by division (A) of section 5711.16 of the Revised Code, except property described in division (C) or (D) of this section, business fixtures, and furniture not held for sale in the course of business, shall be listed and assessed at the rate of twenty-five per cent of its true value in money until reduced to zero in accordance with the following schedule:

(1) Beginning in tax year 2002 and for each of tax years 2003~~,~~ and 2004, ~~2005, and 2006,~~ subtract one percentage point from the rate at which the property was required to be listed and assessed in the preceding year, if the total statewide collection of tangible personal property taxes for the second preceding year exceeded the total statewide collection of tangible personal property taxes for the third preceding year. If no reduction in the assessment rate is made for a year, the rate is the same as for the preceding year. ~~For purposes of this division, total statewide collection of tangible personal property taxes excludes taxes collected from public utilities and interexchange telecommunications companies on property that is determined to be taxable pursuant to section 5727.06 of the Revised Code.~~

(2) In tax ~~year 2007, the assessment rate shall be the lesser of twenty-four per cent or one percentage point less than the rate at which property was required to be listed and assessed the preceding year. Each tax year thereafter~~ years 2005 and 2006, the assessment rate shall be reduced by ~~one~~ two percentage ~~point until it equals zero per cent not later than tax year 2031~~ points, if the total statewide collection of tangible personal property taxes for the second preceding year exceeded the total statewide collection of tangible personal property taxes for the third

preceding year. If no reduction in the assessment rate is made for a year, the rate is the same as for the preceding year.

(3) For tax year 2007 and each tax year thereafter, the assessment rate shall be reduced by two percentage points. During and after the tax year that the assessment rate equals zero, the property described in division (E) of this section shall not be listed for taxation.

Each year until the year the assessment rate equals zero, the tax commissioner shall determine the assessment rate required under this division and shall notify all county auditors of that rate.

For purposes of division (E) of this section, "total statewide collection of tangible person property taxes" excludes taxes collected from public utilities and interexchange telecommunications companies on property that is determined to be taxable pursuant to section 5727.06 of the Revised Code.

(F) Unless otherwise provided by law, all other personal property used in business that has not been legally regarded as an improvement on land and considered in arriving at the value of the real property assessed for taxation shall be listed and assessed at the rate of twenty-five per cent of its true value in money.

Sec. 5711.27. No taxpayer shall fail to make a return within the time prescribed by law, or as extended pursuant to section 5711.04 of the Revised Code, nor fail to list in a return or disclose on an accompanying balance sheet or in other information filed with the return any item of taxable property ~~which he~~ the taxpayer is required ~~by~~ to list in the return under sections 5711.01 to 5711.36 of the Revised Code~~, to list therein~~.

If any taxpayer ~~does so fail the following shall apply:~~

~~(A) In the case of a taxpayer who fails to make a timely~~

~~return, the assessor shall add to the taxpayer's assessment as a penalty, one-half of the taxpayer's taxable value that is exempt from taxation under division (C)(3) of section 5709.01 of the Revised Code. If the taxpayer's taxable value that is exempt from taxation under division (C)(3) of section 5709.01 of the Revised Code is located in more than one taxing district, the penalty assessment shall be applied among taxing districts as if only five thousand dollars, or one-half of the taxpayer's taxable valuation, whichever is less, had been exempt from taxation under such division.~~

~~(B) In the case of a taxpayer who~~ fails to make a timely return, or fails to list or disclose any item ~~he~~ the taxpayer is required to return, the assessor shall add to the assessment of each class or item of taxable property ~~which~~ the taxpayer failed to return, list, or disclose ~~and to any amount added under division (A) of this section,~~ a penalty of up to fifty per cent ~~thereof~~ of the assessment; but if such taxpayer makes, within sixty days after the expiration of the time prescribed by such sections, a return or an amended or supplementary return and lists therein or discloses on an accompanying balance sheet or in other information filed with the return all items of taxable property ~~which he~~ the taxpayer is required by such sections to list, and in all cases in which the taxpayer's only default is ~~his~~ the failure to pay the amounts specified in section 5719.02 of the Revised Code within the time therein specified, such penalty shall be five per cent of the assessment, and, if the assessment certificate has been issued, an amended assessment certificate shall be issued and substituted therefor.

~~Either or both of the penalties~~ The penalty provided in this section may be abated in whole or in part by the assessor when it is shown that such failure is due to reasonable cause. The penalty assessment shall be entered on the proper tax list and duplicate,

and taxes shall be levied thereon the same as on the assessment itself.

~~If any taxpayer does so fail with respect to a return required to be filed for tax year 1982 or any prior year, the assessor shall add to the assessment of each class or item of taxable property which the taxpayer failed to return, list or disclose in addition to the penalties provided by law, an additional charge at the rate of one-half of one per cent per month from the date such property should have been returned or disclosed until the same is assessed, provided that said additional charge shall not be added to an assessment for any period of time in excess of ten years previous to the date of the assessment.~~

A fiduciary against whom a penalty assessment is made shall be personally liable for the amount of taxes levied in respect to such penalty assessment and any additional charge, and in case of fraud or intent to evade taxes, such fiduciary shall have no right of reimbursement against the property held by ~~him~~ the fiduciary as such fiduciary nor against the person for whose benefit the same is held.

Sec. 5711.33. (A)(1) When a county treasurer receives a certificate from a county auditor pursuant to division (A) of section 5711.32 of the Revised Code charging the treasurer with the collection of an amount of taxes due as the result of a deficiency assessment, the treasurer shall immediately prepare and mail a tax bill to the taxpayer owing such tax. The tax bill shall contain the name of the taxpayer; the taxable value, tax rate, and taxes charged for each year being assessed; the total amount of taxes due; the final date payment may be made without additional penalty; and any other information the treasurer considers pertinent or necessary. Taxes due and payable as a result of a

deficiency assessment, less any amount specifically excepted from collection under division (B) of section 5711.32 of the Revised Code, shall be paid with interest thereon as prescribed by section 5719.041 of the Revised Code on or before the sixtieth day following the date of issuance of the certificate by the county auditor. The balance of taxes found due and payable after a final determination by the tax commissioner or a final judgment of the board of tax appeals or any court to which such final judgment may be appealed~~,~~ shall be paid with interest thereon as prescribed by section 5719.041 of the Revised Code on or before the sixtieth day following the date of certification by the auditor to the treasurer pursuant to division (C) of section 5711.32 of the Revised Code of such final determination or judgment. Such final dates for payment shall be determined and exhibited on the tax bill by the treasurer.

(2) If~~,~~ on or before the sixtieth day following the date of a certification of a deficiency assessment under division (A) of section 5711.32 of the Revised Code or of a certification of a final determination or judgment under division (C) of section 5711.32 of the Revised Code, the taxpayer pays the full amount of taxes and interest due at the time of the receipt of certification with respect to that assessment, determination, or judgment, no interest shall accrue or be charged with respect to that assessment, determination, or judgment for the period that begins on the first day of the month in which the certification is made and that ends on the last day of the month preceding the month in which such sixtieth day occurs.

(B) When the taxes charged, as mentioned in division (A) of this section, are not paid within the time prescribed by such division, a penalty of ten per cent of the amount due and unpaid and interest for the period described in division (A)(2) of this section shall accrue at the time the treasurer closes the

treasurer's office for business on the last day so prescribed, but if the taxes are paid within ten days subsequent to the last day prescribed, the treasurer shall waive the collection of and the auditor shall remit one-half of the penalty. The treasurer shall not thereafter accept less than the full amount of taxes and penalty except as otherwise authorized by law. Such penalty shall be distributed in the same manner and at the same time as the tax upon which it has accrued. The whole amount collected shall be included in the next succeeding settlement of appropriate taxes.

(C) When the taxes charged, as mentioned in division (A) of this section, remain unpaid after the final date for payment prescribed by such division, such charges shall be deemed to be delinquent taxes. The county auditor shall cause such charges, including the penalty that has accrued pursuant to this section, to be added to the delinquent tax duplicate in accordance with section 5719.04 of the Revised Code.

(D) The county auditor, upon consultation with the county treasurer, shall remit a penalty imposed under division (B) of this section or division (C) of section 5719.03 of the Revised Code for the late payment of taxes when:

(1) The taxpayer could not make timely payment of the tax because of the negligence or error of the <u>county</u> auditor or <u>county</u> treasurer in the performance of a statutory duty relating to the levy or collection of such tax.

(2) In cases other than those described in division (D)(1) of this section, the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax.

(3) The tax was not timely paid because of the death or serious injury of the taxpayer, or the taxpayer's confinement in a

hospital within sixty days preceding the last day for payment of the tax if, in any case, the tax was subsequently paid within sixty days after the last day for payment of such tax.

(4) The taxpayer demonstrates ~~to the satisfaction of the auditor~~ that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the United States postal service on or before the last day for payment of such tax. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the date of payment of such tax.

(5) In cases other than those described in divisions (D)(1) to (4) of this section, the taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect.

(E) The taxpayer, upon application within sixty days after the mailing of the county auditor's decision, may request the tax commissioner to review the denial of the remission of a penalty by the county auditor. The application may be filed in person or by certified mail. If the application is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal service shall be treated as the date of filing. The commissioner shall consider the application, determine whether the penalty should be remitted, and certify the determination to the taxpayer and to the county treasurer and county auditor, who shall correct the tax list and duplicate accordingly. The commissioner ~~shall~~ may issue orders and instructions for the uniform implementation of this section by all county auditors and county treasurers, and such orders and instructions shall be followed by such officers.

Sec. 5713.07. The county auditor, at the time of making the assessment of real property subject to taxation, shall enter in a

separate list pertinent descriptions of all burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, real property used exclusively for a home for the aged, as defined in section 5701.13 of the Revised Code, ~~and~~ public buildings and property used exclusively for any public purpose, and any other property, with the lot or tract of land on which such house, institution, ~~or~~ public building, or other property is situated, and which ~~are exempt~~ have been exempted from taxation by either the tax commissioner under section 5715.27 of the Revised Code or by the housing officer under section 3735.67 of the Revised Code. ~~He~~ The auditor shall value such houses, buildings, property, and lots and tracts of land at their taxable value in the same manner as ~~he~~ the auditor is required to value other real property, designating in each case the township, municipal corporation, and number of the school district, or the name or designation of the school, religious society, or institution to which each house, lot, or tract belongs. If such property is held and used for other public purposes, ~~he~~ the auditor shall state by whom or how it is held.

Sec. 5713.08. (A) The county auditor shall make a list of all real and personal property in the auditor's county, including money, credits, and investments in bonds, stocks, or otherwise, which is exempted from taxation. Such list shall show the name of the owner, the value of the property exempted, and a statement in brief form of the ground on which such exemption has been granted. It shall be corrected annually by adding thereto the items of property which have been exempted during the year, and by striking therefrom the items which in the opinion of the auditor have lost their right of exemption and which have been reentered on the taxable list. No additions shall be made to such exempt lists and no additional items of property shall be exempted from taxation without the consent of the tax commissioner as is provided for in

section 5715.27 of the Revised Code~~, but when~~ or without the consent of the housing officer under section 3735.67 of the Revised Code. When any personal property or endowment fund of an institution has once been held by the commissioner to be properly exempt from taxation, it is not necessary to obtain the commissioner's consent to the exemption of additional property or investments of the same kind belonging to the same institution, but such property shall appear on the abstract filed annually with the commissioner. The commissioner may revise at any time the list in every county so that no property is improperly or illegally exempted from taxation. The auditor shall follow the orders of the commissioner given under this section. An abstract of such list shall be filed annually with the commissioner, on a form approved by the commissioner, and a copy thereof shall be kept on file in the office of each auditor for public inspection.

The commissioner shall not consider an application for exemption of property unless the application has attached thereto a certificate executed by the county treasurer certifying one of the following:

(1) That all taxes, assessments, interest, and penalties levied and assessed against the property sought to be exempted have been paid in full to the date upon which the application for exemption is filed, except for such taxes, interest, and penalties that may be remitted under division (B) of this section;

(2) That the applicant has entered into a valid delinquent tax contract with the county treasurer pursuant to division (A) of section 323.31 of the Revised Code to pay all of the delinquent taxes, assessments, interest, and penalties charged against the property, except for such taxes, interest, and penalties that may be remitted under division (B) of this section. If the auditor receives notice under section 323.31 of the Revised Code that such a written delinquent tax contract has become void, the auditor

shall strike such property from the list of exempted property and reenter such property on the taxable list. If property is removed from the exempt list because a written delinquent tax contract has become void, current taxes shall first be extended against that property on the general tax list and duplicate of real and public utility property for the tax year in which the auditor receives the notice required by division (A) of section 323.31 of the Revised Code that the delinquent tax contract has become void or, if that notice is not timely made, for the tax year in which falls the latest date by which the treasurer is required by such section to give such notice. A county auditor shall not remove from any tax list and duplicate the amount of any unpaid delinquent taxes, assessments, interest, or penalties owed on property that is placed on the exempt list pursuant to this division.

(3) That a tax certificate has been issued under section 5721.32 or 5721.33 of the Revised Code with respect to the property that is the subject of the application, and the tax certificate is outstanding.

(B) Any taxes, interest, and penalties which have become a lien after the property was first used for the exempt purpose, but in no case prior to the date of acquisition of the title to the property by the applicant, may be remitted by the commissioner, except as is provided in division (A) of section 5713.081 of the Revised Code.

(C) Real property acquired by the state in fee simple is exempt from taxation from the date of acquisition of title or date of possession, whichever is the earlier date, provided that all taxes, interest, and penalties as provided in the apportionment provisions of section 319.20 of the Revised Code have been paid to the date of acquisition of title or date of possession by the state, whichever is earlier. The proportionate amount of taxes that are a lien but not yet determined, assessed, and levied for

the year in which the property is acquired, shall be remitted by the county auditor for the balance of the year from date of acquisition of title or date of possession, whichever is earlier. This section shall not be construed to authorize the exemption of such property from taxation or the remission of taxes, interest, and penalties thereon until all private use has terminated.

Sec. 5713.081. (A) No application for real property tax exemption and tax remission shall be filed with, or considered by, the tax commissioner in which tax remission is requested for more than three tax years, and the commissioner shall not remit more than three years' ~~delinquent~~ taxes, penalties, and interest.

(B) All taxes, penalties, and interest, that have been delinquent for more than three years, appearing on the general tax list and duplicate of real property which have been levied and assessed against parcels of real property owned by the state, any political subdivision, or any other entity whose ownership of real property would constitute public ownership, shall be collected by the county auditor of the county where the real property is located. Such ~~official~~ auditor shall deduct from each distribution made by ~~him~~ the auditor, the amount necessary to pay the tax delinquency from any revenues or funds to the credit of the state, any political subdivision, or any other entity whose ownership of real property would constitute public ownership thereof, passing under ~~his~~ the auditor's control, or which come into ~~his~~ the auditor's possession, and such deductions shall be made on a continuing basis until all delinquent taxes, penalties, and interest noted in this section have been paid.

(C) As used in division (B) of this section, "political subdivision" includes townships, municipalities, counties, school districts, boards of education, all state and municipal universities, park boards, and any other entity whose ownership of

real property would constitute public ownership.

Sec. 5713.082. (A) Whenever the county auditor reenters an item of property to the tax list as provided in section 5713.08 of the Revised Code and there has been no conveyance of the property between separate entities, the auditor shall send notice by certified mail to the owner of the property that it is now subject to property taxation as a result of such action. The auditor shall send the notice at the same time ~~he~~ the auditor certifies the real property tax duplicate to the county treasurer. The notice shall describe the property and indicate that the owner may reapply for tax exemption by filing an application for exemption as provided in section 5715.27 of the Revised Code, and that failure to file such an application within the proper time period will result in the owner having to pay the taxes even if the property continued to be used for an exempt purpose.

(B) If the auditor failed to send the notice required by this section, and if the owner of the property subsequently files an application for tax exemption for the property for the current tax year, the tax commissioner may grant exemption to the property, and ~~he~~ the commissioner shall remit all ~~unpaid~~ taxes and penalties for each prior year since the property was reentered on the tax list notwithstanding the provisions of division (A) of section 5713.081 of the Revised Code.

Sec. 5713.30. As used in sections 5713.31 to 5713.37 and 5715.01 of the Revised Code:

(A) "Land devoted exclusively to agricultural use" means:

(1) Tracts, lots, or parcels of land totaling not less than ten acres that, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code, and through the last day of May of such year, were devoted

exclusively to commercial animal or poultry husbandry, aquaculture, apiculture, the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental trees, sod, or flowers, or the growth of timber for a noncommercial purpose, if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use, or were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government;

(2) Tracts, lots, or parcels of land totaling less than ten acres that, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code and through the last day of May of such year, were devoted exclusively to commercial animal or poultry husbandry, aquaculture, apiculture, the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental trees, sod, or flowers where such activities produced an average yearly gross income of at least twenty-five hundred dollars during such three-year period or where there is evidence of an anticipated gross income of such amount from such activities during the tax year in which application is made, or were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government;

(3) A tract, lot, or parcel of land taxed under sections 5713.22 to 5713.26 of the Revised Code is not land devoted exclusively to agricultural use;

(4) Tracts, lots, or parcels of land, or portions thereof ~~which~~ <u>that</u>, during the previous three consecutive calendar years have been designated as land devoted exclusively to agricultural use, but such land has been lying idle or fallow for up to one

year and no action has occurred to such land that is either inconsistent with the return of it to agricultural production or converts the land devoted exclusively to agricultural use as defined in this section. Such land shall remain designated as land devoted exclusively to agricultural use provided that beyond one year, but less than three years, the landowner proves good cause as determined by the board of revision.

"Land devoted exclusively to agricultural use" includes tracts, lots, or parcels of land or portions thereof that are used for conservation practices, provided that the tracts, lots, or parcels of land or portions thereof comprise twenty-five per cent or less of the total of the tracts, lots, or parcels of land that satisfy the criteria established in division (A)(1), (2), or (4) of this section together with the tracts, lots, or parcels of land or portions thereof that are used for conservation practices.

(B) "Conversion of land devoted exclusively to agricultural use" means any of the following:

(1) The failure of the owner of land devoted exclusively to agricultural use during the next preceding calendar year to file a renewal application under section 5713.31 of the Revised Code without good cause as determined by the board of revision;

(2) The failure of the new owner of such land to file an initial application under that section without good cause as determined by the board of revision;

(3) The failure of such land or portion thereof to qualify as land devoted exclusively to agricultural use for the current calendar year as requested by an application filed under such section;

(4) The failure of the owner of the land described in division (A)(4) of this section to act on such land in a manner that is consistent with the return of the land to agricultural

production after three years.

(C) "Tax savings" means the difference between the dollar amount of real property taxes levied in any year on land valued and assessed in accordance with its current agricultural use value and the dollar amount of real property taxes ~~which~~ that would have been levied upon such land if it had been valued and assessed for such year in accordance with Section 2 of Article XII, Ohio Constitution.

(D) "Owner" includes, but is not limited to, any person owning a fee simple, fee tail, or life estate~~,~~ or a buyer on a land installment contract.

(E) "Conservation practices" are practices used to abate soil erosion as required in the management of the farming operation, and include, but are not limited to, the installation, construction, development, planting, or use of grass waterways, terraces, diversions, filter strips, field borders, windbreaks, riparian buffers, wetlands, ponds, and cover crops for that purpose.

(F) "Wetlands" has the same meaning as in section 6111.02 of the Revised Code.

Sec. 5715.27. (A) ~~The~~ Except as provided in section 3735.67 of the Revised Code, the owner of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that ~~unpaid~~ taxes and penalties be remitted as provided in division (B) of section 5713.08 of the Revised Code.

(B) The board of education of any school district may request the tax commissioner to provide it with notification of applications for exemption from taxation for property located within that district. If so requested, the commissioner shall send

to the board for the quarters ending on the last day of March, June, September, and December of each year, reports that contain sufficient information to enable the board to identify each property that is the subject of an exemption application, including, but not limited to, the name of the property owner or applicant, the address of the property, and the auditor's parcel number. The commissioner shall mail the reports on or about the fifteenth day of the month following the end of the quarter.

(C) A board of education that has requested notification under division (B) of this section may, with respect to any application for exemption of property located in the district and included in the commissioner's most recent report provided under that division, file a statement with the commissioner and with the applicant indicating its intent to submit evidence and participate in any hearing on the application. The statements shall be filed prior to the first day of the third month following the end of the quarter in which that application was docketed by the commissioner. A statement filed in compliance with this division entitles the district to submit evidence and to participate in any hearing on the property and makes the district a party for purposes of sections 5717.02 to 5717.04 of the Revised Code in any appeal of the commissioner's decision to the board of tax appeals.

(D) The commissioner shall not hold a hearing on or grant or deny an application for exemption of property in a school district whose board of education has requested notification under division (B) of this section until the end of the period within which the board may submit a statement with respect to that application under division (C) of this section. The commissioner may act upon an application at any time prior to that date upon receipt of a written waiver from each such board of education, or, in the case of exemptions authorized by section 725.02, 1728.10, ~~3735.67,~~ 5709.41, 5709.62, or 5709.63 of the Revised Code, upon the request

of the property owner. Failure of a board of education to receive the report required in division (B) of this section shall not void an action of the commissioner with respect to any application. The commissioner may extend the time for filing a statement under division (C) of this section.

(E) A complaint may also be filed with the commissioner by any person, board, or officer authorized by section 5715.19 of the Revised Code to file complaints with the county board of revision against the continued exemption of any property granted exemption by the commissioner under this section.

(F) An application for exemption and a complaint against exemption shall be filed prior to the thirty-first day of December of the tax year for which exemption is requested or for which the liability of ~~any~~ the property to taxation in that year is requested. The commissioner shall consider such application or complaint in accordance with procedures established by the commissioner, determine whether the property is subject to taxation or exempt therefrom, and certify the commissioner's findings to the auditor, who shall correct the tax list and duplicate accordingly. If a tax certificate has been sold under section 5721.32 or 5721.33 of the Revised Code with respect to property for which an exemption has been requested, the tax commissioner shall also certify the findings to the county treasurer of the county in which the property is located.

(G) Applications and complaints, and documents of any kind related to applications and complaints, filed with the tax commissioner under this section, are public records within the meaning of section 149.43 of the Revised Code.

(H) If the commissioner determines that the use of property or other facts relevant to the taxability of property that is the subject of an application for exemption or a complaint under this section has changed while the application or complaint was

pending, the commissioner may make the determination under division (F) of this section separately for each tax year beginning with the year in which the application or complaint was filed or the year for which remission of ~~unpaid~~ taxes under division (B) of section 5713.08 of the Revised Code was requested, and including each subsequent tax year during which the application or complaint is pending before the commissioner.

Sec. 5715.39. (A) The tax commissioner may remit real property taxes, manufactured home taxes, penalties, and interest found by the commissioner to have been illegally assessed. The commissioner also may remit any penalty charged against any real property or manufactured or mobile home that was the subject of an application for exemption from taxation under section 5715.27 of the Revised Code if the commissioner determines that the applicant requested such exemption in good faith. The commissioner shall include notice of the remission in the commissioner's certification to the county auditor required under that section.

(B) The ~~commissioner, on application by a taxpayer~~ county auditor, upon consultation with the county treasurer, shall remit a penalty for late payment of any real property taxes or manufactured home taxes when:

~~(A)~~(1) The taxpayer could not make timely payment of the tax because of the negligence or error of the county auditor or county treasurer in the performance of a statutory duty relating to the levy or collection of such tax.

~~(B)~~(2) In cases other than those described in division ~~(A)~~(B)(1) of this section, the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax.

~~(C)~~(3) The tax was not timely paid because of the death or

serious injury of the taxpayer, or the taxpayer's confinement in a hospital within sixty days preceding the last day for payment of the tax if, in any case, the tax was subsequently paid within sixty days after the last day for payment of such tax.

~~(D)~~(4) The taxpayer demonstrates ~~to the satisfaction of the commissioner~~ that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the United States postal service on or before the last day for payment of such tax. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the date of payment of such tax.

(C) The board of revision shall remit a penalty for late payment of any real property taxes or manufactured homes taxes if, in cases other than those described in division (B)(1) to (4) of this section, the taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect.

(D) The taxpayer, upon application within sixty days after the mailing of the county auditor's or board of revision's decision, may request the tax commissioner to review the denial of the remission of a penalty by the auditor or board. The application may be filed in person or by certified mail. If the application is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal service shall be treated as the date of filing. The commissioner shall consider the application, determine whether the penalty should be remitted, and certify the determination to the taxpayer, to the county treasurer, and to the county auditor, who shall correct the tax list and duplicate accordingly. The commissioner may issue orders and instructions for the uniform implementation of this section by all county boards of revision, county auditors, and county treasurers, and such orders and instructions shall be followed by such officers and boards.

(E) This section shall not provide to the taxpayer any remedy with respect to any matter that the taxpayer may be authorized to complain of under section 4503.06, 5715.19, 5717.02, ~~and~~ or 5727.47 of the Revised Code.

(F) Applications for remission, and documents of any kind related to those applications, filed with the tax commissioner under this section~~,~~ are public records within the meaning of section 149.43 of the Revised Code~~,~~ unless otherwise excepted under that section.

Sec. 5717.011. (A) As used in this chapter, "tax administrator" has the same meaning as in section 718.01 of the Revised Code.

(B) Appeals from a municipal board of appeal created under section 718.11 of the Revised Code may be taken by the taxpayer or the tax administrator to the board of tax appeals or may be taken by the taxpayer or the tax administrator to a court of common pleas as otherwise provided by law. If the taxpayer or the tax administrator elects to make an appeal to the board of tax appeals or court of common pleas, the appeal shall be taken by the filing of a notice of appeal with the board of tax appeals or court of common pleas, the municipal board of appeal, and the opposing party. The notice of appeal shall be filed within sixty days after the day the appellant receives notice of the decision issued under section 718.11 of the Revised Code. The notice of appeal may be filed in person or by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code. If the notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service

shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the decision issued under section 718.11 of the Revised Code and shall specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

(C) Upon the filing of a notice of appeal with the board of tax appeals, the municipal board of appeal shall certify to the board of tax appeals a transcript of the record of the proceedings before it, together with all evidence considered by it in connection therewith. Such appeals may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the administrator, but upon the application of any interested party the board shall order the hearing of additional evidence, and the board may make such investigation concerning the appeal as it considers proper.

(D) If an issue being appealed under this section is addressed in a municipal corporation's ordinance or regulation, the tax administrator, upon the request of the board of tax appeals, shall provide a copy of the ordinance or regulation to the board of tax appeals.

Sec. 5717.03. (A) A decision of the board of tax appeals on an appeal filed with it pursuant to section 5717.01, 5717.011, or 5717.02 of the Revised Code shall be entered of record on the journal together with the date when the order is filed with the secretary for journalization.

(B) In case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine the taxable

value of the property whose valuation or assessment by the county board of revision is complained of, or in the event the complaint and appeal is against a discriminatory valuation, shall determine a valuation which shall correct such discrimination, and shall determine the liability of the property for taxation, if that question is in issue, and ~~its~~ the board of tax appeals's decision and the date when it was filed with the secretary for journalization shall be certified by ~~it~~ the board by certified mail to all persons who were parties to the appeal before ~~it~~ the board, to the person in whose name the property is listed, or sought to be listed, if such person is not a party to the appeal, to the county auditor of the county in which the property involved in the appeal is located, and to the tax commissioner.

In correcting a discriminatory valuation, the board of tax appeals shall increase or decrease the value of the property whose valuation or assessment by the county board of revision is complained of by a per cent or amount which will cause such property to be listed and valued for taxation by an equal and uniform rule.

(C) In the case of an appeal from a review, redetermination, or correction of a tax assessment, valuation, determination, finding, computation, or order of the tax commissioner, the order of the board of tax appeals and the date of the entry thereof upon its journal shall be certified by ~~it~~ the board by certified mail to all persons who were parties to the appeal before ~~it~~ the board, the person in whose name the property is listed or sought to be listed, if the decision determines the valuation or liability of property for taxation and if such person is not a party to the appeal, the taxpayer or other person to whom notice of the tax assessment, valuation, determination, finding, computation, or order, or correction or redetermination thereof, by the tax commissioner was by law required to be given, the director of

budget and management, if the revenues affected by such decision would accrue primarily to the state treasury, and the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue.

(D) In the case of an appeal from a municipal board of appeal created under section 718.11 of the Revised Code, the order of the board of tax appeals and the date of the entry thereof upon the board's journal shall be certified by the board by certified mail to all persons who were parties to the appeal before the board.

(E) In the case of all other appeals or applications filed with and determined by the board ~~its~~, the board's order and the date when ~~it~~ the order was filed by the secretary for journalization shall be certified by ~~it~~ the board by certified mail to the person who is a party to such appeal or application, to such persons as the law requires, and to such other persons as the board deems proper.

(F) The orders of the board may affirm, reverse, vacate, modify, or remand the tax assessments, valuations, determinations, findings, computations, or orders complained of in the appeals determined by ~~it~~ the board, and ~~its~~ the board's decision shall become final and conclusive for the current year unless reversed, vacated, or modified as provided in section 5717.04 of the Revised Code. When an order of the board becomes final the tax commissioner and all officers to whom such decision has been certified shall make the changes in their tax lists or other records which the decision requires.

(G) If the board finds that issues not raised on the appeal are important to a determination of a controversy, ~~it~~ the board may remand the cause for an administrative determination and the issuance of a new tax assessment, valuation, determination, finding, computation, or order, unless the parties stipulate to

the determination of such other issues without remand. An order remanding the cause is a final order~~, which~~. If the order relates to any issue other than a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals in Franklin county. If the order relates to a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals for the county in which the municipal corporation in which the dispute arose is primarily situated.

Sec. 5719.07. Subject to the rules prescribed by the tax commissioner, a county treasurer charged with the collection of delinquent taxes may issue a certificate of release of the lien provided for in section 5719.04 of the Revised Code if the amount secured thereby has been paid or omitted from the delinquent tax list and duplicate pursuant to section 5719.06 of the Revised Code. The treasurer shall issue a certificate of partial discharge of any part of the real property subject to the lien ~~if he finds~~ after finding that the value of the part of the property remaining subject to the lien is at least double the amount of the delinquent taxes and all prior liens upon such real property. Such certificate shall be filed and recorded with the county recorder of the county in which the notice of lien has been filed, for which recording the recorder shall charge a base fee of two dollars for services and a housing trust fund fee of two dollars pursuant to section 317.36 of the Revised Code.

Sec. 5725.19. Upon the issuance of a tax credit certificate by the Ohio venture capital authority under section 150.07 of the Revised Code, a credit may be claimed against the tax imposed on a domestic insurance company under section 5725.18 of the Revised Code. The credit shall be claimed in the calendar year specified

in the certificate issued by the authority. If the company elected a refundable credit under section 150.07 of the Revised Code, and the amount of the credit shown on the certificate exceeds the tax otherwise due under section 5725.18 of the Revised Code, the company may receive a refund equal to seventy-five per cent of such excess. If the company elected a nonrefundable credit, the amount of the credit shown on the certificate shall not exceed the ~~aount~~ amount of tax otherwise due. If the company elected a nonrefundable credit and the credit to which the company would otherwise be entitled under this section for any calendar year is greater than the tax otherwise due under section 5725.18 of the Revised Code, the excess shall be allowed as a credit in each of the ensuing ten calendar years, but the amount of any excess credit allowed in the ensuing calendar year shall be deducted from the balance carried forward to the next calendar year.

Sec. 5727.111. The taxable property of each public utility, except a railroad company, and of each interexchange telecommunications company shall be assessed at the following percentages of true value:

(A)(1) Except as provided in division (A)(2) of this section, fifty per cent in the case of a rural electric company;

(2) For tax year 2001 and thereafter, fifty per cent in the case of the taxable transmission and distribution property of a rural electric company, and twenty-five per cent for all its other taxable property;

(B) In the case of a telephone or telegraph company, twenty-five per cent for taxable property first subject to taxation in this state for tax year 1995 or thereafter, and ~~eighty-eight per cent~~ the following for all other taxable property~~;~~:

(1) For tax years prior to 2005, eighty-eight per cent;

(2) For tax year 2005, sixty-seven per cent;

(3) For tax year 2006, forty-six per cent;

(4) For tax year 2007 and thereafter, twenty-five per cent.

(C)~~(1) Except as provided in division (C)(2) of this section, eighty-eight per cent in the case of a natural gas company;~~

~~(2) For tax year 2001 and thereafter, twenty-five~~ Twenty-five per cent in the case of a natural gas company.

(D) Eighty-eight per cent in the case of a pipe-line, water-works, or heating company;

(E)(1) Except as provided in division (E)(2) or (3) of this section, one hundred per cent in the case of the taxable production equipment of an electric company and eighty-eight per cent for all its other taxable property;

(2) For tax year 2001 and thereafter, eighty-eight per cent in the case of the taxable transmission and distribution property of an electric company, and twenty-five per cent for all its other taxable property;

(3) Property listed and assessed under divisions (B)(1) and (2) of section 5711.22 of the Revised Code and leased to an electric company shall continue to be assessed at one hundred per cent for production equipment and eighty-eight per cent for all such other taxable property until January 1, 2002.

(F) Twenty-five per cent in the case of an interexchange telecommunications company;

(G) Twenty-five per cent in the case of a water transportation company.

Sec. 5727.30. (A) Except as provided in divisions (B) ~~and~~, (C), and (D) of this section, each public utility, except railroad companies, shall be subject to an annual excise tax, as provided

by sections 5727.31 to 5727.62 of the Revised Code, for the privilege of owning property in this state or doing business in this state during the twelve-month period next succeeding the period upon which the tax is based. The tax shall be imposed against each such public utility that, on the first day of such twelve-month period, owns property in this state or is doing business in this state, and the lien for the tax, including any penalties and interest accruing thereon, shall attach on such day to the property of the public utility in this state.

(B) An electric company's or a rural electric company's gross receipts received after April 30, 2001, are not subject to the annual excise tax imposed by this section.

(C) A natural gas company's gross receipts received after April 30, 2000, are not subject to the annual excise tax imposed by this section.

<u>(D) A telephone company's gross receipts derived from amounts billed to customers after June 30, 2004, are not subject to the annual excise tax imposed by this section. Notwithstanding any other provision of law, gross receipts derived from amounts billed by a telephone company to customers prior to July 1, 2004, shall be included in the telephone company's annual statement filed on or before August 1, 2004, which shall be the last statement or report filed under section 5727.31 of the Revised Code by a telephone company. A telephone company shall not deduct from its gross receipts included in that last statement any receipts it was unable to collect from its customers for the period of July 1, 2003, to June 30, 2004.</u>

Sec. 5727.32. (A) For the purpose of the tax imposed by section 5727.30 of the Revised Code, the statement required by section 5727.31 of the Revised Code shall contain:

(1) The name of the company;

(2) The nature of the company, whether a person, association, or corporation, and under the laws of what state or country organized;

(3) The location of its principal office;

(4) The name and post-office address of the president, secretary, auditor, treasurer, and superintendent or general manager;

(5) The name and post-office address of the chief officer or managing agent of the company in this state;

(6) The amount of the excise taxes paid or to be paid with the reports made during the current calendar year as provided by section 5727.31 of the Revised Code;

(7) In the case of telegraph ~~and telephone~~ companies:

(a) The gross receipts from all sources, whether messages, telephone tolls, rentals, or otherwise, for business done within this state, including all sums earned or charged, whether actually received or not, for the year ending on the thirtieth day of June, and the company's proportion of gross receipts for business done by it within this state in connection with other companies, firms, corporations, persons, or associations, but excluding all of the following:

(i) All of the receipts derived wholly from interstate business or business done for or with the federal government;

(ii) The receipts of amounts billed on behalf of other entities;

~~(iii) The receipts from sales to other telephone companies for resale;~~

~~(iv) The receipts from sales to providers of telecommunications service for resale, receipts from incoming or outgoing wide area transmission service or wide area transmission~~

~~type service, including eight hundred or eight-hundred-type service, and receipts from private communications service.~~

~~As used in this division, "receipts from sales to other telephone companies for resale" and "receipts from sales to providers of telecommunications service for resale" include but are not limited to, receipts of carrier access charges. "Carrier access charges" means compensation paid to the taxpayer telephone company by another telephone company or by a provider of telecommunications service for the use of the taxpayer's facilities to originate or terminate telephone calls or telecommunications service.~~

(b) The total gross receipts for such period from business done within this state.

(8) In the case of all public utilities subject to the tax imposed by section 5727.30 of the Revised Code, except telegraph ~~and telephone~~ companies:

(a) The gross receipts of the company, actually received, from all sources for business done within this state for the year next preceding the first day of May, including the company's proportion of gross receipts for business done by it within this state in connection with other companies, firms, corporations, persons, or associations, but excluding ~~all~~ both of the following:

(i) Receipts from interstate business or business done for the federal government;

(ii) Receipts from sales to another public utility for resale, provided such other public utility is subject to the tax levied by section 5727.24 or 5727.30 of the Revised Code;

(iii) ~~Receipts from the transmission or delivery of electricity to or for a rural electric company, provided that the electricity that has been so transmitted or delivered is for resale by the rural electric company. This division does not apply~~

~~to tax years 2002 and thereafter.~~

~~(iv) Receipts of an electric company, derived from the provision of electricity and other services to a qualified former owner of the production facilities that generated the electricity from which those receipts were derived. This division does not apply to tax years 2002 and thereafter. As used in this division, a "qualified former owner" means a person who meets both of the following conditions:~~

~~(I) On or before October 11, 1991, the person had sold to an electric company part of the production facility at which the electricity is generated, and, for at least twenty years prior to that sale, the facility was used to generate electricity, but it was not owned in whole or in part during that period by an electric company.~~

~~(II) At the time the electric company provided the electricity or other services for which the exclusion is claimed, the person, or a successor or assign of the person, owned not less than twenty per cent of the production facility and the rights to not less than twenty per cent of the production of that facility; and the person, or a successor or assign of the person, engaged primarily in a business other than providing electricity to others.~~

~~(v)~~ Receipts of a combined company derived from operating as a natural gas company that is subject to the tax imposed by section 5727.24 of the Revised Code.

(b) The total gross receipts of the company, for the year next preceding the first day of May, in this state from business done within the state.

(B) The reports required by section 5727.31 of the Revised Code shall contain:

(1) The name and principal mailing address of the company;

(2) The total amount of the gross receipts excise taxes charged or levied as based upon its last preceding annual statement filed prior to the first day of January of the year in which such report is filed;

(3) The amount of the excise taxes due with the report as provided by section 5727.31 of the Revised Code.

Sec. 5727.33. (A) For the purpose of computing the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code, the entire gross receipts actually received from all sources for business done within this state are taxable gross receipts, excluding the receipts described in divisions (B), (C), and (D)~~, and (E)~~ of this section. The gross receipts for the tax year of each telegraph ~~and telephone~~ company shall be computed for the period of the first day of July prior to the tax year to the thirtieth day of June of the tax year. The gross receipts of each natural gas company, including a combined company's taxable gross receipts attributed to a natural gas company activity, shall be computed in the manner required by section 5727.25 of the Revised Code. The gross receipts for the tax year of any other public utility subject to section 5727.30 of the Revised Code shall be computed for the period of the first day of May prior to the tax year to the thirtieth day of April of the tax year.

(B) In ascertaining and determining the gross receipts of each public utility subject to this section, the following gross receipts are excluded:

(1) All receipts derived wholly from interstate business;

(2) All receipts derived wholly from business done for or with the federal government;

(3) ~~All receipts derived wholly from the transmission or delivery of electricity to or for a rural electric company,~~

~~provided that the electricity that has been so transmitted or delivered is for resale by the rural electric company. This division does not apply to tax years 2002 and thereafter.~~

~~(4)~~ All receipts from the sale of merchandise;

~~(5)~~(4) All receipts from sales to other public utilities, except railroad~~,~~ and telegraph~~, and telephone~~ companies, for resale, provided the other public utility is subject to the tax levied by section 5727.24 or 5727.30 of the Revised Code.

~~(C) In ascertaining and determining the gross receipts of a telephone company, the following gross receipts are excluded:~~

~~(1) Receipts of amounts billed on behalf of other entities;~~

~~(2) Receipts from sales to other telephone companies for resale, as defined in division (A)(7) of section 5727.32 of the Revised Code;~~

~~(3) Receipts from incoming or outgoing wide area transmission service or wide area transmission type service, including eight hundred or eight-hundred-type service;~~

~~(4) Receipts from private communications service as described in division (AA)(2) of section 5739.01 of the Revised Code;~~

~~(5) Receipts from sales to providers of telecommunications service for resale, as defined in division (A)(7) of section 5727.32 of the Revised Code.~~

~~(D) In ascertaining and determining the gross receipts of an electric company, receipts derived from the provision of electricity and other services to a qualified former owner of the production facilities that generated the electricity from which those receipts were derived are excluded. This division does not apply to tax years 2002 and thereafter. As used in this division, a "qualified former owner" means a person who meets both of the following conditions:~~

~~(1) On or before October 11, 1991, the person had sold to an electric company part of the production facility at which the electricity is generated, and, for at least twenty years prior to that sale, the facility was used to generate electricity, but it was not owned in whole or part during that period by an electric company.~~

~~(2) At the time the electric company provided the electricity or other services for which the exclusion is claimed, the person, or a successor or assign of the person, owned not less than a twenty per cent ownership of the production facility and the rights to not less than twenty per cent of the production of that facility.~~

~~(E)~~(C) In ascertaining and determining the gross receipts of a natural gas company, receipts billed on behalf of other entities are excluded. The tax imposed by section 5729.811 of the Revised Code, along with transportation and billing and collection fees charged to other entities, shall be included in the gross receipts of a natural gas company.

~~(F)~~(D) In ascertaining and determining the gross receipts of a combined company subject to the tax imposed by section 5727.30 of the Revised Code, all receipts derived from operating as a natural gas company that are subject to the tax imposed by section 5727.24 of the Revised Code are excluded.

~~(G)~~(E) Except as provided in division ~~(H)~~(F) of this section, the amount ascertained by the commissioner under this section, less a deduction of twenty-five thousand dollars, shall be the taxable gross receipts of such companies for business done within this state for that year.

~~(H)~~(F) The amount ascertained under this section, less the following deduction, shall be the taxable gross receipts of a natural gas company or combined company subject to the tax imposed

by section 5727.24 of the Revised Code for business done within this state:

(1) For a natural gas company that files quarterly returns of the tax imposed by section 5727.24 of the Revised Code, six thousand two hundred fifty dollars for each quarterly return;

(2) For a natural gas company that files an annual return of the tax imposed by section 5727.24 of the Revised Code, twenty-five thousand dollars for each annual return;

(3) For a combined company, twenty-five thousand dollars on the annual statement filed under section 5727.31 of the Revised Code. A combined company shall not be entitled to a deduction in computing gross receipts subject to the tax imposed by section 5727.24 of the Revised Code.

Sec. 5727.56. Any public utility whose articles of incorporation or license certificate to do or transact business in this state has expired or has been canceled or revoked by the secretary of state, as provided by law for failure to make any report or return or to pay any tax or fee, upon payment to the secretary of state of any additional fees and penalties required to be paid to ~~him~~ the secretary of state, and upon the filing with the secretary of state of a certificate from the tax commissioner that it has complied with all the requirements of law as to franchise or excise tax reports and paid all franchise or excise taxes, fees, or penalties due thereon for every year of its delinquency, and upon the payment to the secretary of state of an additional fee of ten dollars, shall be reinstated and again entitled to exercise its rights, privileges, and franchises in this state, and the secretary of state shall cancel the entry of cancellation or expiration to exercise its rights, privileges, and franchises. If the reinstatement is not made within one year from the date of the cancellation of its articles of incorporation or

date of the cancellation or expiration of its license to do business, and it appears that articles of incorporation or license certificate have been issued to a corporation of the same or similar name, the applicant for reinstatement shall be required by the secretary of state, as a condition prerequisite to such reinstatement, to amend its articles by changing its name. A certificate of reinstatement may be filed in the county recorder's office of any county in the state, for which the recorder shall charge and collect a base fee of three dollars for services and a housing trust fund fee of three dollars pursuant to section 317.36 of the Revised Code.

If a domestic public utility applying for reinstatement has not previously designated an agent upon whom process may be served as required by section 1701.07 of the Revised Code, such public utility shall at the time of reinstatement and as a prerequisite thereto designate an agent in accordance with such section.

Any officer, shareholder, creditor, or receiver of any such public utility may at any time take all steps required by this section to effect such reinstatement, and in such case the designation of an agent upon whom process may be served shall not be a prerequisite to the reinstatement of the public utility.

Sec. 5727.84. (A) As used in this section and sections 5727.85, 5727.86, and 5727.87 of the Revised Code:

(1) "School district" means a city, local, or exempted village school district.

(2) "Joint vocational school district" means a joint vocational school district created under section 3311.16 of the Revised Code, and includes a cooperative education school district created under section 3311.52 or 3311.521 of the Revised Code and a county school financing district created under section 3311.50 of the Revised Code.

(3) "Local taxing unit" means a subdivision or taxing unit, as defined in section 5705.01 of the Revised Code, a park district created under Chapter 1545. of the Revised Code, or a township park district established under section 511.23 of the Revised Code, but excludes school districts and joint vocational school districts.

(4) "State education aid" means the sum of state aid amounts computed for a school district or joint vocational school district under Chapter 3317. of the Revised Code.

(5) "State education aid offset" means the amount determined for each school district or joint vocational school district under division (A)(1) of section 5727.85 of the Revised Code.

(6) "Recognized valuation" has the same meaning as in section 3317.02 of the Revised Code.

(7) "Electric company tax value loss" means the amount determined under division (D) of this section.

(8) "Natural gas company tax value loss" means the amount determined under division (E) of this section.

(9) "Tax value loss" means the sum of the electric company tax value loss and the natural gas company tax value loss.

(10) "Fixed-rate levy" means any tax levied on property other than a fixed-sum levy.

(11) "Fixed-rate levy loss" means the amount determined under division (G) of this section.

(12) "Fixed-sum levy" means a tax levied on property at whatever rate is required to produce a specified amount of tax money or levied in excess of the ten-mill limitation to pay debt charges, and includes school district emergency levies imposed pursuant to section 5705.194 of the Revised Code.

(13) "Fixed-sum levy loss" means the amount determined under

division (H) of this section.

(14) "Consumer price index" means the consumer price index (all items, all urban consumers) prepared by the bureau of labor statistics of the United States department of labor.

(B) The kilowatt-hour tax receipts fund is hereby created in the state treasury and shall consist of money arising from the tax imposed by section 5727.81 of the Revised Code. All money in the kilowatt-hour tax receipts fund shall be credited as follows:

(1) Fifty-nine and nine hundred seventy-six one-thousandths per cent, shall be credited to the general revenue fund.

(2) Two and six hundred forty-six one-thousandths per cent shall be credited to the local government fund, for distribution in accordance with section 5747.50 of the Revised Code.

(3) Three hundred seventy-eight one-thousandths per cent shall be credited to the local government revenue assistance fund, for distribution in accordance with section 5747.61 of the Revised Code.

(4) Twenty-five and four-tenths per cent shall be credited to the school district property tax replacement fund, which is hereby created in the state treasury for the purpose of making the payments described in section 5727.85 of the Revised Code.

(5) Eleven and six-tenths per cent shall be credited to the local government property tax replacement fund, which is hereby created in the state treasury for the purpose of making the payments described in section 5727.86 of the Revised Code.

(6) In fiscal years 2002, 2003, 2004, 2005, and 2006, if the revenue arising from the tax levied by section 5727.81 of the Revised Code is less than five hundred fifty-two million dollars, the amount credited to the general revenue fund under division (B)(1) of this section shall be reduced by the amount necessary to

credit to each of the funds in divisions (B)(2) and (3) of this section the amount it would have received if the tax did raise five hundred fifty-two million dollars for that fiscal year. The tax commissioner shall certify to the director of budget and management the amounts that shall be credited under this division.

(7) Beginning in fiscal year 2007, if the revenue arising from the tax levied by section 5727.81 of the Revised Code is less than five hundred fifty-two million dollars, the amount credited to the general revenue fund under division (B)(1) of this section shall be reduced by the amount necessary to credit to each of the funds in divisions (B)(2), (3), (4), and (5) of this section the amount that it would have received if the tax did raise five hundred fifty-two million dollars for that fiscal year. The tax commissioner shall certify to the director of budget and management the amounts to be credited under division (B)(7) of this section.

(C) The natural gas tax receipts fund is hereby created in the state treasury and shall consist of money arising from the tax imposed by section 5727.811 of the Revised Code. All money in the fund shall be credited as follows:

(1) Sixty-eight and seven-tenths per cent shall be credited to the school district property tax replacement fund for the purpose of making the payments described in section 5727.85 of the Revised Code.

(2) Thirty-one and three-tenths per cent shall be credited to the local government property tax replacement fund for the purpose of making the payments described in section 5727.86 of the Revised Code.

(3) Beginning in fiscal year 2007, if the revenue arising from the tax levied by section 5727.811 of the Revised Code is less than ninety million dollars, an amount equal to the

difference between the amount collected and ninety million dollars shall be transferred from the general revenue fund to each of the funds in divisions (C)(1) and (2) of this section in the same percentages as if that amount had been collected as taxes under section 5727.811 of the Revised Code. The tax commissioner shall certify to the director of budget and management the amounts that shall be transferred under this division.

(D) Not later than January 1, 2002, the tax commissioner shall determine for each taxing district its electric company tax value loss, which is the sum of the applicable amounts described in divisions (D)(1) ~~and (2)~~ to (3) of this section:

(1) The difference obtained by subtracting the amount described in division (D)(1)(b) from the amount described in division (D)(1)(a) of this section.

(a) The value of electric company and rural electric company tangible personal property as assessed by the tax commissioner for tax year 1998 on a preliminary assessment, or an amended preliminary assessment if issued prior to March 1, 1999, and as apportioned to the taxing district for tax year 1998;

(b) The value of electric company and rural electric company tangible personal property as assessed by the tax commissioner for tax year 1998 had the property been apportioned to the taxing district for tax year 2001, and assessed at the rates in effect for tax year 2001.

(2) The difference obtained by subtracting the amount described in division (D)(2)(b) from the amount described in division (D)(2)(a) of this section.

(a) The three-year average for tax years 1996, 1997, and 1998 of the assessed value from nuclear fuel materials and assemblies assessed against a person under Chapter 5711. of the Revised Code from the leasing of them to an electric company for those

respective tax years, as reflected in the preliminary assessments;

(b) The three-year average assessed value from nuclear fuel materials and assemblies assessed under division (D)(2)(a) of this section for tax years 1996, 1997, and 1998, as reflected in the preliminary assessments, using an assessment rate of twenty-five per cent.

(3) In the case of a taxing district having a nuclear power plant within its territory, any amount, resulting in an electric company tax value loss, obtained by subtracting the amount described in division (D)(1) of this section from the difference obtained by subtracting the amount described in division (D)(3)(b) of this section from the amount described in division (D)(3)(a) of this section.

(a) The value of electric company tangible personal property as assessed by the tax commissioner for tax year 2000 on a preliminary assessment, or an amended preliminary assessment if issued prior to March 1, 2001, and as apportioned to the taxing district for tax year 2000;

(b) The value of electric company tangible personal property as assessed by the tax commissioner for tax year 2001 on a preliminary assessment, or an amended preliminary assessment if issued prior to March 1, 2002, and as apportioned to the taxing district for tax year 2001.

(E) Not later than January 1, 2002, the tax commissioner shall determine for each taxing district its natural gas company tax value loss, which is the sum of the amounts described in divisions (E)(1) and (2) of this section:

(1) The difference obtained by subtracting the amount described in division (E)(1)(b) from the amount described in division (E)(1)(a) of this section.

(a) The value of all natural gas company tangible personal

property, other than property described in division (E)(2) of this section, as assessed by the tax commissioner for tax year 1999 on a preliminary assessment, or an amended preliminary assessment if issued prior to March 1, 2000, and apportioned to the taxing district for tax year 1999;

(b) The value of all natural gas company tangible personal property, other than property described in division (E)(2) of this section, as assessed by the tax commissioner for tax year 1999 had the property been apportioned to the taxing district for tax year 2001, and assessed at the rates in effect for tax year 2001.

(2) The difference in the value of current gas obtained by subtracting the amount described in division (E)(2)(b) from the amount described in division (E)(2)(a) of this section.

(a) The three-year average assessed value of current gas as assessed by the tax commissioner for tax years 1997, 1998, and 1999 on a preliminary assessment, or an amended preliminary assessment if issued prior to March 1, 2001, and as apportioned in the taxing district for those respective years;

(b) The three-year average assessed value from current gas under division (E)(2)(a) of this section for tax years 1997, 1998, and 1999, as reflected in the preliminary assessment, using an assessment rate of twenty-five per cent.

(F) The tax commissioner may request that natural gas companies, electric companies, and rural electric companies file a report to help determine the tax value loss under divisions (D) and (E) of this section. The report shall be filed within thirty days of the commissioner's request. A company that fails to file the report or does not timely file the report is subject to the penalty in section 5727.60 of the Revised Code.

(G) Not later than January 1, 2002, the tax commissioner shall determine for each school district, joint vocational school

district, and local taxing unit its fixed-rate levy loss, which is the sum of its electric company tax value loss multiplied by the tax rate in effect in tax year 1998 for fixed-rate levies and its natural gas company tax value loss multiplied by the tax rate in effect in tax year 1999 for fixed-rate levies.

(H) Not later than January 1, 2002, the tax commissioner shall determine for each school district, joint vocational school district, and local taxing unit its fixed-sum levy loss, which is the amount obtained by subtracting the amount described in division (H)(2) of this section from the amount described in division (H)(1) of this section:

(1) The sum of the electric company tax value loss multiplied by the tax rate in effect in tax year 1998, and the natural gas company tax value loss multiplied by the tax rate in effect in tax year 1999, for fixed-sum levies for all taxing districts within each school district, joint vocational school district, and local taxing unit. For the years 2002 through 2006, this computation shall include school district emergency levies that existed in 1998 in the case of the electric company tax value loss, and 1999 in the case of the natural gas company tax value loss, and all other fixed-sum levies that existed in 1998 in the case of the electric company tax value loss and 1999 in the case of the natural gas company tax value loss and continue to be charged in the tax year preceding the distribution year. For the years 2007 through 2016 in the case of school district emergency levies, and for all years after 2006 in the case of all other fixed-sum levies, this computation shall exclude all fixed-sum levies that existed in 1998 in the case of the electric company tax value loss and 1999 in the case of the natural gas company tax value loss, but are no longer in effect in the tax year preceding the distribution year. For the purposes of this section, an emergency levy that existed in 1998 in the case of the electric company tax

value loss, and 1999 in the case of the natural gas company tax value loss, continues to exist in a year beginning on or after January 1, 2007, but before January 1, 2017, if, in that year, the board of education levies a school district emergency levy for an annual sum at least equal to the annual sum levied by the board in tax year 1998 or 1999, respectively, less the amount of the payment certified under this division for 2002.

(2) The total taxable value in tax year 1999 less the tax value loss in each school district, joint vocational school district, and local taxing unit multiplied by one-fourth of one mill.

If the amount computed under division (H) of this section for any school district, joint vocational school district, or local taxing unit is greater than zero, that amount shall equal the fixed-sum levy loss reimbursed pursuant to division (E) of section 5727.85 of the Revised Code or division (A)(2) of section 5727.86 of the Revised Code, and the one-fourth of one mill that is subtracted under division (H)(2) of this section shall be apportioned among all contributing fixed-sum levies in the proportion of each levy to the sum of all fixed-sum levies within each school district, joint vocational school district, or local taxing unit.

(I) Notwithstanding divisions (D), (E), (G), and (H) of this section, in computing the tax value loss, fixed-rate levy loss, and fixed-sum levy loss, the tax commissioner shall use the greater of the 1998 tax rate or the 1999 tax rate in the case of levy losses associated with the electric company tax value loss, but the 1999 tax rate shall not include for this purpose any tax levy approved by the voters after June 30, 1999, and the tax commissioner shall use the greater of the 1999 or the 2000 tax rate in the case of levy losses associated with the natural gas company tax value loss.

(J) Not later than January 1, 2002, the tax commissioner shall certify to the department of education the tax value loss determined under divisions (D) and (E) of this section for each taxing district, the fixed-rate levy loss calculated under division (G) of this section, and the fixed-sum levy loss calculated under division (H) of this section. The calculations under divisions (G) and (H) of this section shall separately display the levy loss for each levy eligible for reimbursement.

(K) Not later than September 1, 2001, the tax commissioner shall certify the amount of the fixed-sum levy loss to the county auditor of each county in which a school district with a fixed-sum levy loss has territory.

Sec. 5727.85. (A) By the thirty-first day of July of each year, beginning in 2002 and ending in 2016, the department of education shall determine the following for each school district and each joint vocational school district eligible for payment under division (C) or (D) of this section:

(1) The state education aid offset, which is the difference obtained by subtracting the amount described in division (A)(1)(b) of this section from the amount described in division (A)(1)(a) of this section:

(a) The state education aid computed for the school district or joint vocational school district for the current fiscal year as of the thirty-first day of July;

(b) The state education aid that would be computed for the school district or joint vocational school district for the current fiscal year as of the thirty-first day of July if the recognized valuation included the tax value loss for the school district or joint vocational school district.

(2) The greater of zero or difference obtained by subtracting

the state education aid offset determined under division (A)(1) of this section from the fixed-rate levy loss certified under division (J) of section 5727.84 of the Revised Code for all taxing districts in each school district and joint vocational school district.

By the fifth day of August of each such year, the department of education shall certify the amount so determined under division (A)(1) of this section to the director of budget and management.

(B) Not later than the thirty-first day of October of the years 2006 through 2016, the department of education shall determine all of the following for each school district:

(1) The amount obtained by subtracting the district's state education aid computed for fiscal year 2002 from the district's state education aid computed for the current fiscal year;

(2) The inflation-adjusted property tax loss. The inflation-adjusted property tax loss equals the fixed-rate levy loss, excluding the tax loss from levies within the ten-mill limitation to pay debt charges, determined under division (G) of section 5727.84 of the Revised Code for all taxing districts in each school district plus the product obtained by multiplying that loss by the cumulative percentage increase in the consumer price index from January 1, 2002, to the thirtieth day of June of the current year.

(3) The difference obtained by subtracting the amount computed under division (B)(1) from the amount of the inflation-adjusted property tax loss. If this difference is zero or a negative number, no further payments shall be made under division (C) of this section to the school district from the school district property tax replacement fund.

(C) The department of education shall pay from the school district property tax replacement fund to each school district all

of the following:

(1) In February 2002, one-half of the fixed-rate levy loss certified under division (J) of section 5727.84 of the Revised Code between the twenty-first and twenty-eighth days of February.

(2) From August 2002 through August 2006, one-half of the amount calculated for that fiscal year under division (A)(2) of this section between the twenty-first and twenty-eighth days of August and of February.

(3) From February 2007 through August 2016, one-half of the amount calculated for that calendar year under division (B)(3) of this section between the twenty-first and twenty-eighth days of August and of February.

(4) For taxes levied within the ten-mill limitation for debt purposes in tax year 1998 in the case of electric company tax value losses, and in tax year 1999 in the case of natural gas company tax value losses, payments shall be made equal to one hundred per cent of the loss computed as if the tax were a fixed-rate levy, but those payments shall extend from fiscal year 2006 through fiscal year 2016.

The department of education shall report to each school district the apportionment of the payments among the school district's funds based on the certifications under division (J) of section 5727.84 of the Revised Code.

(D) Not later than January 1, 2002, for all taxing districts in each joint vocational school district, the tax commissioner shall certify to the department of education the fixed-rate levy loss determined under division (G) of section 5727.84 of the Revised Code. From February 2002 to August 2016, the department shall pay from the school district property tax replacement fund to the joint vocational school district one-half of the amount calculated for that fiscal year under division (A)(2) of this

section between the twenty-first and twenty-eighth days of August and of February.

(E)(1) Not later than January 1, 2002, for each fixed-sum levy levied by each school district or joint vocational school district and for each year for which a determination is made under division (H) of section 5727.84 of the Revised Code that a fixed-sum levy loss is to be reimbursed, the tax commissioner shall certify to the department of education the fixed-sum levy loss determined under that division. The certification shall cover a time period sufficient to include all fixed-sum levies for which the tax commissioner made such a determination. The department shall pay from the school district property tax replacement fund to the school district or joint vocational school district one-half of the fixed-sum levy loss so certified for each year between the twenty-first and twenty-eighth days of August and of February.

(2) Beginning in 2003, by the thirty-first day of January of each year, the tax commissioner shall review the certification originally made under division (E)(1) of this section. If the commissioner determines that a debt levy that had been scheduled to be reimbursed in the current year has expired, a revised certification for that and all subsequent years shall be made to the department of education.

(F) Beginning in August 2002, and ending in February 2017, the director of budget and management shall transfer from the school district property tax replacement fund to the general revenue fund each of the following:

(1) Between the twenty-eighth day of August and the fifth day of September, the lesser of one-half of the amount certified for that fiscal year under division (A)(2) of this section or the balance in the school district property tax replacement fund;

(2) Between the first and fifth days of March, the lesser of one-half of the amount certified for that fiscal year under division (A)(2) of this section or the balance in the school district property tax replacement fund.

(G) By August 5, 2002, the tax commissioner shall estimate the amount of money in the school district property tax replacement fund in excess of the amount necessary to make payments under divisions (C), (D), (E), and (F) of this section. Notwithstanding division (C) of this section, the department of education, in consultation with the tax commissioner and from those excess funds, may pay any school district four and one-half times the amount certified under division (A)(2) of this section. Payments shall be made in order from the smallest annual loss to the largest annual loss. A payment made under this division shall be in lieu of the payment to be made in August 2002 under division (C)(2) of this section. No payments shall be made in the manner established in this division to any school district with annual losses from permanent improvement fixed-rate levies in excess of twenty thousand dollars, or annual losses from any other fixed-rate levies in excess of twenty thousand dollars. A school district receiving a payment under this division is no longer entitled to any further payments under division (C) of this section.

(H) On the thirty-first day of July of 2003, 2004, 2005, and 2006, and on the thirty-first day of January and July of 2007 and each year thereafter, if the amount credited to the school district property tax replacement fund exceeds the amount needed to make payments from the fund under divisions (C), (D), (E), and (F) of this section, the department of education shall distribute the excess among school districts and joint vocational school districts. The amount distributed to each district shall bear the same proportion to the excess remaining in the fund as the ADM of

the district bears to the ADM of all of the districts. For the purpose of this division, "ADM" means the formula ADM in the case of a school district, and the average daily membership reported under section 3317.03 of the Revised Code in the case of a joint vocational school district.

If, in the opinion of the department of education, the excess remaining in the school district property tax replacement fund in any year is not sufficient to warrant distribution under this division, the excess shall remain to the credit of the fund.

Amounts received by a school district or joint vocational school district under this division shall be used exclusively for capital improvements.

(I) From fiscal year 2002 through fiscal year 2016, if the total amount in the school district property tax replacement fund is insufficient to make all payments under divisions (C), (D), and (E) of this section at the time the payments are to be made, the director of budget and management shall transfer from the general revenue fund to the school district property tax replacement fund the difference between the total amount to be paid and the total amount in the school district property tax replacement fund, except that no transfer shall be made by reason of a deficiency to the extent that it results from the amendment of section 5727.84 of the Revised Code by Amended Substitute House Bill No. 95 of the 125th general assembly.

(J) If all or a part of the territory of a school district or joint vocational school district is merged with or transferred to another district, the department of education, in consultation with the tax commissioner shall adjust the payments made under this section to each of the districts in proportion to the tax value loss apportioned to the merged or transferred territory.

~~(J)~~(K) There is hereby created the public utility property

tax study committee, effective January 1, 2011. The committee shall consist of the following seven members: the tax commissioner, three members of the senate appointed by the president of the senate, and three members of the house of representatives appointed by the speaker of the house of representatives. The appointments shall be made not later than January 31, 2011. The tax commissioner shall be the chairperson of the committee.

The committee shall study the extent to which each school district or joint vocational school district has been compensated, under sections 5727.84 and 5727.85 of the Revised Code as enacted by Substitute Senate Bill No. 3 of the 123rd general assembly and any subsequent acts, for the property tax loss caused by the reduction in the assessment rates for natural gas, electric, and rural electric company tangible personal property. Not later than June 30, 2011, the committee shall issue a report of its findings, including any recommendations for providing additional compensation for the property tax loss or regarding remedial legislation, to the president of the senate and the speaker of the house of representatives, at which time the committee shall cease to exist.

The department of taxation and department of education shall provide such information and assistance as is required for the committee to carry out its duties.

Sec. 5727.86. (A) Not later than January 1, 2002, the tax commissioner shall compute the payments to be made to each local taxing unit for each year according to divisions (A)(1), (2), (3), and (4) and division (E) of this section, and shall distribute the payments in the manner prescribed by division (C) of this section. The calculation of the fixed-sum levy loss shall cover a time period sufficient to include all fixed-sum levies for which the

tax commissioner determined, pursuant to division (H) of section 5727.84 of the Revised Code, that a fixed-sum levy loss is to be reimbursed.

(1) Except as provided in divisions (A)(3) and (4) of this section, for fixed-rate levy losses determined under division (G) of section 5727.84 of the Revised Code, payments shall be made in each of the following years at the following percentage of the fixed-rate levy loss certified under division (A) of this section:

YEAR	PERCENTAGE
2002	100%
2003	100%
2004	100%
2005	100%
2006	100%
2007	80%
2008	80%
2009	80%
2010	80%
2011	80%
2012	66.7%
2013	53.4%
2014	40.1%
2015	26.8%
2016	13.5%
2017 and thereafter	0%

(2) For fixed-sum levy losses determined under division (H) of section 5727.84 of the Revised Code, payments shall be made in the amount of one hundred per cent of the fixed-sum levy loss for payments required to be made in 2002 and thereafter.

(3) A local taxing unit in a county of less than two hundred fifty square miles that receives eighty per cent or more of its combined general fund and bond retirement fund revenues from

property taxes and rollbacks based on 1997 actual revenues as presented in its 1999 tax budget, and in which electric companies and rural electric companies comprise over twenty per cent of its property valuation, shall receive one hundred per cent of its fixed-rate levy losses from electric company tax value losses certified under division (A) of this section in years 2002 to 2016.

(4) For taxes levied within the ten-mill limitation for debt purposes in tax year 1998 in the case of electric company tax value losses, and in tax year 1999 in the case of natural gas company tax value losses, payments shall be made equal to one hundred per cent of the loss computed as if the tax were a fixed-rate levy, but those payments shall extend from fiscal year 2006 through fiscal year 2016.

(B) Beginning in 2003, by the thirty-first day of January of each year, the tax commissioner shall review the calculation originally made under division (A) of this section of the fixed-sum levy loss determined under division (H) of section 5727.84 of the Revised Code. If the commissioner determines that a fixed-sum levy that had been scheduled to be reimbursed in the current year has expired, a revised calculation for that and all subsequent years shall be made.

(C) Payments to local taxing units required to be made under divisions (A) and (E) of this section shall be paid from the local government property tax replacement fund to the county undivided income tax fund in the proper county treasury. One-half of the amount certified under those divisions shall be paid between the twenty-first and twenty-eighth days of August and of February. The county treasurer shall distribute amounts paid under division (A) of this section to the proper local taxing unit as if they had been levied and collected as taxes, and the local taxing unit shall apportion the amounts so received among its funds in the

same proportions as if those amounts had been levied and collected as taxes. Amounts distributed under division (E) of this section shall be credited to the general fund of the local taxing unit that receives them.

(D) By February 5, 2002, the tax commissioner shall estimate the amount of money in the local government property tax replacement fund in excess of the amount necessary to make payments in that month under division (C) of this section. Notwithstanding division (A) of this section, the tax commissioner may pay any local taxing unit, from those excess funds, nine and four-tenths times the amount computed for 2002 under division (A)(1) of this section. A payment made under this division shall be in lieu of the payment to be made in February 2002 under division (A)(1) of this section. A local taxing unit receiving a payment under this division will no longer be entitled to any further payments under division (A)(1) of this section. A payment made under this division shall be paid from the local government property tax replacement fund to the county undivided income tax fund in the proper county treasury. The county treasurer shall distribute the payment to the proper local taxing unit as if it had been levied and collected as taxes, and the local taxing unit shall apportion the amounts so received among its funds in the same proportions as if those amounts had been levied and collected as taxes.

(E) On the thirty-first day of July of 2002, 2003, 2004, 2005, and 2006, and on the thirty-first day of January and July of 2007 and each year thereafter, if the amount credited to the local government property tax replacement fund exceeds the amount needed to be distributed from the fund under division (A) of this section in the following month, the tax commissioner shall distribute the excess to each county as follows:

(1) One-half shall be distributed to each county in

proportion to each county's population.

(2) One-half shall be distributed to each county in the proportion that the amounts determined under divisions (G) and (H) of section 5727.84 of the Revised Code for all local taxing units in the county is of the total amounts so determined for all local taxing units in the state.

The amounts distributed to each county under this division shall be distributed by the county treasurer to each local taxing unit in the county in the proportion that the unit's current taxes charged and payable are of the total current taxes charged and payable of all the local taxing units in the county. As used in this division, "current taxes charged and payable" means the taxes charged and payable as most recently determined for local taxing units in the county.

If, in the opinion of the tax commissioner, the excess remaining in the local government property tax replacement fund in any year is not sufficient to warrant distribution under this division, the excess shall remain to the credit of the fund.

(F) From fiscal year 2002 through fiscal year 2016, if the total amount in the local government property tax replacement fund is insufficient to make all payments under division (C) of this section at the times the payments are to be made, the director of budget and management shall transfer from the general revenue fund to the local government property tax replacement fund the difference between the total amount to be paid and the amount in the local government property tax replacement fund<u>, except that no transfer shall be made by reason of a deficiency to the extent that it results from the amendment of section 5727.84 of the Revised Code by Amended Substitute House Bill No. 95 of the 125th general assembly</u>.

(G) If all or a part of the territories of two or more local

taxing units are merged, or unincorporated territory of a township is annexed by a municipal corporation, the tax commissioner shall adjust the payments made under this section to each of the local taxing units in proportion to the tax value loss apportioned to the merged or annexed territory, or as otherwise provided by a written agreement between the legislative authorities of the local taxing units certified to the tax commissioner not later than the first day of June of the calendar year in which the payment is to be made.

Sec. 5728.04. (A) It is unlawful for any person to operate a commercial car with three or more axles when operated alone or as part of a commercial tandem, a commercial car with two axles that is to be operated as part of a commercial tandem with a gross vehicle weight or a registered gross vehicle weight exceeding twenty-six thousand pounds, or a commercial tractor when operated alone or as part of a commercial tractor combination or commercial tandem on a public highway ~~without~~ under either of the following circumstances:

(1) Without a ~~valid~~ fuel use permit for such commercial car or commercial tractor.

(2) With a suspended or surrendered fuel use permit for such commercial car or commercial tractor.

(B) The judge or magistrate of any court finding any person guilty of unlawfully operating a commercial car or commercial tractor as provided for in this section shall immediately notify the tax commissioner of such violation and shall transmit to the tax commissioner the name and the permanent address of the owner of the commercial car or commercial tractor operated in violation of this section, the registration number, the state of registration, and the certificate of title number of the commercial car or commercial tractor. The commercial car or

commercial tractor involved in a violation of division (A)(1) or (2) of this section may be detained until a valid fuel use permit is obtained or reinstated.

Sec. 5728.06. (A) For the following purposes, an excise tax is hereby imposed on the use of motor fuel to operate on the public highways of this state a commercial car with three or more axles operated alone or as part of a commercial tandem, a commercial car with two axles operated as part of a commercial tandem having a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, or a commercial tractor operated alone or as part of a commercial tractor combination or commercial tandem: to provide revenue for maintaining the state highway system, to widen existing surfaces on such highways, to resurface such highways, to enable the counties of the state properly to plan for, maintain, and repair their roads, to enable the municipal corporations to plan, construct, reconstruct, repave, widen, maintain, repair, clear, and clean public highways, roads, and streets; to pay that portion of the construction cost of a highway project that a county, township, or municipal corporation normally would be required to pay, but that the director of transportation, pursuant to division (B) of section 5531.08 of the Revised Code, determines instead will be paid from moneys in the highway operating fund; to maintain and repair bridges and viaducts; to purchase, erect, and maintain street and traffic signs and markers; to purchase, erect, and maintain traffic lights and signals; to pay the costs apportioned to the public under section 4907.47 of the Revised Code; and to supplement revenue already available for such purposes, to distribute equitably among those persons using the privilege of driving motor vehicles upon such highways and streets the cost of maintaining and repairing the same, and to pay the interest, principal, and charges on bonds and other obligations

issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code. The tax is imposed in the same amount as the motor fuel tax imposed under Chapter 5735. of the Revised Code plus an additional tax of three cents per gallon of motor fuel used before July 1, 2004, ~~and an~~ provided that the additional tax ~~of~~ shall be reduced to two cents per gallon of motor fuel used ~~before~~ from July 1, 2004 through June 30, 2005, as determined by the gallons consumed while operated on the public highways of this state. Subject to section 5735.292 of the Revised Code, on and after July 1, 2005, the tax shall be imposed in the same amount as the motor fuel tax imposed under Chapter 5735. of the Revised Code. Payment of the fuel use tax shall be made by the purchase of motor fuel within Ohio of such gallons as is equivalent to the gallons consumed while operating such a motor vehicle on the public highways of this state, or by direct remittance to the treasurer of state with the fuel use tax return filed pursuant to section 5728.08 of the Revised Code.

Any person subject to the tax imposed under this section who purchases motor fuel in this state for use in another state in excess of the amount consumed while operating such motor vehicle on the public highways of this state shall be allowed a credit against the tax imposed by this section or a refund equal to the motor fuel tax paid to this state on such excess. No such credit or refund shall be allowed for taxes paid to any state that imposes a tax on motor fuel purchased or obtained in this state and used on the highways of such other state but does not allow a similar credit or refund for the tax paid to this state on motor fuel purchased or acquired in the other state and used on the public highways of this state.

The tax commissioner is authorized to determine whether such credits or refunds are available and to prescribe such rules as

are required for the purpose of administering this chapter.

(B) Within sixty days after the last day of each month, the tax commissioner shall determine the amount of motor fuel tax allowed as a credit against the tax imposed by this section. The commissioner shall certify the amount to the director of budget and management and the treasurer of state, who shall credit the amount in accordance with section 5728.08 of the Revised Code from current revenue arising from the tax levied by section 5735.05 of the Revised Code.

(C) The owner of each commercial car and commercial tractor subject to sections 5728.01 to 5728.14 of the Revised Code is liable for the payment of the full amount of the taxes imposed by this section.

An owner who is a person regularly engaged, for compensation, in the business of leasing or renting motor vehicles without furnishing drivers may designate that the lessee of a motor vehicle leased for a period of thirty days or more shall report and pay the tax incurred during the duration of the lease. An owner who is an independent contractor that furnishes both the driver and motor vehicle, may designate that the person so furnished with the driver and motor vehicle for a period of thirty days or more shall report and pay the tax incurred during that period. An independent contractor that is not an owner, but that furnishes both the driver and motor vehicle and that has been designated by the owner of the motor vehicle to report and pay the tax, may designate that the person so furnished with driver and motor vehicle for a period of thirty days or more shall report and pay the tax incurred during that period.

Sec. 5728.99. (A)(1) Except as provided in division (A)(2) of this section, whoever violates any provision of sections 5728.01 to 5728.14 of the Revised Code, or any rule promulgated by the tax

commissioner under the authority of any provision of those sections, for the violation of which no penalty is provided elsewhere, shall be fined not less than twenty-five nor more than one hundred dollars.

(2) Division (A)(1) of this section does not apply to the filing of any false or fraudulent return, application, or permit under section 5728.02, 5728.03, or 5728.08 of the Revised Code. The filing of any false or fraudulent return, application, or permit under any of those sections is a violation of section 2921.13 of the Revised Code.

(B)(1) Whoever violates division (A)(1) of section 5728.04 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(2) Whoever violates division (A)(2) of section 5728.04 of the Revised Code is guilty of a misdemeanor of the first degree.

Sec. 5729.08. Upon the issuance of a tax credit certificate by the Ohio venture capital authority under section 150.07 of the Revised Code, a credit may be claimed against the tax imposed on a foreign insurance company under section 5729.03 of the Revised Code. The credit shall be claimed in the calendar year specified in the certificate issued by the authority. If the company elected a refundable credit under section 150.07 of the Revised Code, and the amount of the credit shown on the certificate exceeds the tax otherwise due under section 5729.03 of the Revised Code, the company may receive a refund equal to seventy-five per cent of such excess. If the company elected a nonrefundable credit, the amount of the credit shown on the certificate shall not exceed the amount of tax otherwise due. If the company elected a nonrefundable credit and the credit to which the company would otherwise be entitled under this section for any calendar year is greater than the tax otherwise due under section 5729.03 of the Revised Code, the excess shall be allowed as a credit in each of

the ensuing ten calendar years, but the amount of any excess credit allowed in the ensuing calendar year shall be deducted from the balance carried forward to the next calendar year.

Sec. 5733.04. As used in this chapter:

(A) "Issued and outstanding shares of stock" applies to nonprofit corporations, as provided in section 5733.01 of the Revised Code, and includes, but is not limited to, membership certificates and other instruments evidencing ownership of an interest in such nonprofit corporations, and with respect to a financial institution that does not have capital stock, "issued and outstanding shares of stock" includes, but is not limited to, ownership interests of depositors in the capital employed in such an institution.

(B) "Taxpayer" means a corporation subject to the tax imposed by section 5733.06 of the Revised Code.

(C) "Resident" means a corporation organized under the laws of this state.

(D) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(E) "Taxable year" means the period prescribed by division (A) of section 5733.031 of the Revised Code upon the net income of which the value of the taxpayer's issued and outstanding shares of stock is determined under division (B) of section 5733.05 of the Revised Code or the period prescribed by division (A) of section 5733.031 of the Revised Code that immediately precedes the date as of which the total value of the corporation is determined under division (A) or (C) of section 5733.05 of the Revised Code.

(F) "Tax year" means the calendar year in and for which the tax imposed by section 5733.06 of the Revised Code is required to

be paid.

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

(H) "Federal income tax" means the income tax imposed by the Internal Revenue Code.

(I) Except as provided in section 5733.058 of the Revised Code, "net income" means the taxpayer's 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, subject to the following adjustments:

(1)(a) Deduct any net operating loss incurred in any taxable years ending in 1971 or thereafter, but exclusive of any net operating loss incurred in taxable years ending prior to January 1, 1971. This deduction shall not be allowed in any tax year commencing before December 31, 1973, but shall be carried over and allowed in tax years commencing after December 31, 1973, until fully utilized in the next succeeding taxable year or years in which the taxpayer has net income, but in no case for more than the designated carryover period as described in division (I)(1)(b) of this section. The amount of such net operating loss, as determined under the allocation and apportionment provisions of section 5733.051 and division (B) of section 5733.05 of the Revised Code for the year in which the net operating loss occurs, shall be deducted from net income, as determined under the allocation and apportionment provisions of section 5733.051 and division (B) of section 5733.05 of the Revised Code, to the extent necessary to reduce net income to zero with the remaining unused portion of the deduction, if any, carried forward to the remaining years of the designated carryover period as described in division (I)(1)(b) of this section, or until fully utilized, whichever occurs first.

(b) For losses incurred in taxable years ending on or before December 31, 1981, the designated carryover period shall be the five consecutive taxable years after the taxable year in which the net operating loss occurred. For losses incurred in taxable years ending on or after January 1, 1982, and beginning before August 6, 1997, the designated carryover period shall be the fifteen consecutive taxable years after the taxable year in which the net operating loss occurs. For losses incurred in taxable years beginning on or after August 6, 1997, the designated carryover period shall be the twenty consecutive taxable years after the taxable year in which the net operating loss occurs.

(c) The tax commissioner may require a taxpayer to furnish any information necessary to support a claim for deduction under division (I)(1)(a) of this section and no deduction shall be allowed unless the information is furnished.

(2) Deduct any amount included in net income by application of section 78 or 951 of the Internal Revenue Code, amounts received for royalties, technical or other services derived from sources outside the United States, and dividends received from a subsidiary, associate, or affiliated corporation that neither transacts any substantial portion of its business nor regularly maintains any substantial portion of its assets within the United States. For purposes of determining net foreign source income deductible under division (I)(2) of this section, the amount of gross income from all such sources other than dividend income and income derived by application of section 78 or 951 of the Internal Revenue Code shall be reduced by:

(a) The amount of any reimbursed expenses for personal services performed by employees of the taxpayer for the subsidiary, associate, or affiliated corporation;

(b) Ten per cent of the amount of royalty income and

technical assistance fees;

(c) Fifteen per cent of the amount of all other income.

The amounts described in divisions (I)(2)(a) to (c) of this section are deemed to be the expenses attributable to the production of deductible foreign source income unless the taxpayer shows, by clear and convincing evidence, less actual expenses, or the tax commissioner shows, by clear and convincing evidence, more actual expenses.

(3) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of a capital asset, or an asset described in section 1231 of the Internal Revenue Code, to the extent that such loss or gain occurred prior to the first taxable year on which the tax provided for in section 5733.06 of the Revised Code is computed on the corporation's net income. For purposes of division (I)(3) of this section, the amount of the prior loss or gain shall be measured by the difference between the original cost or other basis of the asset and the fair market value as of the beginning of the first taxable year on which the tax provided for in section 5733.06 of the Revised Code is computed on the corporation's net income. At the option of the taxpayer, the amount of the prior loss or gain may be a percentage of the gain or loss, which percentage shall be determined by multiplying the gain or loss by a fraction, the numerator of which is the number of months from the acquisition of the asset to the beginning of the first taxable year on which the fee provided in section 5733.06 of the Revised Code is computed on the corporation's net income, and the denominator of which is the number of months from the acquisition of the asset to the sale, exchange, or other disposition of the asset. The adjustments described in this division do not apply to any gain or loss where the gain or loss is recognized by a qualifying taxpayer, as defined in section 5733.0510 of the Revised Code, with respect to

a qualifying taxable event, as defined in that section.

(4) Deduct the dividend received deduction provided by section 243 of the Internal Revenue Code.

(5) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent included in federal taxable income. As used in divisions (I)(5) and (6) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.

(6) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of public obligations to the extent included in federal taxable income.

(7) To the extent not otherwise allowed, deduct any dividends or distributions received by a taxpayer from a public utility, excluding an electric company <u>and a combined company, and, for tax years 2005 and thereafter, a telephone company</u>, if the taxpayer owns at least eighty per cent of the issued and outstanding common stock of the public utility. As used in division (I)(7) of this section, "public utility" means a public utility as defined in Chapter 5727. of the Revised Code, whether or not the public utility is doing business in the state.

(8) To the extent not otherwise allowed, deduct any dividends received by a taxpayer from an insurance company, if the taxpayer owns at least eighty per cent of the issued and outstanding common stock of the insurance company. As used in division (I)(8) of this section, "insurance company" means an insurance company that is taxable under Chapter 5725. or 5729. of the Revised Code.

(9) Deduct expenditures for modifying existing buildings or structures to meet American national standards institute standard A-117.1-1961 (R-1971), as amended; provided, that no deduction shall be allowed to the extent that such deduction is not

permitted under federal law or under rules of the tax commissioner. Those deductions as are allowed may be taken over a period of five years. The tax commissioner shall adopt rules under Chapter 119. of the Revised Code establishing reasonable limitations on the extent that expenditures for modifying existing buildings or structures are attributable to the purpose of making the buildings or structures accessible to and usable by physically handicapped persons.

(10) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income before operating loss deduction and special deductions for the taxable year, had the targeted jobs credit allowed and determined under sections 38, 51, and 52 of the Internal Revenue Code not been in effect.

(11) Deduct net interest income on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent the laws of the United States prohibit inclusion of the net interest for purposes of determining the value of the taxpayer's issued and outstanding shares of stock under division (B) of section 5733.05 of the Revised Code. As used in division (I)(11) of this section, "net interest" means interest net of any expenses taken on the federal income tax return that would not have been allowed under section 265 of the Internal Revenue Code if the interest were exempt from federal income tax.

(12)(a) Except as set forth in division (I)(12)(d) of this section, to the extent not included in computing the taxpayer's federal taxable income before operating loss deduction and special deductions, add gains and deduct losses from direct or indirect sales, exchanges, or other dispositions, made by a related entity who is not a taxpayer, of the taxpayer's indirect, beneficial, or

constructive investment in the stock or debt of another entity, unless the gain or loss has been included in computing the federal taxable income before operating loss deduction and special deductions of another taxpayer with a more closely related investment in the stock or debt of the other entity. The amount of gain added or loss deducted shall not exceed the product obtained by multiplying such gain or loss by the taxpayer's proportionate share, directly, indirectly, beneficially, or constructively, of the outstanding stock of the related entity immediately prior to the direct or indirect sale, exchange, or other disposition.

(b) Except as set forth in division (I)(12)(e) of this section, to the extent not included in computing the taxpayer's federal taxable income before operating loss deduction and special deductions, add gains and deduct losses from direct or indirect sales, exchanges, or other dispositions made by a related entity who is not a taxpayer, of intangible property other than stock, securities, and debt, if such property was owned, or used in whole or in part, at any time prior to or at the time of the sale, exchange, or disposition by either the taxpayer or by a related entity that was a taxpayer at any time during the related entity's ownership or use of such property, unless the gain or loss has been included in computing the federal taxable income before operating loss deduction and special deductions of another taxpayer with a more closely related ownership or use of such intangible property. The amount of gain added or loss deducted shall not exceed the product obtained by multiplying such gain or loss by the taxpayer's proportionate share, directly, indirectly, beneficially, or constructively, of the outstanding stock of the related entity immediately prior to the direct or indirect sale, exchange, or other disposition.

(c) As used in division (I)(12) of this section, "related entity" means those entities described in divisions (I)(12)(c)(i)

to (iii) of this section:

(i) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(ii) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(iii) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (I)(12)(c)(iv) of this section, if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least fifty per cent of the value of the corporation's outstanding stock.

(iv) The attribution rules of section 318 of the Internal Revenue Code apply for purposes of determining whether the ownership requirements in divisions (I)(12)(c)(i) to (iii) of this section have been met.

(d) For purposes of the adjustments required by division (I)(12)(a) of this section, the term "investment in the stock or debt of another entity" means only those investments where the taxpayer and the taxpayer's related entities directly, indirectly, beneficially, or constructively own, in the aggregate, at any time during the twenty-four month period commencing one year prior to the direct or indirect sale, exchange, or other disposition of

such investment at least fifty per cent or more of the value of either the outstanding stock or such debt of such other entity.

(e) For purposes of the adjustments required by division (I)(12)(b) of this section, the term "related entity" excludes all of the following:

(i) Foreign corporations as defined in section 7701 of the Internal Revenue Code;

(ii) Foreign partnerships as defined in section 7701 of the Internal Revenue Code;

(iii) Corporations, partnerships, estates, and trusts created or organized in or under the laws of the Commonwealth of Puerto Rico or any possession of the United States;

(iv) Foreign estates and foreign trusts as defined in section 7701 of the Internal Revenue Code.

The exclusions described in divisions (I)(12)(e)(i) to (iv) of this section do not apply if the corporation, partnership, estate, or trust is described in any one of divisions (C)(1) to (5) of section 5733.042 of the Revised Code.

(f) Nothing in division (I)(12) of this section shall require or permit a taxpayer to add any gains or deduct any losses described in divisions (I)(12)(f)(i) and (ii) of this section:

(i) Gains or losses recognized for federal income tax purposes by an individual, estate, or trust without regard to the attribution rules described in division (I)(12)(c) of this section;

(ii) A related entity's gains or losses described in division (I)(12)(b) of this section if the taxpayer's ownership of or use of such intangible property was limited to a period not exceeding nine months and was attributable to a transaction or a series of transactions executed in accordance with the election or elections

made by the taxpayer or a related entity pursuant to section 338 of the Internal Revenue Code.

(13) Any adjustment required by section 5733.042 of the Revised Code.

(14) Add any amount claimed as a credit under section 5733.0611 of the Revised Code to the extent that such amount satisfies either of the following:

(a) It was deducted or excluded from the computation of the corporation's taxable income before operating loss deduction and special deductions as required to be reported for the corporation's taxable year under the Internal Revenue Code;

(b) It resulted in a reduction of the corporation's taxable income before operating loss deduction and special deductions as required to be reported for any of the corporation's taxable years under the Internal Revenue Code.

(15) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of job and family services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax commissioner, the taxpayer shall provide any information that, in the tax commissioner's opinion, is necessary to establish the amount deducted under division (I)(15) of this section.

(16) Any adjustment required by section 5733.0510 <u>or 5733.0511</u> of the Revised Code.

(17)(a)<u>(i)</u> Add five-sixths of the amount of depreciation expense allowed under subsection (k) of section 168 of the Internal Revenue Code, including a person's proportionate or distributive share of the amount of depreciation expense allowed by that subsection to any pass-through entity in which the person has direct or indirect ownership. ~~The~~

(ii) Add five-sixths of the amount of qualifying section 179 depreciation expense, including a person's proportionate or distributive share of the amount of qualifying section 179 depreciation expense allowed to any pass-through entity in which the person has a direct or indirect ownership. For the purposes of this division, "qualifying section 179 depreciation expense" means the difference between (I) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code, and (II) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code as that section existed on December 31, 2002.

The tax commissioner, under procedures established by the commissioner, may waive the ~~add-back~~ add-backs related to a pass-through entity if the person owns, directly or indirectly, less than five per cent of the pass-through entity.

(b) Nothing in division (I)(17) of this section shall be construed to adjust or modify the adjusted basis of any asset.

(c) To the extent the add-back is attributable to property generating income or loss allocable under section 5733.051 of the Revised Code, the add-back shall be allocated to the same location as the income or loss generated by that property. Otherwise, the add-back shall be apportioned, subject to division (B)(2)(d) of section 5733.05 of the Revised Code.

(18)(a) If a person is required to make the add-back under division (I)(17)(a) of this section for a tax year, the person shall deduct one-fifth of the amount added back for each of the succeeding five tax years.

(b) If the amount deducted under division (I)(18)(a) of this section is attributable to an add-back allocated under division (I)(17)(c) of this section, the amount deducted shall be allocated

to the same location. Otherwise, the amount shall be apportioned using the apportionment factors for the taxable year in which the deduction is taken, subject to division (B)(2)(d) of section 5733.05 of the Revised Code.

(J) Any term used in this chapter has the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

(K) "Financial institution" has the meaning given by section 5725.01 of the Revised Code but does not include a production credit association as described in 85 Stat. 597, 12 U.S.C.A. 2091.

(L)(1) A "qualifying holding company" is any corporation satisfying all of the following requirements:

(a) Subject to divisions (L)(2) and (3) of this section, the net book value of the corporation's intangible assets is greater than or equal to ninety per cent of the net book value of all of its assets and at least fifty per cent of the net book value of all of its assets represents direct or indirect investments in the equity of, loans and advances to, and accounts receivable due from related members;

(b) At least ninety per cent of the corporation's gross income for the taxable year is attributable to the following:

(i) The maintenance, management, ownership, acquisition, use, and disposition of its intangible property, its aircraft the use of which is not subject to regulation under 14 C.F.R. part 121 or part 135, and any real property described in division (L)(2)(c) of this section;

(ii) The collection and distribution of income from such property.

(c) The corporation is not a financial institution on the last day of the taxable year ending prior to the first day of the tax year;

(d) The corporation's related members make a good faith and reasonable effort to make timely and fully the adjustments required by division (C)(2) of section 5733.05 of the Revised Code and to pay timely and fully all uncontested taxes, interest, penalties, and other fees and charges imposed under this chapter;

(e) Subject to division (L)(4) of this section, the corporation elects to be treated as a qualifying holding company for the tax year.

A corporation otherwise satisfying divisions (L)(1)(a) to (e) of this section that does not elect to be a qualifying holding company is not a qualifying holding company for the purposes of this chapter.

(2)(a)(i) For purposes of making the ninety per cent computation under division (L)(1)(a) of this section, the net book value of the corporation's assets shall not include the net book value of aircraft or real property described in division (L)(1)(b)(i) of this section.

(ii) For purposes of making the fifty per cent computation under division (L)(1)(a) of this section, the net book value of assets shall include the net book value of aircraft or real property described in division (L)(1)(b)(i) of this section.

(b)(i) As used in division (L) of this section, "intangible asset" includes, but is not limited to, the corporation's direct interest in each pass-through entity only if at all times during the corporation's taxable year ending prior to the first day of the tax year the corporation's and the corporation's related members' combined direct and indirect interests in the capital or profits of such pass-through entity do not exceed fifty per cent.

If the corporation's interest in the pass-through entity is an intangible asset for that taxable year, then the distributive share of any income from the pass-through entity shall be income from an intangible asset for that taxable year.

(ii) If a corporation's and the corporation's related members' combined direct and indirect interests in the capital or profits of a pass-through entity exceed fifty per cent at any time during the corporation's taxable year ending prior to the first day of the tax year, "intangible asset" does not include the corporation's direct interest in the pass-through entity, and the corporation shall include in its assets its proportionate share of the assets of any such pass-through entity and shall include in its gross income its distributive share of the gross income of such pass-through entity in the same form as was earned by the pass-through entity.

(iii) A pass-through entity's direct or indirect proportionate share of any other pass-through entity's assets shall be included for the purpose of computing the corporation's proportionate share of the pass-through entity's assets under division (L)(2)(b)(ii) of this section, and such pass-through entity's distributive share of any other pass-through entity's gross income shall be included for purposes of computing the corporation's distributive share of the pass-through entity's gross income under division (L)(2)(b)(ii) of this section.

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii), (2)(a)(i), and (2)(a)(ii) of this section, real property is described in division (L)(2)(c) of this section only if all of the following conditions are present at all times during the taxable year ending prior to the first day of the tax year:

(i) The real property serves as the headquarters of the corporation's trade or business, or is the place from which the corporation's trade or business is principally managed or

directed;

(ii) Not more than ten per cent of the value of the real property and not more than ten per cent of the square footage of the building or buildings that are part of the real property is used, made available, or occupied for the purpose of providing, acquiring, transferring, selling, or disposing of tangible property or services in the normal course of business to persons other than related members, the corporation's employees and their families, and such related members' employees and their families.

(d) As used in division (L) of this section, "related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section.

(3) The percentages described in division (L)(1)(a) of this section shall be equal to the quarterly average of those percentages as calculated during the corporation's taxable year ending prior to the first day of the tax year.

(4) With respect to the election described in division (L)(1)(e) of this section:

(a) The election need not accompany a timely filed report;

(b) The election need not accompany the report; rather, the election may accompany a subsequently filed but timely application for refund and timely amended report, or a subsequently filed but timely petition for reassessment;

(c) The election is not irrevocable;

(d) The election applies only to the tax year specified by the corporation;

(e) The corporation's related members comply with division (L)(1)(d) of this section.

Nothing in division (L)(4) of this section shall be construed to extend any statute of limitations set forth in this chapter.

(M) "Qualifying controlled group" means two or more corporations that satisfy the ownership and control requirements of division (A) of section 5733.052 of the Revised Code.

(N) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state.

(O) "Pass-through entity" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year under that code, or a partnership, limited liability company, or any other person, other than an individual, trust, or estate, if the partnership, limited liability company, or other person is not classified for federal income tax purposes as an association taxed as a corporation.

(P) "Electric company~~,~~" ~~and~~ "combined company~~,~~" and "telephone company" have the same meanings as in section 5727.01 of the Revised Code.

(Q) "Business income" means income arising from transactions, activities, and sources in the regular course of a trade or business and includes income from real property, tangible personal property, and intangible personal property if the acquisition, rental, management, and disposition of the property constitute integral parts of the regular course of a trade or business operation. "Business income" includes income, including gain or loss, from a partial or complete liquidation of a business, including, but not limited to, gain or loss from the sale or other disposition of goodwill.

(R) "Nonbusiness income" means all income other than business income.

Sec. 5733.05. As used in this section, "qualified research" means laboratory research, experimental research, and other

similar types of research; research in developing or improving a product; or research in developing or improving the means of producing a product. It does not include market research, consumer surveys, efficiency surveys, management studies, ordinary testing or inspection of materials or products for quality control, historical research, or literary research. "Product" as used in this paragraph does not include services or intangible property.

The annual report determines the value of the issued and outstanding shares of stock of the taxpayer, which under division (A) or divisions (B) and (C) of this section is the base or measure of the franchise tax liability. Such determination shall be made as of the date shown by the report to have been the beginning of the corporation's annual accounting period that includes the first day of January of the tax year. For the purposes of this chapter, the value of the issued and outstanding shares of stock of any corporation that is a financial institution shall be deemed to be the value as calculated in accordance with division (A) of this section. For the purposes of this chapter, the value of the issued and outstanding shares of stock of any corporation that is not a financial institution shall be deemed to be the values as calculated in accordance with divisions (B) and (C) of this section. Except as otherwise required by this section or section 5733.056 of the Revised Code, the value of a taxpayer's issued and outstanding shares of stock under division (A) or (C) of this section does not include any amount that is treated as a liability under generally accepted accounting principles.

(A) The total value, as shown by the books of the financial institution, of its capital, surplus, whether earned or unearned, undivided profits, and reserves shall be determined as prescribed by section 5733.056 of the Revised Code for tax years 1998 and thereafter.

(B) The sum of the corporation's net income during the

corporation's taxable year, allocated or apportioned to this state as prescribed in divisions (B)(1) and (2) of this section, and subject to sections 5733.052, 5733.053, 5733.057, 5733.058, 5733.059, and 5733.0510 of the Revised Code:

(1) The net nonbusiness income allocated or apportioned to this state as provided by section 5733.051 of the Revised Code.

(2) The amount of Ohio apportioned net business income ~~from sources other than those allocated under section 5733.051 of the Revised Code~~, which shall be ~~determined~~ calculated by multiplying the corporation's net business income by a fraction. The numerator of the fraction is the sum of the following products: the property factor multiplied by twenty, the payroll factor multiplied by twenty, and the sales factor multiplied by sixty. The denominator of the fraction is one hundred, provided that the denominator shall be reduced by twenty if the property factor has a denominator of zero, by twenty if the payroll factor has a denominator of zero, and by sixty if the sales factor has a denominator of zero.

The property, payroll, and sales factors shall be determined as follows, but the numerator and the denominator of the factors shall not include the portion of any property, payroll, and sales otherwise includible in the factors to the extent that the portion relates to, or is used in connection, with the production of nonbusiness income allocated under section 5733.051 of the Revised Code:

(a) The property factor is a fraction ~~the~~ computed as follows:

The numerator of ~~which~~ the fraction is the average value of the corporation's real and tangible personal property owned or rented, and used in the trade or business in this state during the taxable year, and the denominator of ~~which~~ the fraction is the

average value of all the corporation's real and tangible personal property owned or rented, and used in the trade or business everywhere during such year. Real and tangible personal property used in the trade or business includes, but is not limited to, real and tangible personal property that the corporation rents, subrents, leases, or subleases to others if the income or loss from such rentals, subrentals, leases, or subleases is business income. There shall be excluded from the numerator and denominator of the ~~property factor~~ fraction the original cost of all of the following property within Ohio: property with respect to which a "pollution control facility" certificate has been issued pursuant to section 5709.21 of the Revised Code; property with respect to which an "industrial water pollution control certificate" has been issued pursuant to that section or former section 6111.31 of the Revised Code; and property used exclusively during the taxable year for qualified research.

(i) Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate. "Net annual rental rate" means the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals.

(ii) 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 corporation's property.

(b) The payroll factor is a fraction ~~the~~ computed as follows:

The numerator of ~~which~~ the fraction is the total amount paid in this state during the taxable year by the corporation for compensation, and the denominator of ~~which~~ the fraction is the total compensation paid everywhere by the corporation during such year. There shall be excluded from the numerator and the

denominator of the payroll factor the total compensation paid in this state to employees who are primarily engaged in qualified research.

(i) Compensation means any form of remuneration paid to an employee for personal services.

(ii) Compensation is paid in this state if: (1) the recipient's service is performed entirely within this state, (2) 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, (3) 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.

(iii) Compensation is paid in this state to any employee of a common or contract motor carrier corporation, who performs the employee's regularly assigned duties on a motor vehicle in more than one state, in the same ratio by which the mileage traveled by such employee within the state bears to the total mileage traveled by such employee everywhere during the taxable year.

(c) Except as provided in section 5733.059 of the Revised Code, the sales factor is a fraction ~~the~~ <u>computed as follows:</u>

<u>The</u> numerator of ~~which~~ <u>the fraction</u> is the total sales in this state by the corporation during the taxable year, and the denominator of ~~which~~ <u>the fraction</u> is the total sales by the corporation everywhere during such year. In determining the numerator and denominator of the ~~sales factor~~ <u>fraction</u>, 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 corporation 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 <u>and a combined company, and, for tax years 2005 and thereafter, a telephone company</u>, 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 corporation from such utilities, insurance companies, and financial institutions shall be eliminated.

For the purpose of this section and section 5733.03 of the Revised Code, 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.

Except as provided in section 5733.059 of the Revised Code, sales, other than sales of tangible personal property, are in this state if either:

(i) The income-producing activity is performed solely in this state;

(ii) The income-producing activity is performed both within and without this state and a greater proportion of the <u>seller's</u>

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

(d) If the allocation and apportionment provisions of division (B) of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may request, which request must be in writing and must accompany the report, a timely filed petition for reassessment, or a timely filed amended report, or the tax commissioner may require, in respect to all or any part of the taxpayer's allocated or apportioned base, if reasonable, any one or more of the following:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's allocated or apportioned base in this state.

An alternative method will be effective only with approval by the tax commissioner.

Nothing in this section shall be construed to extend any statute of limitations set forth in this chapter.

(e) The tax commissioner may adopt rules providing for alternative allocation and apportionment methods, and alternative calculations of a corporation's base, that apply to corporations engaged in telecommunications.

(C)(1) ~~Subject to divisions (C)(2) and (3) of this section, the~~ The total value, as shown on the books of each corporation that is not a qualified holding company, of the net book value of ~~a~~ the corporation's assets less the net carrying value of its liabilities, and excluding from the corporation's assets land devoted exclusively to agricultural use as of the first Monday of June in the corporation's taxable year as determined by the county

auditor of the county in which the land is located pursuant to section 5713.31 of the Revised Code, and making any adjustment required by division (D) of this section. For the purposes of determining that total value, any reserves shown on the corporation's books shall be considered liabilities or contra assets, as the case may be, except for any reserves that are deemed appropriations of retained earnings under generally accepted accounting principles.

(2)~~(a)~~ The base upon which the tax is levied under division (C) of section 5733.06 of the Revised Code shall be computed by multiplying the amount determined under division (C)(1) of this section by the fraction determined under divisions (B)(2)(a) to (c) of this section and, if applicable, divisions (B)(2)(d)(ii) and (iii) of this section, and with regard to section 5733.052 of the Revised Code, but substituting "net worth" for "net income" wherever "net income" appears in division (B)(2)(c) in this section. For purposes of division (C)(2) of this section, the numerator and denominator of each of the fractions shall include the portion of any real and tangible personal property, payroll, and sales, respectively, relating to, or used in connection with the production of, net nonbusiness income allocated under section 5733.051 of the Revised Code. Nothing in this division shall allow any amount to be included in the numerator or denominator more than once.

(D)(1) If, on the last day of the taxpayer's taxable year preceding the tax year, the taxpayer is a related member to a corporation that elects to be a qualifying holding company for the tax year beginning after the last day of the taxpayer's taxable year, or if, on the last day of the taxpayer's taxable year preceding the tax year, a corporation that elects to be a qualifying holding company for the tax year beginning after the last day of the taxpayer's taxable year is a related member to the

taxpayer, then the taxpayer's total value for the purposes of division (C) of this section shall be adjusted by the qualifying amount. Except as otherwise provided under division ~~(C)(2)(b)~~(D)(2) of this section, "qualifying amount" means the amount that, when added to the taxpayer's total value, and when subtracted from the net carrying value of the taxpayer's liabilities computed without regard to division (C)(2) of this section, or when subtracted from the taxpayer's total value and when added to the net carrying value of the taxpayer's liabilities computed without regard to division ~~(C)(2)~~(D) of this section, results in the taxpayer's debt-to-equity ratio equaling the debt-to-equity ratio of the qualifying controlled group on the last day of the taxable year ending prior to the first day of the tax year computed on a consolidated basis in accordance with general accepted accounting principles. For the purposes of division ~~(C)(2)(a)~~(D)(1) of this section, the corporation's total value, after the adjustment required by that division, shall not exceed the net book value of the corporation's assets.

~~(b)(i)~~(2)(a) The amount added to the taxpayer's total value and subtracted from the net carrying value of the taxpayer's liabilities shall not exceed the amount of the net carrying value of the taxpayer's liabilities owed to the taxpayer's related members.

~~(ii)~~(b) A liability owed to the taxpayer's related members includes, but is not limited to, any amount that the corporation owes to a person that is not a related member if the corporation's related member or related members in whole or in part guarantee any portion or all of that amount, or pledge, hypothecate, mortgage, or carry out any similar transactions to secure any portion or all of that amount.

(3) The base upon which the tax is levied under division (C) of section 5733.06 of the Revised Code shall be computed by

multiplying the amount determined under divisions (C)~~(1)~~ and ~~(2)~~(D) of this section ~~by the fraction determined under divisions (B)(2)(a) to (c) of this section and, if applicable, divisions (B)(2)(d)(ii) to (iv) of this section~~ but without regard to section 5733.052 of the Revised Code.

(4) For purposes of division ~~(C)~~(D) of this section, "related member" has the same meaning as in ~~division (A)(6) of~~ section 5733.042 of the Revised Code ~~without regard to division (B) of that section~~.

Sec. 5733.051. ~~Subject~~ For purposes of this section, "available" means information is such that a person is able to learn of the information by the due date plus extensions, if any, for filing the report for the tax year immediately following the last day of the taxable year, and "modified qualifying controlled group" means that portion of a qualifying controlled group consisting of the corporation the sale of which resulted in the gain or loss described in division (E) of this section together with all members of the qualifying controlled group owned directly or indirectly by that corporation, or the corporation that directly paid the dividend or directly made the distribution described in division (F) of this section together with all members of the qualifying controlled group owned directly or indirectly by that corporation.

Subject to section 5733.0510 of the Revised Code, net nonbusiness income of a corporation ~~subject to the tax imposed by section 5733.06 of the Revised Code~~ shall be allocated and apportioned to this state as follows:

(A) Net rents and royalties from real property located in this state are allocable to this state. Net rents and royalties from real property not located in this state are allocable outside this state.

(B) Net rents and royalties from tangible personal property, to the extent such property is utilized in this state, are allocable to this state ~~if the taxpayer is otherwise subject to the tax imposed by section 5733.06 of the Revised Code~~. Net rents and royalties from tangible personal property, to the extent such property is utilized outside this state, are allocable outside this state.

(C) Capital gains and losses from the sale or other disposition of real property located in this state are allocable to this state. Capital gains and losses from the sale or other disposition of real property located outside this state are allocable outside this state.

(D) Capital gains and losses from the sale or other disposition of tangible personal property are allocable to this state ~~if the property had a situs in this state at the time of sale and the taxpayer is otherwise subject to the tax imposed by section 5733.06 of the Revised Code~~ to the extent such property was utilized in this state prior to the property's sale or other disposition. Capital gains and losses from the sale or other disposition of tangible personal property are allocable outside this state to the extent such property was utilized outside this state prior to the property's sale or other disposition.

(E) Capital gains and losses from the sale or other disposition of intangible property which may produce income enumerated in division (F)(1) of this section are allocable on the same basis as set forth in that division, substituting the day of the sale or disposition for the day on which the payor pays the dividend or makes the distribution, but if the location of the physical assets described in that division is not available to the taxpayer, such gains and losses are apportionable under division (I) of this section. Capital gains and losses from the sale or other disposition of all other intangible property are

apportionable under division (I) of this section.

(F) "Dividends or distributions" to which this division refers are dividends directly or indirectly paid by or distributions directly or indirectly made by any person classified for federal income tax purposes as an association taxable as a corporation.

(1) Dividends or distributions which are not otherwise deducted or excluded from net income, other than dividends or distributions from a domestic international sales corporation, ~~are allocable~~ shall be allocated to this state ~~in accordance with the ratio of the book value of the physical assets of the payor of the dividends or distributions located in this state divided by the book value of the total physical assets of the payor located everywhere~~ by multiplying such dividends and distributions by a fraction. The numerator of the fraction is the book value of the physical assets in this state of the payor or, if the payor is a member of a modified qualifying controlled group on the last day of the payor's fiscal or calendar year ending immediately prior to the day on which the payor pays the dividend or makes the distribution, the sum of the book values of the physical assets in this state of the payor and of all the other members of the modified qualifying controlled group of which the payor is a member on the last day of the payor's fiscal or calendar year ending immediately prior to the day on which the payor pays the dividend or makes the distribution. The denominator of the fraction is the book value of the physical assets everywhere of the payor or, if the payor is a member of a modified qualifying controlled group on the last day of the payor's fiscal or calendar year ending immediately prior to the day on which the payor pays the dividend or makes the distribution, the sum of the book values of the physical assets everywhere of the payor and of all the other members of the modified qualifying controlled group of which

the payor is a member on the last day of the payor's fiscal or calendar year ending immediately prior to the day on which the payor pays the dividend or makes the distribution. Dividends or distributions received from a domestic international sales corporation, or from a payor for which the location of ~~whose~~ physical assets described in this division is ~~unavailable~~ not available to the taxpayer, are apportionable under division (I) of this section.

(2) If the payor of a dividend or distribution, or if that payor and any members of the qualifying controlled group of which the payor is a member on the last day of the payor's fiscal or calendar year ending immediately prior to the day on which the payor pays the dividend or makes the distribution, separately or cumulatively own, directly or indirectly, on the last day of the payor's fiscal or calendar year ending immediately prior to the day on which the payor pays the dividend or makes the distribution, more than fifty per cent of the equity of a pass-through entity, then for purposes of division (F)(1) of this section the payor and the other members are deemed to own the proportionate share of the physical assets that the pass-through entity directly or indirectly owns on the last day of the payor's fiscal or calendar year ending immediately prior to the day on which the payor pays the dividend or makes the distribution.

(3) For the purposes of division (F)(3) of this section, "upper level pass-through entity" means a pass-through entity directly or indirectly owning any equity of another pass-through entity, and "lower level pass-through entity" means that other pass-through entity. For purposes of divisions (F)(1) and (2) of this section, an upper level pass-through entity is deemed to own, on the last day of the upper level pass-through entity's fiscal or calendar year, the proportionate share of the lower level pass-through entity's physical assets that the lower level

pass-through entity directly or indirectly owns on the last day of the lower level pass-through entity's fiscal or calendar year ending within or with the last day of the upper level pass-through entity's fiscal or calendar year. If the upper level pass-through entity directly and indirectly owns less than fifty per cent of the equity of the lower level pass-through entity on each day of the upper level pass-through entity's fiscal or calendar year in which or with which ends the fiscal or calendar year of the lower level pass-through entity and if, based upon clear and convincing evidence, complete information about the location and cost of the physical assets of the lower level pass-through entity is not available to the upper level pass-through entity, then for purposes of divisions (F)(1) and (2) of this section, the upper level pass-through entity shall be deemed as owning no equity of the lower level pass-through entity for each day during the upper level pass-through entity's calendar or fiscal year in which or with which ends the lower level pass-through entity's fiscal or calendar year.

(G) ~~Patent and copyright~~ Net rents, net royalties, and net technical assistance fees~~, not representing the principal source of gross receipts of the taxpayer,~~ from intangible property are allocable to this state to the extent that the activity of the payor thereof giving rise to the payment takes place in this state. If the location of ~~the~~ a payor's activity is ~~unavailable~~ not available to the ~~taxpayer, such~~ corporation, the net rents, net royalties, and net technical assistance fees are allocable or apportionable under division (I) of this section.

(H)(1) The following amounts ~~described in division (B)(5) of section 5747.20 of the Revised Code~~ are allocable to this state:

(a) All lottery prize awards paid by the state lottery commission pursuant to Chapter 3770. of the Revised Code;

(b) All earnings, profit, income, and gain from the sale,

exchange, or other disposition of lottery prize awards paid or to be paid to any person by the state lottery commission pursuant to Chapter 3770. of the Revised Code;

(c) All earnings, profit, income, and gain from the direct or indirect ownership of lottery prize awards paid or to be paid to any person by the state lottery commission pursuant to Chapter 3770. of the Revised Code;

(d) All earnings, profit, income, and gain from the direct or indirect interest in any right in or to any lottery prize awards paid or to be paid to any person by the state lottery commission pursuant to Chapter 3770. of the Revised Code.

(2) Lottery prize awards and related earnings, profit, income, or gain with respect to lotteries sponsored by persons or agencies outside this state shall be allocated outside this state.

(I) ~~Any~~ Every other item of net nonbusiness income~~,~~ from sources other than those enumerated in divisions (A) to (H) of this section~~,~~ is allocated entirely to this state except to the extent the allocation of such item of net nonbusiness income entirely to this state is not within the taxing power of this state under the Constitution of the United States. To the extent such allocation entirely to this state would not be within the taxing power of this state under the Constitution of the United States, such item of net nonbusiness income is apportionable to this state on the basis of the mechanism provided in division (B)(2) of section 5733.05 and in section 5733.057 of the Revised Code.

Sec. 5733.056. (A) As used in this section:

(1) "Billing address" means the address where any notice, statement, or bill relating to a customer's account is mailed, as indicated in the books and records of the taxpayer on the first

day of the taxable year or on such later date in the taxable year when the customer relationship began.

(2) "Borrower or credit card holder located in this state" means:

(a) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(b) A borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

(3) "Branch" means a "domestic branch" as defined in section 3 of the "Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 1813(o), as amended.

(4) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, such as those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the Internal Revenue Code shall be made as though such employees were subject to the Internal Revenue Code.

(5) "Credit card" means a credit, travel, or entertainment card.

(6) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(7) "Deposits" has the meaning given in section 3 of the "Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 1813(1), as amended.

(8) "Employee" means, with respect to a particular taxpayer, any individual who under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(9) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property. "Gross rents" includes:

(a) Any amount payable for the use or possession of real property or tangible personal property whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise;

(b) Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement; and

(c) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land, by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight, and the value of the building is determined in the same manner as if owned by the taxpayer.

(d) The following are not included in the term "gross rents":

(i) Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(ii) Reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(iii) Reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and

(iv) That portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it.

(10) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include debt obligations of subsidiaries, participations, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include: properties treated as loans under section 595 of the Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depositor institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit or other mortgage-backed or asset-backed security; and other similar items.

(11) "Loan secured by real property" means that fifty per cent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(12) "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(13) "Participation" means an extension of credit in which an

undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(14) "Principal base of operations" with respect to transportation property means the place of more or less permanent nature from which the property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly (a) starts work and to which the employee customarily returns in order to receive instructions from the employer or (b) communicates with the employee's customers or other persons or (c) performs any other functions necessary to the exercise of the trade or profession at some other point or points.

(15) "Qualified institution" means a financial institution that on or after June 1, 1997:

(a)(i) Has consummated one or more approved transactions with insured banks with different home states that would qualify under section 102 of the "Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994," Public Law 103-328, 108 Stat. 2338;

(ii) Is a federal savings association or federal savings bank that has consummated one or more interstate acquisitions that result in a financial institution that has branches in more than one state; or

(iii) Has consummated one or more approved interstate acquisitions under authority of Title XI of the Revised Code that result in a financial institution that has branches in more than one state; and

(b) Has at least nine per cent of its deposits in this state as of the last day of June prior to the beginning of the tax year.

(16) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively, on which the taxpayer may claim depreciation for federal income tax purposes, or to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax. Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(17) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the taxpayer.

(18) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

(19) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(20) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

(B) The annual financial institution report determines the value of the issued and outstanding shares of stock of the taxpayer, and is the base or measure of the franchise tax liability. Such determination shall be made as of the date shown by the report to have been the beginning of the financial institution's annual accounting period that includes the first day

of January of the tax year. For purposes of this section, division (A) of section 5733.05, and division (D) of section 5733.06 of the Revised Code, the value of the issued and outstanding shares of stock of the financial institution shall include the total value, as shown by the books of the financial institution, of its capital, surplus, whether earned or unearned, undivided profits, and reserves, but exclusive of:

(1) Reserves for accounts receivable, depreciation, depletion, and any other valuation reserves with respect to specific assets;

(2) Taxes due and payable during the year for which such report was made;

(3) Voting stock and participation certificates in corporations chartered pursuant to the "Farm Credit Act of 1971," 85 Stat. 597, 12 U.S.C. 2091, as amended;

(4) Good will, appreciation, and abandoned property as set up in the annual report of the financial institution, provided a certified balance sheet of the company is made available upon the request of the tax commissioner. Such balance sheet shall not be a part of the public records, but shall be a confidential report for use of the tax commissioner only.

(5) A portion of the value of the issued and outstanding shares of stock of such financial institution equal to the amount obtained by multiplying such value by the quotient obtained by:

(a) Dividing (1) the amount of the financial institution's assets, as shown on its books, represented by investments in the capital stock and indebtedness of public utilities<u>, except electric companies and combined companies, and, for tax years 2005 and thereafter, telephone companies,</u> of which at least eighty per cent of the utility's issued and outstanding common stock is owned by the financial institution by (2) the total assets of such

financial institution as shown on its books;

(b) Dividing (1) the amount of the financial institution's assets, as shown on its books, represented by investments in the capital stock and indebtedness of insurance companies of which at least eighty per cent of the insurance company's issued and outstanding common stock is owned by the financial institution by (2) the total assets of such financial institution as shown on its books;

(c) Dividing (1) the amount of the financial institution's assets, as shown on its books, represented by investments in the capital stock and indebtedness of other financial institutions of which at least twenty-five per cent of the other financial institution's issued and outstanding common stock is owned by the financial institution by (2) the total assets of the financial institution as shown on its books. Division (B)(5)(c) of this section applies only with respect to such other financial institutions that for the tax year immediately following the taxpayer's taxable year will pay the tax imposed by division (D) of section 5733.06 of the Revised Code.

(6) Land that has been determined pursuant to section 5713.31 of the Revised Code by the county auditor of the county in which the land is located to be devoted exclusively to agricultural use as of the first Monday of June in the financial institution's taxable year.

(7) Property within this state used exclusively during the taxable year for qualified research as defined in section 5733.05 of the Revised Code.

(C) The base upon which the tax levied under division (D) of section 5733.06 of the Revised Code shall be computed by multiplying the value of a financial institution's issued and outstanding shares of stock as determined in division (B) of this

section by a fraction. The numerator of the fraction is the sum of the following: the property factor multiplied by fifteen, the payroll factor multiplied by fifteen, and the sales factor multiplied by seventy. The denominator of the fraction is one hundred, provided that the denominator shall be reduced by fifteen if the property factor has a denominator of zero, by fifteen if the payroll factor has a denominator of zero, and by seventy if the sales factor has a denominator of zero.

(D) A financial institution shall calculate the property factor as follows:

(1) The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable year, the average value of real and tangible personal property owned by the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year; and the denominator of which is the average value of all such property located or used within and without this state during the taxable year.

(2)(a) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(b) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged-off is not outstanding. A specifically allocated reserve established pursuant to financial accounting guidelines which is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes

of this section.

(c) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(3) The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two. If averaging on this basis does not properly reflect average value, the tax commissioner may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the tax commissioner or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the tax commissioner or the tax commissioner requires a different method of determining value.

(4)(a) The average value of real property and tangible personal property that the taxpayer has rented from another and is not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(b) Where the use of the general method described in division (D)(4)(a) of this section results in inaccurate valuations of rented property, any other method which properly reflects the value may be adopted by the tax commissioner or by the taxpayer when approved in writing by the tax commissioner. Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the tax

commissioner or the tax commissioner requires a different method of valuation.

(5)(a) Except as described in division (D)(5)(b) of this section, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated, or used within this state.

(b) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(6)(a)(i) A loan, other than a loan or advance described in division (D)(6)(d) of this section, is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(I) The taxpayer has assigned, in the regular course of its

business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(II) Such assignment on its records is based upon substantive contacts of the load to such regular place of business; and

(III) The taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in division (D)(6)(a)(ii) of this section may be rebutted upon a showing by the tax commissioner, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan shall then be located within this state if (1) the taxpayer had a regular place of business within this state at the time the loan was made; and (2) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within this state.

(b) In the case of a loan which is assigned by the taxpayer to a place without this state which is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile was within this state.

(c) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis and consideration shall be given to such activities as the solicitation, investigation, negotiation,

approval, and administration of the loan. The terms "solicitation," "investigation," "negotiation," "approval," and "administration" are defined as follows:

(i) "Solicitation" is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(ii) "Investigation" is the procedure whereby employees of the taxpayer determine the creditworthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iii) Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as the amount, duration, interest rate, frequency of repayment, currency denomination, and security required. Such activity is located at the regular place of business to which the taxpayer's employees are regularly connected or working from, regardless of where the services of such employees were actually performed.

(iv) "Approval" is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at

the regular place of business to which the taxpayer's employees are regularly connected or working from, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.

(v) "Administration" is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business that oversees this activity.

(d) A loan or advance to a subsidiary corporation at least fifty-one per cent of whose common stock is owned by the financial institution shall be allocated in and out of the state by the application of a ratio whose numerator is the sum of the net book value of the subsidiary's real property owned in this state and the subsidiary's tangible personal property owned in this state and whose denominator is the sum of the subsidiary's real property owned wherever located and the subsidiary's tangible personal property owned wherever located. For purposes of calculating this ratio, the taxpayer shall determine net book value in accordance with generally accepted accounting principles. If the subsidiary corporation owns at least fifty-one per cent of the common stock of another corporation, the ratio shall be calculated by including the other corporation's real property and tangible personal property. The calculation of the ratio applies with respect to all lower-tiered subsidiaries, provided that the immediate parent corporation of the subsidiary owns at least fifty-one per cent of the common stock of that subsidiary.

(7) For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and

shall be subject to division (D)(6) of this section.

(8) A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business there.

(E) A financial institution shall calculate the payroll factor as follows:

(1) 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 both within and without this state during the taxable year.

(2) Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(a) The employee's services are performed entirely within this state.

(b) The employee's services are performed both within and without this state, but the service performed without this state is incidental to the employee's service within this state. The term "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(c) The employee's services are performed both within and without this state, and:

(i) The employee's principal base of operations is within this state; or

(ii) There is no principal base of operations in any state in which some part of the services are performed, but the place from

which the services are directed or controlled is in this state; or

(iii) The principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

(F) A financial institution shall calculate the sales factor as follows:

(1) The sales factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(2) The numerator of the sales factor includes receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state, or receipts from the sublease of real property if the property is located within this state.

(3)(a) Except as described in division (F)(3)(b) of this section the numerator of the sales factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(b) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the sales factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state's sales factor is determined by multiplying all the receipts from the lease or rental of the

aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(4)(a) The numerator of the sales factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this paragraph are included in the numerator of the sales factor if more than fifty per cent of the fair market value of the real property is located within this state. If more than fifty per cent of the fair market value of the real property is not located within any one state, then the receipts described in this paragraph shall be included in the numerator of the sales factor if the borrower is located in this state.

(b) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

(5) The numerator of the sales factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(6) The numerator of the sales factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code.

(a) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(4) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(b) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(5) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(7) The numerator of the sales factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(8) The numerator of the sales factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(7) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(9) The numerator of the sales factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the

numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(7) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(10) The numerator of the sales factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts shall be computed net of any card holder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(11)(a)(i) The numerator of the sales factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(4) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The numerator of the sales factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to division (F)(5) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(b) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the sales factor shall include such fees if the borrower is located in this state.

(12) The numerator of the sales factor includes receipts from services not otherwise apportioned under this section if the

service is performed in this state. If the service is performed both within and without this state, the numerator of the sales factor includes receipts from services not otherwise apportioned under this section, if a greater proportion of the income producing activity is performed in this state based on cost of performance.

(13)(a) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the sales factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in divisions (F)(13)(a)(i) and (ii) of this section, the sales factor shall include the amounts described in such divisions.

(i) The sales factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(ii) The sales factor shall include the amount by which interest, dividends, gains, and other income from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(b) The numerator of the sales factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and

activities described in division (F)(13)(a) of this section that are attributable to this state.

(i) The amount of interest, other than interest described in division (F)(13)(b)(iv) of this section, dividends, other than dividends described in that division, net gains, but not less than zero, and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in division (F)(13)(a)(i) of this section from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(iii) The amount of interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transaction, but excluding amounts described in division (F)(13)(b)(i) or (ii) of this section, attributable to this state and included in the numerator is determined by multiplying the amount described in division (F)(13)(a)(ii) of this section by a fraction, the numerator of which is the average value of such trading assets which are

properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(iv) The amount of dividends received on the capital stock of, and the amount of interest received from loans and advances to, subsidiary corporations at least fifty-one per cent of whose common stock is owned by the reporting financial institution shall be allocated in and out of this state by the application of a ratio whose numerator is the sum of the net book value of the payor's real property owned in this state and the payor's tangible personal property owned in this state and whose denominator is the sum of the net book value of the payor's real property owned wherever located and the payor's tangible personal property owned wherever located. For purposes of calculating this ratio, the taxpayer shall determine net book value in accordance with generally accepted accounting principles.

(v) For purposes of this division, average value shall be determined using the rules for determining the average value of tangible personal property set forth in division (D)(2) and (3) of this section.

(c) In lieu of using the method set forth in division (F)(13)(b) of this section, the taxpayer may elect, or the tax commissioner may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in division (F)(13)(c) of this section.

(i) The amount of interest, other than interest described in division (F)(13)(b)(iv) of this section, dividends, other than dividends described in that division, net gains, but not less than zero, and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which

is the gross income from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state, and the denominator of which is the gross income from all such assets and activities.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in division (F)(13)(a)(i) of this section from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(iii) The amount of interest, dividends, gains, and other income from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in division (F)(13)(a)(i) or (ii) of this section, attributable to this state and included in the numerator, is determined by multiplying the amount described in division (F)(13)(a)(ii) of this section by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) The amount of dividends received on the capital stock of, and the amount of interest received from loans and advances to, subsidiary corporations at least fifty-one per cent of whose common stock is owned by the reporting financial institution shall be allocated in and out of this state by the application of a ratio whose numerator is the sum of the net book value of the

payor's real property owned in this state and the payor's tangible personal property owned in this state and whose denominator is the sum of the payor's real property owned wherever located and the payor's tangible personal property owned wherever located. For purposes of calculating this ratio, the taxpayer shall determine net book value in accordance with generally accepted accounting principles.

(d) If the taxpayer elects or is required by the tax commissioner to use the method set forth in division (F)(13)(c) of this section, it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the tax commissioner to use or the tax commissioner requires a different method.

(e) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state such asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(14) The numerator of the sales factor includes all other receipts if either:

(a) The income-producing activity is performed solely in this

state; or

(b) 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.

(G) A qualified institution may calculate the base upon which the fee provided for in division (D) of section 5733.06 of the Revised Code is determined for each tax year by multiplying the value of its issued and outstanding shares of stock determined under division (B) of this section by a single deposits fraction whose numerator is the deposits assigned to branches in this state and whose denominator is the deposits assigned to branches everywhere. Deposits shall be assigned to branches in the same manner in which the assignment is made for regulatory purposes. If the base calculated under this division is less than the base calculated under division (C) of this section, then the qualifying institution may elect to substitute the base calculated under this division for the base calculated under division (C) of this section. Such election may be made annually for each tax year on the corporate report. The election need not accompany the report; rather, the election may accompany a subsequently filed but timely application for refund, a subsequently filed but timely amended report, or a subsequently filed but timely petition for reassessment. The election is not irrevocable and it applies only to the specified tax year. Nothing in this division shall be construed to extend any statute of limitations set forth in this chapter.

(H) If the apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) Separate accounting;

(2) The exclusion of any one or more of the factors;

(3) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's value.

Sec. 5733.057. As used in this section, "adjusted qualifying amount" has the same meaning as in section 5733.40 of the Revised Code.

This section does not apply to divisions (E) and (F) of section 5733.051 of the Revised Code.

Except as otherwise provided in divisions (A) and (B) of section 5733.401 and in sections 5733.058 and 5747.401 of the Revised Code, in making all apportionment, allocation, income, gain, loss, deduction, tax, and credit computations under this chapter and under sections 5747.41 and 5747.43 of the Revised Code, each person shall include in that person's items of business income, nonbusiness income, adjusted qualifying amounts, allocable income or loss, if any, apportionable income or loss, property, compensation, and sales, the person's entire distributive share or proportionate share of the items of business income, nonbusiness income, adjusted qualifying amounts, allocable income or loss, apportionable income or loss, property, compensation, and sales of any pass-through entity in which the person has a direct or indirect ownership interest at any time during the pass-through entity's calendar or fiscal year ending within, or with the last day of the person's taxable year. A pass-through entity's direct or indirect distributive share or proportionate share of any other pass-through entity's items of business income, nonbusiness

income, adjusted qualifying amounts, allocable income or loss, apportionable income or loss, property, compensation, and sales shall be included for the purposes of computing the person's distributive share or proportionate share of the pass-through entity's items of business income, nonbusiness income, adjusted qualifying amounts, allocable income or loss, apportionable income or loss, property, compensation, and sales under this section. Those items shall be in the same form as was recognized by the pass-through entity.

Sec. 5733.059. (A) As used in this section:

(1) "Customer" means a person who purchases electricity for consumption either by that person or by the person's related member and the electricity is not for resale directly or indirectly to any person other than a related member.

(2) "Related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section.

(B) Except as provided in division (C) of this section, this division applies only to sales of electric transmission and distribution services. For purposes of sections 5733.05 and 5747.21 of the Revised Code:

(1) Sales of the transmission of electricity are in this state in proportion to the ratio of the wire mileage of the taxpayer's transmission lines located in this state divided by the wire mileage of the taxpayer's transmission lines located everywhere. Transmission wire mileage shall be weighted for the voltage capacity of each line.

(2) Sales of the distribution of electricity are in this state in proportion to the ratio of the wire mileage of the taxpayer's distribution lines located in this state divided by the

wire mileage of the taxpayer's distribution lines located everywhere. Distribution wire mileage shall not be weighted for the voltage capacity of each line.

(C) This division applies only to a person that has transmission or distribution lines in this state. If a contract for the sale of electricity includes the seller's or the seller's related member's obligation to transmit or distribute the electricity and if the sales contract separately identifies the price charged for the transmission or distribution of electricity, the price charged for the transmission and distribution of electricity shall be apportioned to this state in accordance with division (B) of this section. Any remaining portion of the sales price of the electricity shall be sitused to this state in accordance with division (D) of this section.

If the sales contract does not separately identify the price charged for the transmission or distribution of electricity, the sales price of the electricity shall be sitused to this state in accordance with division (D) of this section.

(D) Any person who makes a sale of electricity shall situs the following to this state:

(1) A sale of electricity directly or indirectly to a customer to the extent the customer consumes the electricity in this state;

(2) A sale of electricity directly or indirectly to a related member where the related member directly or indirectly sells electricity to a customer to the extent the customer consumes the electricity in this state;

(3) A sale of electricity if the seller or the seller's related member directly or indirectly delivers the electricity to a location in this state or directly or indirectly delivers the electricity exactly to the border of this state and another state;

(4) A sale of electricity if the seller or the seller's related member directly or indirectly directs the delivery of the electricity to a location in this state or directly or indirectly directs the delivery of the electricity exactly to the border of this state and another state.

(E) If the situsing provisions of this section do not fairly represent the extent of the taxpayer's or the taxpayer's related member's activity in this state, the taxpayer may request, or the tax commissioner may require, in respect to all or part of a taxpayer's or related member's sales, if reasonable, any of the following:

(1) Separate accounting;

(2) The exclusion of one or more additional situsing factors that will fairly represent the taxpayer's and the related member's sales in this state;

(3) The inclusion of one or more additional situsing factors that will fairly represent the taxpayer's and the related member's sales in this state.

The taxpayer's request shall be in writing and shall be filed with the report required by section 5733.02 of the Revised Code, a timely filed petition for reassessment, or a timely filed amended report. An alternative situsing method shall be effective with the approval of the tax commissioner.

Nothing in this section shall be construed to extend any statute of limitations set forth in this chapter.

(F) If the situsing provisions of this section do not fairly represent activity in this state, the tax commissioner may promulgate rules to situs sales using a methodology that fairly reflects sales in this state.

(G) Notwithstanding ~~sections 5733.111 and 5747.131~~ section

5703.56 of the Revised Code to the contrary, a person situsing a sale outside this state has the burden to establish by a preponderance of the evidence that the doctrines enumerated in ~~those sections~~ that section do not apply.

Sec. 5733.0511. (A) As used in this section:

(1) "Qualifying telephone company taxpayer" means either of the following:

(a) A telephone company, but only if the telephone company was subject to the tax imposed by section 5727.30 of the Revised Code for gross receipts received during the period from July 1, 2003, to June 30, 2004, and the telephone company's property subject to taxation under Chapter 5727. of the Revised Code for tax years 2003 through 2006 was assessed using the true value percentages provided for in division (B) of section 5727.111 of the Revised Code.

(b) Any taxpayer not described in division (A)(1)(a) of this section if a telephone company described in division (A)(1)(a) of this section transfers all or a portion of its assets and equity directly or indirectly to the taxpayer, the transfer occurred as part of an entity organization or reorganization, or subsequent entity organization or reorganization, and the gain or loss with respect to the transfer is not recognized in whole or in part for federal income tax purposes under the Internal Revenue Code on account of a transfer as part of an entity organization or reorganization, or subsequent entity organization or reorganization.

(2) "Qualifying telephone company asset" means any asset shown on the qualifying telephone company taxpayer's books and records on December 31, 2003, in accordance with generally accepted accounting principles.

(3) "Net income" has the same meaning as in division (I) of section 5733.04 of the Revised Code.

(4) "Book-tax difference" means the difference, if any, between a qualifying telephone company asset's net book value shown on the qualifying telephone company taxpayer's books and records on December 31, 2003, in accordance with generally accepted accounting principles, and such asset's adjusted basis on December 31, 2003. The book-tax difference may be a negative number.

(5) Solely for purposes of division (A)(1)(a) of this section, "tax year" has the same meaning as used in section 5727.01 of the Revised Code.

(B) In computing net income under division (I) of section 5733.04 of the Revised Code, a qualifying telephone company taxpayer shall adjust net income to reflect a ten-year amortization of the book-tax difference for each qualifying telephone company asset, in equal installments over each of the ten tax years beginning with 2010. If the net book value exceeds the adjusted basis of the asset as of December 31, 2003, net income shall be reduced in each of the ten years beginning with tax year 2010 by one-tenth of the book-tax difference. If the adjusted basis exceeds the net book value of the asset as of December 31, 2003, net income shall be increased in each of the ten years beginning with tax year 2010 by one-tenth of the absolute value of the book-tax difference. The adjustment to net income provided for by this division shall apply without regard to the disposal of those assets after December 31, 2003.

(C) The allocation and apportionment of this amortization of the book-tax difference under this section shall be governed by division (B) of section 5733.05 and by section 5733.051 of the Revised Code. The tax commissioner may prescribe rules regarding

the apportionment of the amortization of the book-tax difference under this section.

(D) Nothing in this section shall allow for an adjustment more than once with respect to the same qualifying asset or allow more than one corporation to claim an adjustment with respect to the same qualifying telephone company asset.

Sec. 5733.06. The tax hereby charged each corporation subject to this chapter shall be the greater of the sum of divisions (A) and (B) of this section, after the reduction, if any, provided by division (J) of this section, or division (C) of this section, after the reduction, if any, provided by division (J) of this section, except that the tax hereby charged each financial institution subject to this chapter shall be the amount computed under division (D) of this section:

(A) Except as set forth in division (F) of this section, five and one-tenth per cent upon the first fifty thousand dollars of the value of the taxpayer's issued and outstanding shares of stock as determined under division (B) of section 5733.05 of the Revised Code;

(B) Except as set forth in division (F) of this section, eight and one-half per cent upon the value so determined in excess of fifty thousand dollars; or

(C)(1) Except as otherwise provided under division (G) of this section, four mills times that portion of the value of the issued and outstanding shares of stock as determined under division (C) of section 5733.05 of the Revised Code. For the purposes of division (C) of this section, division (C)(2) of section 5733.065, and division (C) of section 5733.066 of the Revised Code, the value of the issued and outstanding shares of stock of an eligible corporation for tax year 2003 through tax year 2007, or of a qualified holding company, is zero.

(2) As used in division (C) of this section, "eligible corporation" means a person treated as a corporation for federal income tax purposes that meets all of the following criteria:

(a) The corporation conducts business for an entire taxable year as a qualified trade or business as defined by division (C) of section 122.15 of the Revised Code.

(b) The corporation uses more than fifty per cent of the corporation's assets, based on net book value, that are located in Ohio solely to conduct activities that constitute a qualified trade or business as defined by section 122.15 of the Revised Code.

(c) The corporation has been formed or organized not more than three years before the report required to be filed by section 5733.02 of the Revised Code is due, without regard to any extensions.

(d) The corporation is not a related member, as defined in section 5733.042 of the Revised Code, at any time during the taxable year with respect to another person treated as a corporation for federal income tax purposes. A corporation is not a related member if during the entire taxable year at least seventy-five per cent of the corporation's stock is owned directly or through a pass-through entity by individuals, estates, and grantor trusts, and the individuals, estates, and grantor trusts do not directly or indirectly own more than twenty per cent of the value of another person treated as a corporation for federal income tax purposes that is conducting a qualified trade or business.

(D) The tax charged each financial institution subject to this chapter shall be that portion of the value of the issued and outstanding shares of stock as determined under division (A) of section 5733.05 of the Revised Code, multiplied by the following

amounts:

(1) For tax years prior to the 1999 tax year, fifteen mills;

(2) For the 1999 tax year, fourteen mills;

(3) For tax year 2000 and thereafter, thirteen mills.

(E) No tax shall be charged from any corporation that has been adjudicated bankrupt, or for which a receiver has been appointed, or that has made a general assignment for the benefit of creditors, except for the portion of the then current tax year during which the tax commissioner finds such corporation had the power to exercise its corporate franchise unimpaired by such proceedings or act. The minimum payment for ~~all corporations~~ each corporation shall be ~~fifty dollars~~ as follows:

(1) One thousand dollars in the case of a corporation having gross receipts for the taxable year equal to at least five million dollars from activities within or outside this state or in the case of a corporation employing at least three hundred employees at some time during the taxable year within or outside this state;

(2) Fifty dollars in the case of any other corporation.

The tax charged to corporations under this chapter for the privilege of engaging in business in this state, which is an excise tax levied on the value of the issued and outstanding shares of stock, shall in no manner be construed as prohibiting or otherwise limiting the powers of municipal corporations, joint economic development zones created under section 715.691 of the Revised Code, and joint economic development districts created under section 715.70 or 715.71 or sections 715.72 to 715.81 of the Revised Code in this state to impose an income tax on the income of such corporations.

(F) If two or more taxpayers satisfy the ownership or control requirements of division (A) of section 5733.052 of the Revised

Code, each such taxpayer shall substitute "the taxpayer's pro-rata amount" for "fifty thousand dollars" in divisions (A) and (B) of this section. For purposes of this division, "the taxpayer's pro-rata amount" is an amount that, when added to the other such taxpayers' pro-rata amounts, does not exceed fifty thousand dollars. For the purpose of making that computation, the taxpayer's pro-rata amount shall not be less than zero. Nothing in this division derogates from or eliminates the requirement to make the alternative computation of tax under division (C) of this section.

(G) The tax liability of any corporation under division (C) of this section shall not exceed one hundred fifty thousand dollars.

(H)(1) For the purposes of division (H) of this section, "exiting corporation" means a corporation that satisfies all of the following conditions:

(a) The corporation had nexus with or in this state under the Constitution of the United States during any portion of a calendar year;

(b) The corporation was not a corporation described in division (A) of section 5733.01 of the Revised Code on the first day of January immediately following that calendar year;

(c) The corporation was not a financial institution on the first day of January immediately following that calendar year;

(d) If the corporation was a transferor as defined in section 5733.053 of the Revised Code, the corporation's transferee was not required to add to the transferee's net income the income of the transferor pursuant to division (B) of that section;

(e) During any portion of that calendar year, or any portion of the immediately preceding calendar year, the corporation had net income that was not included in a report filed by the

corporation or its transferee pursuant to section 5733.02, 5733.021, 5733.03, 5733.031, or 5733.053 of the Revised Code;

(f) The corporation would have been subject to the tax computed under divisions (A), (B), (C), (F), and (G) of this section if the corporation is assumed to be a corporation described in division (A) of section 5733.01 of the Revised Code on the first day of January immediately following the calendar year to which division (H)(1)(a) of this section refers.

(2) For the purposes of division (H) of this section, "unreported net income" means net income that was not previously included in a report filed pursuant to section 5733.02, 5733.021, 5733.03, 5733.031, or 5733.053 of the Revised Code and that was realized or recognized during the calendar year to which division (H)(1) of this section refers or the immediately preceding calendar year.

(3) Each exiting corporation shall pay a tax computed by first allocating and apportioning the unreported net income pursuant to division (B) of section 5733.05 and section 5733.051 and, if applicable, section 5733.052 of the Revised Code. The exiting corporation then shall compute the tax due on its unreported net income allocated and apportioned to this state by applying divisions (A), (B), and (F) of this section to that income.

(4) Divisions (C) and (G) of this section, division (D)(2) of section 5733.065, and division (C) of section 5733.066 of the Revised Code do not apply to an exiting corporation, but exiting corporations are subject to every other provision of this chapter.

(5) Notwithstanding division (B) of section 5733.01 or sections 5733.02, 5733.021, and 5733.03 of the Revised Code to the contrary, each exiting corporation shall report and pay the tax due under division (H) of this section on or before the

thirty-first day of May immediately following the calendar year to which division (H)(1)(a) of this section refers. The exiting corporation shall file that report on the form most recently prescribed by the tax commissioner for the purposes of complying with sections 5733.02 and 5733.03 of the Revised Code. Upon request by the corporation, the tax commissioner may extend the date for filing the report.

(6) If, on account of the application of section 5733.053 of the Revised Code, net income is subject to the tax imposed by divisions (A) and (B) of this section, such income shall not be subject to the tax imposed by division (H)(3) of this section.

(7) The amendments made to division (H) of this section by Am. Sub. S.B. 287 of the 123rd general assembly do not apply to any transfer, as defined in section 5733.053 of the Revised Code, for which negotiations began prior to January 1, 2001, and that was commenced in and completed during calendar year 2001, unless the taxpayer makes an election prior to December 31, 2001, to apply those amendments.

(8) The tax commissioner may adopt rules governing division (H) of this section.

(I) Any reference in the Revised Code to "the tax imposed by section 5733.06 of the Revised Code" or "the tax due under section 5733.06 of the Revised Code" includes the taxes imposed under sections 5733.065 and 5733.066 of the Revised Code.

(J)(1) Division (J) of this section applies solely to a combined company. Section 5733.057 of the Revised Code shall apply when calculating the adjustments required by division (J) of this section.

(2) Subject to division (J)(4) of this section, the total tax calculated in divisions (A) and (B) of this section shall be reduced by an amount calculated by multiplying such tax by a

fraction, the numerator of which is the total taxable gross receipts attributed to providing public utility activity other than as an electric company under section 5727.03 of the Revised Code for the year upon which the taxable gross receipts are measured immediately preceding the tax year, and the denominator of which is the total gross receipts from all sources for the year upon which the taxable gross receipts are measured immediately preceding the tax year. Nothing herein shall be construed to exclude from the denominator any item of income described in section 5733.051 of the Revised Code.

(3) Subject to division (J)(4) of this section, the total tax calculated in division (C) of this section shall be reduced by an amount calculated by multiplying such tax by the fraction described in division (J)(2) of this section.

(4) In no event shall the reduction provided by division (J)(2) or (J)(3) of this section exceed the amount of the excise tax paid in accordance with section 5727.38 of the Revised Code, for the year upon which the taxable gross receipts are measured immediately preceding the tax year.

Sec. 5733.0611. (A) There is hereby allowed a nonrefundable credit against the tax imposed under section 5733.06 of the Revised Code. The credit shall be equal to the taxpayer's proportionate share of the lesser of either the tax due or the tax paid by any qualifying entity under section 5733.41 of the Revised Code for the qualifying taxable year of the qualifying entity that ends in the taxable year of the taxpayer. The taxpayer shall claim the credit for the taxpayer's taxable year in which ends the qualifying entity's qualifying taxable year.

In claiming the credit and determining its proportionate share of the tax due and the tax paid by the qualifying entity, the person claiming the credit shall follow the concepts set forth

in subchapter K of the Internal Revenue Code. Nothing in this division shall be construed to limit or disallow pass-through treatment of a pass-through entity's income, deductions, credits, or other amounts necessary to compute the tax imposed and the credits allowed under this chapter.

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

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

(C) If an organization described in section 401(a) of the Internal Revenue Code or a trust or fund is entitled to a proportionate share of the lesser of either the tax due or the tax paid by any qualifying entity under section 5733.41 of the Revised Code, and if that proportionate share is then or could be allocable to an exempt person as defined in division (D) of this section, then the organization, trust, or fund may file an application for refund with respect to such allocable amounts pursuant to section 5733.12 of the Revised Code. Upon proper application for refund under that section, the tax commissioner

shall issue a refund in the amount of the credit to which the organization, trust, or fund would have been entitled under division (A)(1) of this section had the organization, trust, or fund been a taxpayer, and as if the credit were a refundable credit. To the extent that such an organization, trust, or fund is permitted to apply for a refund under this division, or to the extent that such an organization, trust, or fund has applied for such a refund, exempt persons are not entitled to the credit authorized under this section or section 5747.059 of the Revised Code.

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

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

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

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

pay the withheld tax as required under section 5733.41 and sections 5747.40 to 5747.453 of the Revised Code.

(2) An exempt person does not include any person that would not qualify as an exempt person under the doctrines of "economic reality," "sham transaction," "step doctrine," or "substance over form." Notwithstanding ~~sections 5733.111 and 5747.131~~ section 5703.56 of the Revised Code to the contrary, an organization, trust, or fund described in division (C) of this section bears the burden of establishing by a preponderance of the evidence that any transaction giving rise to a claim for a refundable credit under this section does not have as a principal purpose a claim for that credit. Nothing in this section shall be construed to limit solely to this section the application of the doctrines referred to in division (D)(2) of this section.

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

Sec. 5733.09. (A) ~~An~~ (1) Except as provided in divisions (A)(2) and (3) of this section, an incorporated company, whether foreign or domestic, owning and operating a public utility in this state, and required by law to file reports with the tax commissioner and to pay an excise tax upon its gross receipts, and insurance, fraternal, beneficial, bond investment, and other corporations required by law to file annual reports with the superintendent of insurance and dealers in intangibles, the shares of which are, or the capital or ownership in capital employed by such dealer is, subject to the taxes imposed by section 5707.03 of the Revised Code, shall not be subject to this chapter, except for sections 5733.031, 5733.042, 5733.05, 5733.052, 5733.053, 5733.069, 5733.0611, 5733.40, 5733.41, and sections 5747.40 to 5747.453 of the Revised Code. However, for reports required to be

filed under section 5725.14 of the Revised Code in 2003 and thereafter, nothing in this section shall be construed to exempt the property of any dealer in intangibles under section 5725.13 of the Revised Code from the tax imposed under section 5707.03 of the Revised Code. ~~An~~

(2) An electric company subject to the filing requirements of section 5727.08 of the Revised Code or otherwise having nexus with or in this state under the Constitution of the United States, or any other corporation having any gross receipts directly attributable to providing public utility service as an electric company or having any property directly attributable to providing public utility service as an electric company, is subject to this chapter.

(3) A telephone company that no longer pays an excise tax under section 5727.30 of the Revised Code on its gross receipts billed after June 30, 2004, is first subject to taxation under this chapter for tax year 2005. For that tax year, a telephone company with a taxable year ending in 2004 shall compute the tax imposed under this chapter, and shall compute the net operating loss carry forward for tax year 2005, by multiplying the tax owed under this chapter, net of all nonrefundable credits, or the loss for the taxable year, by fifty per cent.

(B) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year under such code is exempt from the tax imposed by section 5733.06 of the Revised Code that is based on that taxable year.

A corporation that makes such an election shall file a notice of such election with the tax commissioner between the first day of January and the thirty-first day of March of each tax year that the election is in effect.

(C) An entity defined to be a "real estate investment trust" by section 856 of the Internal Revenue Code, a "regulated investment company" by section 851 of the Internal Revenue Code, or a "real estate mortgage investment conduit" by section 860D of the Internal Revenue Code, is exempt from taxation for a tax year as a corporation under this chapter and is exempt from taxation for a return year as a dealer in intangibles under Chapter 5725. of the Revised Code if it provides the report required by this division. By the last day of March of the tax or return year the entity shall submit to the tax commissioner the name of the entity with a list of the names, addresses, and social security or federal identification numbers of all investors, shareholders, and other similar investors who owned any interest or invested in the entity during the preceding calendar year. The commissioner may extend the date by which the report must be submitted for reasonable cause shown by the entity. The commissioner may prescribe the form of the report required for exemption under this division.

(D)(1) As used in this division:

(a) "Commercial printer" means a person primarily engaged in the business of commercial printing. However, "commercial printer" does not include a person primarily engaged in the business of providing duplicating services using photocopy machines or other xerographic processes.

(b) "Commercial printing" means printing by one or more common processes such as letterpress, lithography, gravure, screen, or digital imaging, and includes related activities such as binding, platemaking, prepress operation, cartographic composition, and typesetting.

(c) "Contract for printing" means an oral or written agreement for the purchase of printed materials produced by a

commercial printer.

(d) "Intangible property located at the premises of a commercial printer" means intangible property of any kind owned or licensed by a customer of the commercial printer and furnished to the commercial printer for use in commercial printing.

(e) "Printed material" means any tangible personal property produced or processed by a commercial printer pursuant to a contract for printing.

(f) "Related member" has the same meaning as in ~~division (A)(6) of~~ section 5733.042 of the Revised Code without regard to division (B) of that section.

(2) Except as provided in divisions (D)(3) and (4) of this section, a corporation not otherwise subject to the tax imposed by section 5733.06 of the Revised Code for a tax year does not become subject to that tax for the tax year solely by reason of any one or more of the following occurring in this state during the taxable year that ends immediately prior to the tax year:

(a) Ownership by the corporation or a related member of the corporation of tangible personal property or intangible property located during all or any portion of the taxable year or on the first day of the tax year at the premises of a commercial printer with which the corporation or the corporation's related member has a contract for printing with respect to such property or the premises of a commercial printer's related member with which the corporation or the corporation's related member has a contract for printing with respect to such property;

(b) Sales by the corporation or a related member of the corporation of property produced at and shipped or distributed from the premises of a commercial printer with which the corporation or the corporation's related member has a contract for printing with respect to such property or the premises of a

commercial printer's related member with which the corporation or the corporation's related member has a contract for printing with respect to such property;

(c) Activities of employees, officers, agents, or contractors of the corporation or a related member of the corporation on the premises of a commercial printer with which the corporation or the corporation's related member has a contract for printing or the premises of a commercial printer's related member with which the corporation or the corporation's related member has a contract for printing, where the activities are directly and solely related to quality control, distribution, or printing services, or any combination thereof, performed by or at the direction of the commercial printer or the commercial printer's related member.

(3) The exemption under this division does not apply for a taxable year to any corporation having on the first day of January of the tax year or at any time during the taxable year ending immediately preceding the first day of January of the tax year a related member which, on the first day of January of the tax year or during any portion of such taxable year of the corporation, has nexus in or with this state under the Constitution of the United States or holds a certificate of compliance with the laws of this state authorizing it to do business in this state.

(4) With respect to allowing the exemption under this division, the tax commissioner shall be guided by the doctrines of "economic reality," "sham transaction," "step transaction," and "substance over form." A corporation shall bear the burden of establishing by a preponderance of the evidence that any transaction giving rise to an exemption claimed under this division did not have as a principal purpose the avoidance of any portion of the tax imposed by section 5733.06 of the Revised Code.

Application of the doctrines listed in division (D)(4) of this section is not limited to this division.

Sec. 5733.121. If a corporation entitled to a refund under section 5733.11 or 5733.12 of the Revised Code is indebted to this state for any tax, workers' compensation premium due under section 4123.35 of the Revised Code, unemployment compensation contribution due under section 4141.25 of the Revised Code, or unemployment compensation payment in lieu of contribution under section 4141.241 of the Revised Code or fee ~~administered by the tax commissioner~~ that is paid to the state or to the clerk of courts pursuant to section 4505.06 of the Revised Code, or any charge, penalty, or interest arising from such a tax, workers' compensation premium, unemployment compensation contribution, or unemployment compensation payment in lieu of contribution under section 4141.241 of the Revised Code or fee, the amount refundable may be applied in satisfaction of the debt. If the amount refundable is less than the amount of the debt, it may be applied in partial satisfaction of the debt. If the amount refundable is greater than the amount of the debt, the amount remaining after satisfaction of the debt shall be refunded. If the corporation has more than one such debt, any debt subject to section 5739.33 or division (G) of section 5747.07 of the Revised Code shall be satisfied first. This section applies only to debts that have become final.

The tax commissioner may, with the consent of the taxpayer, provide for the crediting, against tax due for any tax year, of the amount of any refund due the taxpayer under this chapter for a preceding tax year.

Sec. 5733.18. Annually, on the day fixed for the payment of any excise or franchise tax required to be paid by law, such tax, together with any penalties subsequently accruing thereon, shall become a lien on all property in this state of a corporation, whether such property is employed by the corporation in the

prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the creditors and stockholders. Such lien shall continue until such taxes, together with any penalties subsequently accruing, are paid.

Upon failure of such corporation to pay such tax on the day fixed for payment, the tax commissioner may file, for which filing no fee shall be charged, in the office of the county recorder in each county in this state in which such corporation owns or has a beneficial interest in real estate, notice of such lien containing a brief description of such real estate. Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor whose rights have attached prior to the time such notice is so filed in the county in which the real estate which is the subject of such mortgage, purchase, or judgment lien is located. Such notice shall be recorded in a book kept by the recorder, called the corporation franchise lien record, and indexed under the name of the corporation charged with such tax. When such tax, together with any penalties subsequently accruing thereon, has been paid, the tax commissioner shall furnish to the corporation an acknowledgment of such payment which the corporation may record with the recorder of each county in which notice of such lien has been filed, for which recording the recorder shall charge and receive a <u>base</u> fee of two dollars <u>for services and a housing trust fund fee of two dollars pursuant to section 317.36 of the Revised Code</u>.

Sec. 5733.22. (A)(1) Any corporation whose articles of incorporation or license certificate to do or transact business in this state has been canceled by the secretary of state pursuant to section 5733.20 of the Revised Code for failure to make any report or return or to pay any tax or fee, shall be reinstated and again entitled to exercise its rights, privileges, and franchises in this state, and the secretary of state shall cancel the entry of

cancellation to exercise its rights, privileges, and franchises upon compliance with all of the following:

(a) Payment to the secretary of state of any additional fees and penalties required to be paid to the secretary of state;

(b) Filing with the secretary of state a certificate from the tax commissioner that it has complied with all the requirements of law as to franchise or excise tax reports and paid all franchise or excise taxes, fees, or penalties due thereon for every year of its delinquency;

(c) Payment to the secretary of state of an additional fee of ten dollars.

(2) The applicant for reinstatement shall be required by the secretary of state, as a condition prerequisite to such reinstatement, to amend its articles by changing its name if all of the following apply:

(a) The reinstatement is not made within one year from the date of the cancellation of its articles of incorporation or date of the cancellation of its license to do business;

(b) It appears that the applicant's articles of incorporation or license certificate has been issued to another entity and is not distinguishable upon the record from the name of the applicant;

(c) It appears that the articles of organization of a limited liability company, registration of a foreign limited liability company, certificate of limited partnership, registration of a foreign limited partnership, registration of a domestic or foreign limited liability partnership, or registration of a trade name has been issued to another entity and is not distinguishable upon the record from the name of the applicant. A certificate of reinstatement may be filed in the recorder's office of any county in the state, for which the recorder shall charge and collect a

base fee of three dollars for services and a housing trust fund fee of three dollars pursuant to section 317.36 of the Revised Code.

Any officer, shareholder, creditor, or receiver of any such corporation may at any time take all steps required by this section to effect such reinstatement.

(B) The rights, privileges, and franchises of a corporation whose articles of incorporation have been reinstated in accordance with this section, are subject to section 1701.922 of the Revised Code.

(C) Notwithstanding a violation of section 5733.21 of the Revised Code, upon reinstatement of a corporation's articles of incorporation in accordance with this section, neither section 5733.20 nor section 5733.21 of the Revised Code shall be applied to invalidate the exercise or attempt to exercise any right, privilege, or franchise on behalf of the corporation by an officer, agent, or employee of the corporation after cancellation and prior to the reinstatement of the articles, if the conditions set forth in divisions (B)(1)(a) and (b) of section 1701.922 of the Revised Code are met.

Sec. 5733.45. (A) For purposes of this section, a "qualifying dealer in intangibles" is a dealer in intangibles that is a member of a qualifying controlled group of which a financial institution is also a member on the first day of the financial institution's tax year.

(B) For tax years 2002 and thereafter, there is hereby allowed to each financial institution a nonrefundable credit against the tax imposed by section 5733.06 of the Revised Code. The amount of the credit shall be computed in accordance with division (C) of this section. The credit shall be claimed in the order prescribed by section 5733.98 of the Revised Code. The

credit shall not exceed the amount of tax otherwise due under section 5733.06 of the Revised Code after deducting any other credits that precede the credit claimed under this section in that order.

(C) Subject to division (D) of this section, the amount of the nonrefundable credit is the lesser of the amount described in division (C)(1) of this section or the amount described in division (C)(2) of this section.

(1) The amount of tax that a qualifying dealer in intangibles paid under Chapter 5707. of the Revised Code during the calendar year immediately preceding the financial institution's tax year. Such amount shall be reduced, but not below zero, by any refunds of such tax received by the qualifying dealer in intangibles under Chapter 5703. of the Revised Code during that calendar year.

(2) The product of the amounts described in division (C)(2)(a) to (C)(2)(c) of this section. The amount described in division (C)(2)(a) of this section shall be ascertained on the last day of the financial institution's taxable year immediately preceding the tax year.

(a) The cost of the financial institution's direct investment in the capital stock of the qualifying dealer in intangibles. The cost does not include any appreciation or goodwill to the extent those amounts are allowed as an exempted asset on the financial institution's annual report.

(b) The ratio described in section 5725.15 of the Revised Code for the calendar year immediately preceding the financial institution's tax year;

(c) The tax rate imposed under division (D) of section 5707.03 of the Revised Code for the calendar year immediately preceding the financial institution's tax year.

(D)(1) The principles and concepts set forth in section

5733.057 of the Revised Code shall apply to ascertain if a dealer in intangibles is a member of a qualifying controlled group of which the financial institution also is a member and to ascertain the cost of the financial institution's direct investment in the capital stock of the qualifying dealer in intangibles.

(2) Notwithstanding section ~~5733.111~~ 5703.56 of the Revised Code to the contrary, a financial institution claiming the credit provided by this section has the burden to establish by a preponderance of the evidence that none of the doctrines enumerated in that section would apply to deny to the financial institution all or a part of the credit otherwise provided by this section.

(E) For tax years 2002 and 2003, the credit allowed by this section applies only if the qualifying dealer in intangibles on account of which the financial institution is claiming the credit submits to the ~~Tax Commissioner~~ tax commissioner, not later than January 15, 2002, a written statement that the qualifying dealer in intangibles irrevocably agrees that it will not seek a refund of the tax paid by the dealer under section 5707.03 of the Revised Code in 2000 and 2001, and irrevocably agrees to continue paying that tax in 2002, regardless of the amendment of section 5725.26 of the Revised Code by Am. Sub. H.B. 405 of the 124th general assembly.

Sec. 5733.49. Upon the issuance of a tax credit certificate by the Ohio venture capital authority under section 150.07 of the Revised Code, a credit may be claimed against the tax imposed by section 5733.06 of the Revised Code. The credit shall be claimed for the tax year specified in the certificate issued by the authority and in the order required under section 5733.98 of the Revised Code. If the taxpayer elected a refundable credit under section 150.07 of the Revised Code, and the amount of the credit

shown on the certificate exceeds the tax otherwise due under sections 5733.06, 5733.065, and 5733.066 of the Revised Code after all credits, including the credit allowed under this section, are deducted in that order, the taxpayer shall receive a refund equal to seventy-five per cent of that excess. If the taxpayer elected a nonrefundable credit, the amount of the credit, claimed in that order, shall not exceed the tax otherwise due under those sections after all the taxpayer's credits are deducted in that order. If the taxpayer elected a nonrefundable credit and the credit to which the taxpayer would otherwise be entitled under this section for any tax year is greater than the tax otherwise due under sections 5733.06, 5733.065, and 5733.066 of the Revised Code, after allowing for any other credits that precede the credit allowed under this section, the excess shall be allowed as a credit in each of the ensuing ten tax years, but the amount of any excess credit allowed in the ensuing tax year shall be deducted from the balance carried forward to the next tax year.

Sec. 5733.55. (A) As used in this section:

(1) "9-1-1 system" has the same meaning as in section 4931.40 of the Revised Code.

(2) "Nonrecurring 9-1-1 charges" means nonrecurring charges approved by the public utilities commission for the telephone network portion of a 9-1-1 system pursuant to section 4931.47 of the Revised Code.

(3) "Eligible nonrecurring 9-1-1 charges" means all nonrecurring 9-1-1 charges for a 9-1-1 system, except:

(a) Charges for a system that was not established pursuant to a plan adopted under section 4931.44 of the Revised Code or an agreement under section 4931.48 of the Revised Code;

(b) Charges for that part of a system established pursuant to

such a plan or agreement that are excluded from the credit by division (C)(2) of section 4931.47 of the Revised Code.

(4) "Telephone company" has the same meaning as in section 5727.01 of the Revised Code.

(B) Beginning in tax year 2005, a telephone company shall be allowed a nonrefundable credit against the tax imposed by section 5733.06 of the Revised Code equal to the amount of its eligible nonrecurring 9-1-1 charges. The credit shall be claimed for the company's taxable year that covers the period in which the 9-1-1 service for which the credit is claimed becomes available for use. The credit shall be claimed in the order required by section 5733.98 of the Revised Code. If the credit exceeds the total taxes due under section 5733.06 of the Revised Code for the tax year, the commissioner shall credit the excess against taxes due under that section for succeeding tax years until the full amount of the credit is granted.

(C) After the last day a return, with any extensions, may be filed by any telephone company that is eligible to claim a credit under this section, the commissioner shall determine whether the sum of the credits allowed for prior tax years commencing with tax year 2005 plus the sum of the credits claimed for the current tax year exceeds fifteen million dollars. If it does, the credits allowed under this section for the current tax year shall be reduced by a uniform percentage such that the sum of the credits allowed for the current tax year do not exceed fifteen million dollars claimed by all telephone companies for all tax years. Thereafter, no credit shall be granted under this section, except for the remaining portions of any credits allowed under division (B) of this section.

(D) A telephone company that is entitled to carry forward a credit against its public utility excise tax liability under section 5727.39 of the Revised Code is entitled to carry forward

any amount of that credit remaining after its last public utility excise tax payment for the period of July 1, 2003, through June 30, 2004, and claim that amount as a credit against its corporation franchise tax liability under this section. Nothing in this section authorizes a telephone company to claim a credit under this section for any eligible nonrecurring 9-1-1 charges for which it has already claimed a credit under section 5727.39 of the Revised Code.

Sec. 5733.56. Beginning in tax year 2005, a telephone company that provides any telephone service program to aid the communicatively impaired in accessing the telephone network under section 4905.79 of the Revised Code is allowed a nonrefundable credit against the tax imposed by section 5733.06 of the Revised Code. The amount of the credit is the cost incurred by the company for providing the telephone service program during its taxable year, excluding any costs incurred prior to July 1, 2004. If the tax commissioner determines that the credit claimed under this section by a telephone company was not correct, the commissioner shall determine the proper credit.

A telephone company shall claim the credit in the order required by section 5733.98 of the Revised Code. If the credit exceeds the total taxes due under section 5733.06 of the Revised Code for the tax year, the commissioner shall credit the excess against taxes due under that section for succeeding tax years until the full amount of the credit is granted. Nothing in this section authorizes a telephone company to claim a credit under this section for any costs incurred for providing a telephone service program for which it is claiming a credit under former section 5727.44 of the Revised Code.

Sec. 5733.57. (A) As used in this section:

(1) "Small telephone company" means a telephone company, existing as such as of January 1, 2003, with twenty-five thousand or fewer access lines as shown on the company's annual report filed under section 4905.14 of the Revised Code for the calendar year immediately preceding the tax year, and is an "incumbent local exchange carrier" under 47 U.S.C. 251(h).

(2) "Gross receipts tax amount" means the product obtained by multiplying four and three-fourths per cent by the amount of a small telephone company's taxable gross receipts, excluding the deduction of twenty-five thousand dollars, that the tax commissioner would have determined under section 5727.33 of the Revised Code for that small telephone company for the annual period ending on the thirtieth day of June of the calendar year immediately preceding the tax year, as that section applied in the measurement period from July 1, 2002, to June 30, 2003.

(3) "Applicable percentage" means one hundred per cent for tax year 2005; eighty per cent for tax year 2006; sixty per cent for tax year 2007; forty per cent for tax year 2008; twenty per cent for tax year 2009; and zero per cent for each subsequent tax year thereafter.

(4) "Applicable amount" means the amount resulting from subtracting the gross receipts tax amount from the tax imposed by sections 5733.06, 5733.065, and 5733.066 of the Revised Code for the tax year, without regard to any credits available to the small telephone company.

(B)(1) Except as provided in division (B)(2) of this section, beginning in tax year 2005, a small telephone company is hereby allowed a nonrefundable credit against the tax imposed by sections 5733.06, 5733.065, and 5733.066 of the Revised Code, equal to the product obtained by multiplying the applicable percentage by the applicable amount. The credit shall be claimed in the order

required by section 5733.98 of the Revised Code.

(2) If the applicable amount for a tax year is less than zero, a small telephone company shall not be allowed for that tax year the credit provided under this section.

Sec. 5733.98. (A) To provide a uniform procedure for calculating the amount of tax imposed by section 5733.06 of the Revised Code that is due under this chapter, a taxpayer shall claim any credits to which it is entitled in the following order, except as otherwise provided in section 5733.058 of the Revised Code:

(1) The credit for taxes paid by a qualifying pass-through entity allowed under section 5733.0611 of the Revised Code;

(2) The credit allowed for financial institutions under section 5733.45 of the Revised Code;

(3) The credit for qualifying affiliated groups under section 5733.068 of the Revised Code;

(4) The subsidiary corporation credit under section 5733.067 of the Revised Code;

(5) The savings and loan assessment credit under section 5733.063 of the Revised Code;

(6) The credit for recycling and litter prevention donations under section 5733.064 of the Revised Code;

(7) The credit for employers that enter into agreements with child day-care centers under section 5733.36 of the Revised Code;

(8) The credit for employers that reimburse employee child day-care expenses under section 5733.38 of the Revised Code;

(9) The credit for maintaining railroad active grade crossing warning devices under section 5733.43 of the Revised Code;

(10) The credit for purchases of lights and reflectors under

section 5733.44 of the Revised Code;

(11) The job retention credit under division (B) of section 5733.0610 of the Revised Code;

(12) The credit for losses on loans made under the Ohio venture capital program under sections 150.01 to 150.10 of ~~th~~ the Revised Code if the taxpayer elected a nonrefundable credit under section 150.07 of the Revised Code;

(13) The credit for purchases of new manufacturing machinery and equipment under section 5733.31 or section 5733.311 of the Revised Code;

(14) The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;

(15) The job training credit under section 5733.42 of the Revised Code;

(16) The credit for qualified research expenses under section 5733.351 of the Revised Code;

(17) The enterprise zone credit under section 5709.66 of the Revised Code;

(18) The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;

(19) The credit for employers that establish on-site child day-care under section 5733.37 of the Revised Code;

(20) The ethanol plant investment credit under section 5733.46 of the Revised Code;

(21) The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;

(22) The export sales credit under section 5733.069 of the Revised Code;

(23) The credit for research and development and technology

transfer investors under section 5733.35 of the Revised Code;

(24) The enterprise zone credits under section 5709.65 of the Revised Code;

(25) The credit for using Ohio coal under section 5733.39 of the Revised Code;

(26) The credit for small telephone companies under section 5733.57 of the Revised Code;

(27) The credit for eligible nonrecurring 9-1-1 charges under section 5733.55 of the Revised Code;

(28) The credit for providing programs to aid the communicatively impaired under section 5733.56 of the Revised Code;

(29) The refundable jobs creation credit under division (A) of section 5733.0610 of the Revised Code;

~~(27)~~(30) The refundable credit for tax withheld under division (B)(2) of section 5747.062 of the Revised Code;

~~(28)~~(31) The credit for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code if the taxpayer elected a refundable credit under section 150.07 of the Revised Code.

(B) For any credit except the credits enumerated in divisions (A)~~(26), (27),~~(29), (30), and ~~(28)~~(31) of this section, the amount of the credit for a tax year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit.

Sec. 5735.05. (A) To provide revenue for maintaining the state highway system; to widen existing surfaces on such highways;

to resurface such highways; to pay that portion of the construction cost of a highway project which a county, township, or municipal corporation normally would be required to pay, but which the director of transportation, pursuant to division (B) of section 5531.08 of the Revised Code, determines instead will be paid from moneys in the highway operating fund; to enable the counties of the state properly to plan, maintain, and repair their roads and to pay principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code for highway improvements; to enable the municipal corporations to plan, construct, reconstruct, repave, widen, maintain, repair, clear, and clean public highways, roads, and streets, and to pay the principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code for highway improvements; to enable the Ohio turnpike commission to construct, reconstruct, maintain, and repair turnpike projects; to maintain and repair bridges and viaducts; to purchase, erect, and maintain street and traffic signs and markers; to purchase, erect, and maintain traffic lights and signals; to pay the costs apportioned to the public under sections 4907.47 and 4907.471 of the Revised Code and to supplement revenue already available for such purposes; to pay the costs incurred by the public utilities commission in administering sections 4907.47 to 4907.476 of the Revised Code; to distribute equitably among those persons using the privilege of driving motor vehicles upon such highways and streets the cost of maintaining and repairing them; to pay the interest, principal, and charges on highway capital improvements bonds and other obligations issued pursuant to Section 2m of Article VIII, Ohio Constitution, and section 151.06 of the Revised Code; to pay the interest, principal, and charges on highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code; ~~and~~ to provide revenue for the purposes of

sections 1547.71 to 1547.78 of the Revised Code; and to pay the expenses of the department of taxation incident to the administration of the motor fuel laws, a motor fuel excise tax is hereby imposed on all motor fuel dealers upon receipt of motor fuel within this state at the rate of two cents plus the cents per gallon rate on each gallon so received, to be computed in the manner set forth in section 5735.06 of the Revised Code; provided that no tax is hereby imposed upon the following transactions:

(1) The sale of dyed diesel fuel by a licensed motor fuel dealer from a location other than a retail service station provided the licensed motor fuel dealer places on the face of the delivery document or invoice, or both if both are used, a conspicuous notice stating that the fuel is dyed and is not for taxable use, and that taxable use of that fuel is subject to a penalty. The tax commissioner, by rule, may provide that any notice conforming to rules or regulations issued by the United States department of the treasury or the Internal Revenue Service is sufficient notice for the purposes of division (A)(1) of this section.

(2) The sale of K-1 kerosene to a retail service station, except when placed directly in the fuel supply tank of a motor vehicle. Such sale shall be rebuttably presumed to not be distributed or sold for use or used to generate power for the operation of motor vehicles upon the public highways or upon the waters within the boundaries of this state.

(3) The sale of motor fuel by a licensed motor fuel dealer to another licensed motor fuel dealer;

(4) The exportation of motor fuel by a licensed motor fuel dealer from this state to any other state or foreign country;

(5) The sale of motor fuel to the United States government or any of its agencies, except such tax as is permitted by it, where

such sale is evidenced by an exemption certificate, in a form approved by the tax commissioner, executed by the United States government or an agency thereof certifying that the motor fuel therein identified has been purchased for the exclusive use of the United States government or its agency;

(6) The sale of motor fuel ~~which~~ that is in the process of transportation in foreign or interstate commerce, except ~~in so far~~ insofar as it may be taxable under the Constitution and statutes of the United States, and except as may be agreed upon in writing by the dealer and the commissioner;

(7) The sale of motor fuel when sold exclusively for use in the operation of aircraft, where such sale is evidenced by an exemption certificate prescribed by the commissioner and executed by the purchaser certifying that the motor fuel purchased has been purchased for exclusive use in the operation of aircraft;

(8) The sale for exportation of motor fuel by a licensed motor fuel dealer to a licensed exporter type A;

(9) The sale for exportation of motor fuel by a licensed motor fuel dealer to a licensed exporter type B, provided that the destination state motor fuel tax has been paid or will be accrued and paid by the licensed motor fuel dealer.

(10) The sale to a consumer of diesel fuel, by a motor fuel dealer for delivery from a bulk lot vehicle, for consumption in operating a vessel when the use of such fuel in a vessel would otherwise qualify for a refund under section 5735.14 of the Revised Code.

Division (A)(1) of this section does not apply to the sale or distribution of dyed diesel fuel used to operate a motor vehicle on the public highways or upon water within the boundaries of this state by persons permitted under regulations of the United States department of the treasury or of the Internal Revenue Service to

so use dyed diesel fuel.

(B) The two cent motor fuel tax levied by this section is also for the purpose of paying the expenses of administering and enforcing the state law relating to the registration and operation of motor vehicles.

(C) After the tax provided for by this section on the receipt of any motor fuel has been paid by the motor fuel dealer, the motor fuel may thereafter be used, sold, or resold by any person having lawful title to it, without incurring liability for such tax.

If a licensed motor fuel dealer sells motor fuel received by the licensed motor fuel dealer to another licensed motor fuel dealer, the seller may deduct on the report required by section 5735.06 of the Revised Code the number of gallons so sold for the month within which the motor fuel was sold or delivered. In this event the number of gallons is deemed to have been received by the purchaser, who shall report and pay the tax imposed thereon.

Sec. 5735.053. There is hereby created in the state treasury the motor fuel tax administration fund for the purpose of paying the expenses of the department of taxation incident to the administration of the motor fuel laws. After the treasurer of state credits the tax refund fund out of tax receipts as required by sections 5735.23, 5735.26, 5735.291, and 5735.30 of the Revised Code, the treasurer of state shall transfer to the motor fuel tax administration fund two hundred seventy-five one-thousandths per cent of the receipts from the taxes levied by sections 5735.05, 5735.25, 5735.29, and 5735.30 of the Revised Code.

Sec. 5735.14. (A) Any person who uses any motor fuel, on which the tax imposed by this chapter has been paid, for the purpose of operating stationary gas engines, tractors not used on

public highways, unlicensed motor vehicles used exclusively in intraplant operations, vessels when used in trade, including vessels when used in connection with an activity that constitutes a person's chief business or means of livelihood or any other vessel used entirely for commercial purposes, vessels used for commercial fishing, vessels used by the sea scout department of the boy scouts of America chiefly for training scouts in seamanship, vessels used or owned by any railroad company, railroad car ferry company, the United States, this state, or any political subdivision of this state, or aircraft, or who uses any such fuel upon which such tax has been paid, for cleaning or for dyeing, or any purpose other than the operation of motor vehicles upon highways or upon waters within the boundaries of this state, shall be reimbursed in the amount of the tax so paid on such motor fuel as provided in this section; provided, that any person purchasing motor fuel in this state on which taxes levied under Title LVII of the Revised Code have been paid shall be reimbursed for such taxes paid in this state on such fuel used by that person in another state on which a tax is paid for such usage, except such tax used as a credit against the tax levied by section 5728.06 of the Revised Code. A person shall not be reimbursed for taxes paid on fuel that is used while a motor vehicle is idling or used to provide comfort or safety in the operation of a motor vehicle. Sales of motor fuel, on which the tax imposed by this chapter has been paid, from one person to another do not constitute use of the fuel and are not subject to a refund under this section.

~~Such~~ <u>(B) Any person who uses in this state any motor fuel with water intentionally added to the fuel, on which the taxes imposed by this chapter or Chapter 5728. of the Revised Code have been paid, shall be reimbursed in the amount of the taxes so paid on ninety-five per cent of the water. This division applies only to motor fuel that contains at least nine per cent water, by</u>

volume.

(C) A person claiming reimbursement under this section shall file with the tax commissioner an application for refund within one year from the date of purchase, stating the quantity of fuel used for the refundable purposes ~~other than the operation of motor vehicles~~ in division (A) or (B) of this section, except that no person shall file a claim for the tax on fewer than one hundred gallons of motor fuel. An application for refund filed for the purpose of division (B) of this section also shall state the quantity of water intentionally added to the motor fuel. No person shall claim reimbursement under that division on fewer than one hundred gallons of water. The application shall be accompanied by the statement described in section 5735.15 of the Revised Code showing such purchase, together with evidence of payment thereof.

(D) After consideration of the application and statement, the commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

No refund shall be authorized or paid under this section on a single claim for tax on fewer than one hundred gallons of motor fuel. And, when water has been intentionally added to fuel, no refund shall be authorized or paid under this section on a single claim for tax on fewer than one hundred gallons of water. The commissioner may require that the application be supported by the affidavit of the claimant.

The refund authorized by this section or section 5703.70 of the Revised Code shall be reduced by the cents per gallon amount

of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

(E) The right to receive any refund under this section or section 5703.70 of the Revised Code is not assignable. The payment of this refund shall not be made to any person other than the person originally entitled thereto who used the motor fuel upon which the claim for refund is based, except that such refunds, when allowed and certified as provided in this section, may be paid to the executor, ~~the~~ administrator, ~~the~~ receiver, ~~the~~ trustee in bankruptcy, or ~~the~~ assignee in insolvency proceedings of such person.

Sec. 5735.142. (A)(1) Any person who uses any motor fuel, on which the tax imposed by sections 5735.05, 5735.25, and 5735.29 of the Revised Code has been paid, for the purpose of operating a transit bus shall be reimbursed in the amount of the tax paid on motor fuel used by public transportation systems providing transit or paratransit service on a regular and continuing basis within the state;

(2) A city, exempted village, joint vocational, or local school district or educational service center that ~~uses~~ purchases any motor fuel for school district or service center operations, on which any tax imposed by section 5735.29 of the Revised Code that became effective on or after July 1, 2003, has been paid, may, if an application is filed under this section, be reimbursed in the amount of all but two cents per gallon of ~~that~~ the total tax imposed by such section and paid on motor fuel~~, used for providing transportation for pupils in a vehicle the district owns or leases~~.

(B) Such person, school district, or educational service

center shall file with the tax commissioner an application for refund within one year from the date of purchase, stating the quantity of fuel used for operating transit buses used by local transit systems in furnishing scheduled common carrier, public passenger land transportation service along regular routes primarily in one or more municipal corporations or for operating vehicles used ~~by~~ for school ~~districts to transport pupils~~ district or service center operations. However, no ~~person shall file a~~ claim shall be made for the tax on fewer than one hundred gallons of motor fuel. A school district or educational service center shall not apply for a refund for any tax paid on motor fuel that is sold by the district or educational service center. The application shall be accompanied by the statement described in section 5735.15 of the Revised Code showing the purchase, together with evidence of payment thereof.

(C) After consideration of the application and statement, the commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

The commissioner may require that the application be supported by the affidavit of the claimant. No refund shall be authorized or ordered for any single claim for the tax on fewer than one hundred gallons of motor fuel. No refund shall be authorized or ordered on motor fuel that is sold by a school district or educational service center.

(D) The refund authorized by this section or section 5703.70 of the Revised Code shall be reduced by the cents per gallon

amount of any qualified fuel credit received under section 5735.145 of the Revised Code, as determined by the commissioner, for each gallon of qualified fuel included in the total gallonage of motor fuel upon which the refund is computed.

(E) The right to receive any refund under this section or section 5703.70 of the Revised Code is not assignable. The payment of this refund shall not be made to any person or entity other than the person or entity originally entitled thereto who used the motor fuel upon which the claim for refund is based, except that the refund when allowed and certified, as provided in this section, may be paid to the executor, the administrator, the receiver, the trustee in bankruptcy, or the assignee in insolvency proceedings of the person.

Sec. 5735.15. When motor fuel is sold to a person who claims to be entitled to a refund under section 5735.14 or 5735.142 of the Revised Code, the seller of such motor fuel shall ~~make out in duplicate on forms prescribed and supplied by the tax commissioner, which forms shall have printed thereon~~ provide to the person documentation that indicates that the liability to the state for the excise tax imposed under the motor fuel laws of this state on such motor fuel has been assumed by the seller, and that said excise tax has already been paid or will be paid by the seller when the same becomes payable~~, a statement setting~~. The documentation also shall set forth the name and address of the purchaser, the number of gallons of motor fuel sold, the price paid for or the price per gallon of the motor fuel sold, the proposed use for which such motor fuel is purchased, and such other information as the commissioner requires. When motor fuel is sold to a person who claims to be entitled to reimbursement under division (B) of section 5735.14 of the Revised Code, the documentation also shall state the number of gallons of water intentionally added to the motor fuel. The ~~original of such~~

~~statement~~ documentation shall be given to the purchaser, and ~~the duplicate~~ a copy shall be retained by the seller.

Sec. 5735.19. (A) The tax commissioner may examine, during the usual business hours of the day, the records, books, ~~and papers~~ invoices, storage tanks, and any other equipment of any motor fuel dealer, retail dealer, exporter, terminal operator, purchaser, or common carrier pertaining to motor fuel received, sold, shipped, or delivered, to determine whether the taxes imposed by this chapter have been paid and to verify the truth and accuracy of any statement, report, or return. ~~The~~

(B) The tax commissioner may, in the enforcement of the motor fuel laws of this state, hold hearings, take the testimony of any person, issue subpoenas and compel the attendance of witnesses, and conduct such investigations as the commissioner deems necessary~~, but no person shall disclose the information acquired by the commissioner under this section, except when required to do so in court~~. Such information or evidence is not privileged when used by the state or any officer thereof in any proceeding for the collection of the tax, or any prosecution for violation of the motor fuel laws.

(C) The commissioner may prescribe all forms upon which reports shall be made to the commissioner, forms for claims for refund presented to the commissioner, or forms of records to be used by motor fuel dealers.

(D)(1) As used in this division, "designated inspection site" means any state highway inspection station, weigh station, mobile station, or other similar location designated by the tax commissioner to be used as a fuel inspection site.

(2) An employee of the department of taxation that is so authorized by the tax commissioner may physically inspect, examine, or otherwise search any tank, reservoir, or other

container that can or may be used for the production, storage, or transportation of fuel, fuel dyes, or fuel markers, and books and records, if any, that are maintained at the place of inspection and are kept to determine tax liability under this chapter. Inspections may be performed at any place at which motor fuel is or may be produced or stored, or at any designated inspection site.

(3) An employee of the department of taxation who is a duly authorized enforcement agent may detain any motor vehicle, train, barge, ship, or vessel for the purpose of inspecting its fuel tanks and storage tanks. Detainment shall be on the premises under inspection or at a designated inspection site. Detainment may continue for a reasonable period of time as is necessary to determine the amount and composition of the fuel.

(4) Any employee described in division (D)(2) or (3) of this section who has been properly trained may take and remove samples of fuel in quantities as are reasonably necessary to determine the composition of the fuel.

(5) No person shall refuse to allow an inspection under division (D) of this section. Any person who refuses to allow an inspection shall be subject to revocation or cancellation of any license or permit issued under Chapter 5728. or 5735. of the Revised Code.

Sec. 5735.23. (A) Out of receipts from the tax levied by section 5735.05 of the Revised Code, the treasurer of state shall place to the credit of the tax refund fund established by section 5703.052 of the Revised Code amounts equal to the refunds certified by the tax commissioner pursuant to sections 5735.13, 5735.14, 5735.141, 5735.142, and 5735.16 of the Revised Code. The treasurer of state shall then transfer the amount required by section 5735.051 of the Revised Code to the waterways safety fund

~~and~~, the amount required by section 4907.472 of the Revised Code to the grade crossing protection fund, and the amount required by section 5735.053 of the Revised Code to the motor fuel tax administration fund.

(B) Except as provided in division (D) of this section, each month the balance of the receipts from the tax levied by section 5735.05 of the Revised Code shall be credited, after receipt by the treasurer of state of certification from the commissioners of the sinking fund, as required by section 5528.35 of the Revised Code, that there are sufficient moneys to the credit of the highway obligations bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code due and payable during the current calendar year, as follows:

(1) To the state and local government highway distribution fund, which is hereby created in the state treasury, an amount that is the same percentage of the balance to be credited as that portion of the tax per gallon determined under division (B)(2)(a) of section 5735.06 of the Revised Code is of the total tax per gallon determined under divisions (B)(2)(a) and (b) of that section.

(2) After making the distribution to the state and local government highway distribution fund, the remainder shall be credited as follows:

(a) Thirty per cent to the gasoline excise tax fund for distribution pursuant to division (A)(1) of section 5735.27 of the Revised Code;

(b) Twenty-five per cent to the gasoline excise tax fund for distribution pursuant to division (A)(3) of section 5735.27 of the Revised Code;

(c) Except as provided in division (D) of this section, forty-five per cent to the highway operating fund for distribution pursuant to division (B)(1) of section 5735.27 of the Revised Code.

(C) From the balance in the state and local government highway distribution fund on the last day of each month there shall be paid the following amounts:

(1) To the local transportation improvement program fund created by section 164.14 of the Revised Code, an amount equal to a fraction of the balance in the state and local government highway distribution fund, the numerator of which fraction is one and the denominator of which fraction is that portion of the tax per gallon determined under division (B)(2)(a) of section 5735.06 of the Revised Code;

(2) An amount equal to five cents multiplied by the number of gallons of motor fuel sold at stations operated by the Ohio turnpike commission, such gallonage to be certified by the commission to the treasurer of state not later than the last day of the month following. The funds paid to the commission pursuant to this section shall be expended for the construction, reconstruction, maintenance, and repair of turnpike projects, except that the funds may not be expended for the construction of new interchanges. The funds also may be expended for the construction, reconstruction, maintenance, and repair of those portions of connecting public roads that serve existing interchanges and are determined by the commission and the director of transportation to be necessary for the safe merging of traffic between the turnpike and those public roads.

The remainder of the balance shall be distributed as follows on the fifteenth day of the following month:

(a) Ten and seven-tenths per cent shall be paid to municipal

corporations for distribution pursuant to division (A)(1) of section 5735.27 of the Revised Code and may be used for any purpose for which payments received under that division may be used. Beginning August 15, 2004, the sum of two hundred forty-eight thousand six hundred twenty-five dollars shall be ~~annually~~ monthly subtracted from the amount so computed and credited to the highway operating fund.

(b) Five per cent shall be paid to townships for distribution pursuant to division (A)(5) of section 5735.27 of the Revised Code and may be used for any purpose for which payments received under that division may be used. Beginning August 15, 2004, the sum of eighty-seven thousand seven hundred fifty dollars shall be ~~annually~~ monthly subtracted from the amount so computed and credited to the highway operating fund.

(c) Nine and three-tenths per cent shall be paid to counties for distribution pursuant to division (A)(3) of section 5735.27 of the Revised Code and may be used for any purpose for which payments received under that division may be used. Beginning August 15, 2004, the sum of two hundred forty-eight thousand six hundred twenty-five dollars shall be ~~annually~~ monthly subtracted from the amount so computed and credited to the highway operating fund.

(d) Except as provided in division (D) of this section, the balance shall be transferred to the highway operating fund and used for the purposes set forth in division (B)(1) of section 5735.27 of the Revised Code.

(D) Beginning on the first day of September each fiscal year, any amounts required to be credited or transferred to the highway operating fund pursuant to division (B)(2)(c) or (C)(2)(d) of this section shall be credited or transferred to the highway capital improvement bond service fund created in section 151.06 of the Revised Code, until such time as the office of budget and

management receives certification from the treasurer of state or the treasurer of state's designee that sufficient money has been credited or transferred to the bond service fund to meet in full all payments of debt service and financing costs due during the fiscal year from that fund.

Sec. 5735.26. The treasurer of state shall place to the credit of the tax refund fund created by section 5703.052 of the Revised Code, out of receipts from the tax levied by section 5735.25 of the Revised Code, amounts equal to the refunds certified by the tax commissioner pursuant to sections 5735.142 and 5735.25 of the Revised Code, which shall be paid from such fund. ~~Receipts from the tax shall be used by the tax commissioner for the maintenance and administration of the motor fuel laws.~~ The treasurer of state shall <u>then</u> transfer the amount required by section 5735.051 of the Revised Code to the waterways safety fund <u>and the amount required by section 5735.053 of the Revised Code to the motor fuel tax administration fund</u>.

The balance of taxes collected under section 5735.25 of the Revised Code shall be credited as follows<u>,</u> after the credits to the tax refund fund~~, and after deduction of the cost of administration of the motor fuel laws,~~ and ~~after~~ the ~~transfer~~ <u>transfers</u> to the waterways safety fund <u>and motor fuel tax administration fund</u>, and after receipt by the treasurer of state of certifications from the commissioners of the sinking fund certifying, as required by sections 5528.15 and 5528.35 of the Revised Code, there are sufficient moneys to the credit of the highway improvement bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of bonds and other obligations issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code due and payable during the current calendar year, and that there are sufficient moneys to the credit of the

highway obligations bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code due and payable during the current calendar year:

(A) Sixty-seven and one-half per cent to the highway operating fund for distribution pursuant to division (B)(2) of section 5735.27 of the Revised Code;

(B) Seven and one-half per cent to the gasoline excise tax fund for distribution pursuant to division (A)(2) of such section;

(C) Seven and one-half per cent to the gasoline excise tax fund for distribution pursuant to division (A)(4) of such section;

(D) Seventeen and one-half per cent to the gasoline excise tax fund for distribution pursuant to division (A)(5) of such section.

Sec. 5735.291. (A) The treasurer of state shall place to the credit of the tax refund fund created by section 5703.052 of the Revised Code, out of receipts from the tax levied by section 5735.29 of the Revised Code, amounts equal to the refunds certified by the tax commissioner pursuant to sections 5735.142 and 5735.29 of the Revised Code. The refunds provided for by sections 5735.142 and 5735.29 of the Revised Code shall be paid from such fund. The treasurer of state shall <u>then</u> transfer the amount required by section 5735.051 of the Revised Code to the waterways safety fund <u>and the amount required by section 5735.053 of the Revised Code to the motor fuel tax administration fund</u>. ~~The~~

<u>The</u> specified portion of the balance of taxes collected under section 5735.29 of the Revised Code<u>,</u> after the credits to the tax refund fund~~,~~ and ~~after~~ the ~~transfer~~ <u>transfers</u> to the waterways safety fund <u>and the motor fuel tax administration fund</u>, shall be

credited to the gasoline excise tax fund. Subject to division (B) of this section, forty-two and eighty-six hundredths per cent of the specified portion shall be distributed among the municipal corporations within the state in accordance with division (A)(2) of section 5735.27 of the Revised Code, thirty-seven and fourteen hundredths per cent of the specified portion shall be distributed among the counties within the state in accordance with division (A)(3) of section 5735.27 of the Revised Code, and twenty per cent of the specified portion shall be combined with twenty per cent of any amounts transferred from the highway operating fund to the gasoline excise tax fund through biennial appropriations acts of the general assembly pursuant to the planned phase-in of a new source of funding for the state highway patrol, and shall be distributed among the townships within the state in accordance with division (A)(5)(b)of section 5735.27 of the Revised Code. Subject to division (B) of this section, the remainder of the tax levied by section 5735.29 of the Revised Code after receipt by the treasurer of state of certifications from the commissioners of the sinking fund certifying, as required by sections 5528.15 and 5528.35 of the Revised Code, <u>that</u> there are sufficient moneys to the credit of the highway improvement bond retirement fund created by section 5528.12 of the Revised Code to meet in full all payments of interest, principal, and charges for the retirement of bonds and other obligations issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code due and payable during the current calendar year, and that there are sufficient moneys to the credit of the highway obligations bond retirement fund created by section 5528.32 of the Revised Code to meet in full all payments of interest, principal, and charges for the retirement of highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code due and payable during the current calendar year, shall be

credited to the highway operating fund, which is hereby created in the state treasury and shall be used solely for the purposes enumerated in section 5735.29 of the Revised Code. All investment earnings of the fund shall be credited to the fund.

(B)(1) Effective August 15, 2003, prior to the distribution from the gasoline excise tax fund to municipal corporations of the forty-two and eighty-six hundredths per cent of the specified portion as provided in division (A) of this section, the department of taxation shall deduct thirty-three and one-third per cent of the amount specified in division (A)(5)(c) of section 5735.27 of the Revised Code and use it for distribution to townships pursuant to division (A)(5)(b) of that section.

(2) Effective August 15, 2003, prior to the distribution from the gasoline excise tax fund to counties of the thirty-seven and fourteen hundredths per cent of the specified portion as provided in division (A) of this section, the department of taxation shall deduct thirty-three and one-third per cent of the amount specified in division (A)(5)(c) of section 5735.27 of the Revised Code and use it for distribution to townships pursuant to division (A)(5)(b) of that section.

(3) Effective August 15, 2003, prior to crediting any revenue resulting from the tax levied by section 5735.29 of the Revised Code to the highway operating fund, the department of taxation shall deduct thirty-three and one-third per cent of the amount specified in division (A)(5)(c) of section 5735.27 of the Revised Code and use it for distribution to townships pursuant to division (A)(5)(b) of that section.

(C) As used in this section, "specified portion" means all of the following:

(1) Until August 15, 2003, none of the taxes collected under section 5735.29 of the Revised Code;

(2) Effective August 15, 2003, one-eighth of the balance of taxes collected under section 5735.29 of the Revised Code, after the credits to the tax refund fund and ~~after~~ the ~~transfer~~ transfers to the waterways safety fund and the motor fuel tax administration fund;

(3) Effective August 15, 2004, one-sixth of the balance of taxes described in division (C)(2) of this section;

(4) Effective August 15, 2005, three-sixteenths of the balance of taxes described in division (C)(2) of this section.

Sec. 5735.30. (A) For the purpose of providing funds to pay the state's share of the cost of constructing and reconstructing highways and eliminating railway grade crossings on the major thoroughfares of the state highway system and urban extensions thereof, to pay that portion of the construction cost of a highway project which a county, township, or municipal corporation normally would be required to pay, but which the director of transportation, pursuant to division (B) of section 5531.08 of the Revised Code, determines instead will be paid from moneys in the highway operating fund, to pay the interest, principal, and charges on bonds and other obligations issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code, to pay the interest, principal, and charges on highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code, ~~and~~ to provide revenues for the purposes of sections 1547.71 to 1547.78 of the Revised Code, and to pay the expenses of the department of taxation incident to the administration of the motor fuel laws, a motor fuel excise tax is hereby imposed on all motor fuel dealers upon their receipt of motor fuel within the state, at the rate of one cent on each gallon so received, to be reported, computed, paid, collected,

administered, enforced, refunded, and subject to the same exemptions and penalties as provided in this chapter of the Revised Code.

The tax imposed by this section shall be in addition to the tax imposed by sections 5735.05, 5735.25, and 5735.29 of the Revised Code.

(B) The treasurer of state shall place to the credit of the tax refund fund created by section 5703.052 of the Revised Code, out of receipts from the tax levied by this section, amounts equal to the refunds certified by the tax commissioner pursuant to this section. The refund provided for by ~~the first paragraph~~ division (A) of this section shall be paid from such fund. The treasurer shall then transfer the amount required by section 5735.051 of the Revised Code to the waterways safety fund and the amount required by section 5735.053 of the Revised Code to the motor fuel tax administration fund. The balance of taxes for which the liability has become fixed prior to July 1, 1955, under this section, after the credit to the tax refund fund, shall be credited to the highway operating fund.

(C)(1) The moneys derived from the tax levied by this section, after the credit ~~to the tax refund fund and the waterways safety fund as provided~~ and transfers required by division (B) of this section, shall, during each calendar year, be credited to the highway improvement bond retirement fund created by section 5528.12 of the Revised Code, until the commissioners of the sinking fund certify to the treasurer of state, as required by section 5528.17 of the Revised Code, that there are sufficient moneys to the credit of the highway improvement bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of bonds and other obligations issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code due and payable

during the current calendar year and during the next succeeding calendar year. From the date of the receipt of the certification required by section 5528.17 of the Revised Code by the treasurer of state until the thirty-first day of December of the calendar year in which such certification is made, all moneys received in the state treasury from the tax levied by this section, after the credit ~~to the tax refund fund and the waterways safety fund as provided~~ and transfers required by division (B) of this section, shall be credited to the highway obligations bond retirement fund created by section 5528.32 of the Revised Code~~,~~ until the commissioners of the sinking fund certify to the treasurer of state, as required by section 5528.38 of the Revised Code, that there are sufficient moneys to the credit of the highway obligations bond retirement fund to meet in full all payments of interest, principal, and charges for the retirement of obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code due and payable during the current calendar year and during the next succeeding calendar year. ~~From~~

(2) From the date of the receipt of the certification required by section 5528.38 of the Revised Code by the treasurer of state until the thirty-first day of December of the calendar year in which such certification is made, all moneys received in the state treasury from the tax levied by this section, after the credit ~~to the tax refund fund and the waterways safety fund as provided~~ and transfers required by division (B) of this section, shall be credited to the highway operating fund, except as provided in ~~the next succeeding paragraph~~ division (C)(3) of this section.

(3) From the date of the receipt by the treasurer of state of certifications from the commissioners of the sinking fund, as required by sections 5528.18 and 5528.39 of the Revised Code,

certifying that the moneys to the credit of the highway improvement bond retirement fund are sufficient to meet in full all payments of interest, principal, and charges for the retirement of all bonds and other obligations which may be issued pursuant to Section 2g of Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised Code, and to the credit of the highway obligations bond retirement fund are sufficient to meet in full all payments of interest, principal, and charges for the retirement of all obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code, the moneys derived from the tax levied by this section, after the credit ~~to the tax refund fund and the waterways safety fund as provided~~ and transfers required by division (B) of this section, shall be credited to the highway operating fund.

Sec. 5735.99. (A) Whoever violates division (F) of section 5735.02, division (D) of section 5735.021, division (B) of section 5735.063, division (B) of section 5735.064, or division (A)(2) of section 5735.20 of the Revised Code is guilty of a misdemeanor of the first degree.

(B) Whoever violates division (E) of section 5735.06 of the Revised Code is guilty of a felony of the fourth degree.

(C) Whoever violates section 5735.025 or division (A)(1) of section 5735.20 of the Revised Code is guilty of a misdemeanor of the first degree, if the tax owed or the fraudulent refund received is not greater than five hundred dollars. If the tax owed or the fraudulent refund received is greater than five hundred dollars but not greater than ten thousand dollars, the offender is guilty of a felony of the fourth degree; for each subsequent offense when the tax owed or the fraudulent refund received is greater than five hundred dollars but not greater than ten

thousand dollars, the offender is guilty of a felony of the third degree. If the tax owed or the fraudulent refund received is greater than ten thousand dollars, the offender is guilty of a felony of the second degree.

(D) Whoever violates a provision of this chapter for which a penalty is not otherwise prescribed under this section is guilty of a misdemeanor of the fourth degree.

(E) Whoever violates division (D)(5) of section 5735.19 of the Revised Code is guilty of a misdemeanor of the first degree.

Sec. 5739.01. As used in this chapter:

(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the state and its political subdivisions, and combinations of individuals of any form.

(B) "Sale" and "selling" include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever:

(1) All transactions by which title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is or is to be granted;

(2) All transactions by which lodging by a hotel is or is to be furnished to transient guests;

(3) All transactions by which:

(a) An item of tangible personal property is or is to be repaired, except property, the purchase of which would not be subject to the tax imposed by section 5739.02 of the Revised Code;

(b) An item of tangible personal property is or is to be installed, except property, the purchase of which would not be subject to the tax imposed by section 5739.02 of the Revised Code or property that is or is to be incorporated into and will become a part of a production, transmission, transportation, or distribution system for the delivery of a public utility service;

(c) The service of washing, cleaning, waxing, polishing, or painting a motor vehicle is or is to be furnished;

(d) ~~Industrial~~ Until August 1, 2003, industrial laundry cleaning services are or are to be provided and, on and after August 1, 2003, laundry and dry cleaning services are or are to be provided;

(e) Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An affiliated group means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than fifty per cent of the other corporation's common stock with voting rights.

(f) Telecommunications service, other than mobile telecommunications service after July 31, 2002, is or is to be provided ~~that originates or terminates in this state and is charged in the records of the telecommunications service vendor to~~

~~the consumer's telephone number or account in this state, or that both originates and terminates in this state;~~, but does not include transactions by which ~~telecommunications service is paid for by using a prepaid authorization number or prepaid telephone calling card, or by which~~ local telecommunications service is obtained from a coin-operated telephone and paid for by using coin;

(g) Landscaping and lawn care service is or is to be provided;

(h) Private investigation and security service is or is to be provided;

(i) Information services or tangible personal property is provided or ordered by means of a nine hundred telephone call;

(j) Building maintenance and janitorial service is or is to be provided;

(k) Employment service is or is to be provided;

(l) Employment placement service is or is to be provided;

(m) Exterminating service is or is to be provided;

(n) Physical fitness facility service is or is to be provided;

(o) Recreation and sports club service is or is to be provided.

(p) After July 31, 2002, mobile telecommunications service is or is to be provided ~~in this state~~ when that service is sitused to this state pursuant to the "Mobile Telecommunications Sourcing Act," ~~P.~~ Pub. L. No. 106-252, 114 Stat. 626 to 632 (2000), 4 U.S.C.A. 116 to 126, as amended.

(q) On and after August 1, 2003, satellite broadcasting service is or is to be provided;

(r) On and after August 1, 2003, personal care service is or is to be provided to an individual. As used in this division, "personal care service" includes skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services. "Personal care service" does not include a service provided by or on the order of a licensed physician or licensed chiropractor, or the cutting, coloring, or styling of an individual's hair.

(s) On and after August 1, 2003, the transportation of persons by motor vehicle or aircraft is or is to be provided, when the transportation is entirely within this state, except for transportation provided by an ambulance service, by a transit bus, as defined in section 5735.01 of the Revised Code, and transportation provided by a citizen of the United States holding a certificate of public convenience and necessity issued under 49 U.S.C. 41102;

(t) On and after August 1, 2003, motor vehicle towing service is or is to be provided. As used in this division, "motor vehicle towing service" means the towing or conveyance of a wrecked, disabled, or illegally parked motor vehicle.

(u) On and after August 1, 2003, snow removal service is or is to be provided. As used in this division, "snow removal service" means the removal of snow by any mechanized means, but does not include the providing of such service by a person that has less than five thousand dollars in sales of such service during the calendar year.

(4) All transactions by which printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter are or are to be furnished or transferred;

(5) The production or fabrication of tangible personal

property for a consideration for consumers who furnish either directly or indirectly the materials used in the production of fabrication work; and include the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. Except as provided in section 5739.03 of the Revised Code, a construction contract pursuant to which tangible personal property is or is to be incorporated into a structure or improvement on and becoming a part of real property is not a sale of such tangible personal property. The construction contractor is the consumer of such tangible personal property, provided that the sale and installation of carpeting, the sale and installation of agricultural land tile, the sale and erection or installation of portable grain bins, or the provision of landscaping and lawn care service and the transfer of property as part of such service is never a construction contract. The transfer of copyrighted motion picture films for exhibition purposes is not a sale, except such films as are used solely for advertising purposes. ~~Other than as provided in this section, "sale" and "selling" do not include transfers of interest in leased property where the original lessee and the terms of the original lease agreement remain unchanged, or professional, insurance, or personal service transactions that involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made.~~

As used in division (B)(5) of this section:

(a) "Agricultural land tile" means fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated or to be incorporated into a subsurface drainage system appurtenant to land used or to be used directly in production by farming, agriculture, horticulture, or floriculture. The term does not include such materials when they are or are to

be incorporated into a drainage system appurtenant to a building or structure even if the building or structure is used or to be used in such production.

(b) "Portable grain bin" means a structure that is used or to be used by a person engaged in farming or agriculture to shelter the person's grain and that is designed to be disassembled without significant damage to its component parts.

(6) All transactions in which all of the shares of stock of a closely held corporation are transferred, if the corporation is not engaging in business and its entire assets consist of boats, planes, motor vehicles, or other tangible personal property operated primarily for the use and enjoyment of the shareholders;

(7) All transactions in which a warranty, maintenance or service contract, or similar agreement by which the vendor of the warranty, contract, or agreement agrees to repair or maintain the tangible personal property of the consumer is or is to be provided;

(8) ~~All transactions by which a prepaid authorization number or a prepaid telephone calling card is or is to be transferred~~ On and after August 1, 2003, all transactions by which tangible personal property is or is to be stored, except such property that the consumer of the storage holds for sale in the regular course of business.

Except as provided in this section, "sale" and "selling" do not include transfers of interest in leased property where the original lessee and the terms of the original lease agreement remain unchanged, or professional, insurance, or personal service transactions that involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made.

(C) "Vendor" means the person providing the service or by

whom the transfer effected or license given by a sale is or is to be made or given and, for sales described in division (B)(3)(i) of this section, the telecommunications service vendor that provides the nine hundred telephone service; if two or more persons are engaged in business at the same place of business under a single trade name in which all collections on account of sales by each are made, such persons shall constitute a single vendor.

Physicians, dentists, hospitals, and veterinarians who are engaged in selling tangible personal property as received from others, such as eyeglasses, mouthwashes, dentifrices, or similar articles, are vendors. Veterinarians who are engaged in transferring to others for a consideration drugs, the dispensing of which does not require an order of a licensed veterinarian or physician under federal law, are vendors.

(D)(1) "Consumer" means the person for whom the service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B)(3)(f) or (i) of this section is charged, or to whom the admission is granted.

(2) Physicians, dentists, hospitals, and blood banks operated by nonprofit institutions and persons licensed to practice veterinary medicine, surgery, and dentistry are consumers of all tangible personal property and services purchased by them in connection with the practice of medicine, dentistry, the rendition of hospital or blood bank service, or the practice of veterinary medicine, surgery, and dentistry. In addition to being consumers of drugs administered by them or by their assistants according to their direction, veterinarians also are consumers of drugs that under federal law may be dispensed only by or upon the order of a licensed veterinarian or physician, when transferred by them to others for a consideration to provide treatment to animals as directed by the veterinarian.

(3) A person who performs a facility management, or similar service contract for a contractee is a consumer of all tangible personal property and services purchased for use in connection with the performance of such contract, regardless of whether title to any such property vests in the contractee. The purchase of such property and services is not subject to the exception for resale under division (E)(1) of this section.

(4)(a) In the case of a person who purchases printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of that printed matter, and the purchase of that printed matter for that purpose is a sale.

(b) In the case of a person who produces, rather than purchases, printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of all tangible personal property and services purchased for use or consumption in the production of that printed matter. That person is not entitled to claim ~~exception~~ exemption under division ~~(E)(8)~~(B)(43)(f) of ~~this~~ section 5739.02 of the Revised Code for any material incorporated into the printed matter or any equipment, supplies, or services primarily used to produce the printed matter.

(c) The distribution of printed matter to the public or to a designated segment of the public, free of charge, is not a sale to the members of the public to whom the printed matter is distributed or to any persons who purchase space in the printed matter for advertising or other purposes.

(5) A person who makes sales of any of the services listed in division (B)(3) of this section is the consumer of any tangible personal property used in performing the service. The purchase of

that property is not subject to the resale exception under division (E)(1) of this section.

(E) "Retail sale" and "sales at retail" include all sales~~,~~ except those in which the purpose of the consumer is~~:~~

~~(1) To~~ to resell the thing transferred or benefit of the service provided, by a person engaging in business, in the form in which the same is, or is to be, received by the person~~;~~

~~(2) To incorporate the thing transferred as a material or a part, into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining, or to use or consume the thing transferred directly in producing a product for sale by mining, including without limitation the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, farming, agriculture, horticulture, or floriculture, and persons engaged in rendering farming, agricultural, horticultural, or floricultural services, and services in the exploration for, and production of, crude oil and natural gas, for others are deemed engaged directly in farming, agriculture, horticulture, and floriculture, or exploration for, and production of, crude oil and natural gas; directly in the rendition of a public utility service, except that the sales tax levied by section 5739.02 of the Revised Code shall be collected upon all meals, drinks, and food for human consumption sold upon Pullman and railroad coaches. This paragraph does not exempt or except from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.~~

~~(3) To hold the thing transferred as security for the performance of an obligation of the vendor;~~

~~(4) To use or consume the thing transferred in the process of reclamation as required by Chapters 1513. and 1514. of the Revised~~

~~Code;~~

~~(5) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;~~

~~(6) To use or consume the thing directly in commercial fishing;~~

~~(7) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;~~

~~(8) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;~~

~~(9) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;~~

~~(10) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as defined in division (B)(7) of this section, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would be exempt on its purchase from the tax imposed by section 5739.02 of the Revised Code;~~

~~(11) To use the thing transferred as qualified research and development equipment;~~

~~(12) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the~~

~~warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. Division (E)(12) of this section does not apply to motor vehicles registered for operation on the public highways. As used in division (E)(12) of this section, "affiliated group" has the same meaning as in division (B)(3)(e) of this section and "direct marketing" has the same meaning as in division (B)(36) of section 5739.02 of the Revised Code.~~

~~(13) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B)(7) of this section;~~

~~(14) To use or consume the thing transferred in the production of a newspaper for distribution to the public;~~

~~(15) To use tangible personal property to perform a service listed in division (B)(3) of this section, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service.~~

~~As used in division (E) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of this section.~~

~~Sales conducted through a coin-operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction, are not retail sales or sales at retail~~.

(F) "Business" includes any activity engaged in by any person

with the object of gain, benefit, or advantage, either direct or indirect. "Business" does not include the activity of a person in managing and investing the person's own funds.

(G) "Engaging in business" means commencing, conducting, or continuing in business, and liquidating a business when the liquidator thereof holds itself out to the public as conducting such business. Making a casual sale is not engaging in business.

(H)(1)(a) "Price," except as provided in divisions (H)(2) and (3) of this section, means ~~the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, in the complete performance of a retail sale, without any deduction on account of the cost of the property sold, cost of materials used, labor or service cost, interest, discount paid or allowed after the sale is consummated, or any other expense. If the retail sale consists of the rental or lease of tangible personal property, "price" means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, in the complete performance of the rental or lease, without any deduction for tax, interest, labor or service charge, damage liability waiver, termination or damage charge, discount paid or allowed after the lease is consummated, or any other expense. Except as provided in division (H)(4) of this section, the sales tax shall be calculated and collected by the lessor on each payment made by the lessee. "Price" does not include the consideration received as a deposit refundable to the consumer upon return of a beverage container, the consideration received as a deposit on a carton or case that is used for such returnable containers, or the consideration received as a refundable security deposit for the use of tangible personal property to the extent that it actually is refunded, if the consideration for such refundable deposit is separately stated from the consideration received or to be received for the tangible personal property~~

~~transferred in the retail sale. Such separation must appear in the sales agreement or on the initial invoice or initial billing rendered by the vendor to the consumer. "Price" also does not include delivery charges that are separately stated on the initial invoice or initial billing rendered by the vendor. Price is the amount received inclusive of the tax, provided the vendor establishes to the satisfaction of the tax commissioner that the tax was added to the price. When the price includes both a charge for tangible personal property and a charge for providing a service and the sale of the property and the charge for the service are separately taxable, or have a separately determinable tax status, the price shall be separately stated for each such charge so the tax can be correctly computed and charged.~~

~~The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state and of counties levying an additional sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized in section 5739.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of such tax.~~

~~As used in division (H)(1) of this section, "delivery charges" means charges by the vendor for preparation and delivery to a location designated by the consumer of tangible personal property or a service, including transportation, shipping, postage, handling, crating, and packing~~ the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise,

without any deduction for any of the following:

(i) The vendor's cost of the property sold;

(ii) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the vendor, all taxes imposed on the vendor, and any other expense of the vendor;

(iii) Charges by the vendor for any services necessary to complete the sale;

(iv) On and after August 1, 2003, delivery charges. As used in this division, "delivery charges" means charges by the vendor for preparation and delivery to a location designated by the consumer of tangible personal property or a service, including transportation, shipping, postage, handling, crating, and packing.

(v) Installation charges;

(vi) The value of exempt tangible personal property given to the consumer where taxable and exempt tangible personal property have been bundled together and sold by the vendor as a single product or piece of merchandise.

(b) "Price" does not include any of the following:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a vendor and taken by a consumer on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.

(2) In the case of a sale of any new motor vehicle by a new motor vehicle dealer, as defined in section 4517.01 of the Revised

Code, in which another motor vehicle is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the motor vehicle received in trade.

(3) In the case of a sale of any watercraft or outboard motor by a watercraft dealer licensed in accordance with section 1547.543 of the Revised Code, in which another watercraft, watercraft and trailer, or outboard motor is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the watercraft, watercraft and trailer, or outboard motor received in trade. <u>As used in this division, "watercraft" includes an outdrive unit attached to the watercraft.</u>

(4) ~~In the case of the lease of any motor vehicle designed by the manufacturer to carry a load of not more than one ton, watercraft, outboard motor, or aircraft, or the lease of any tangible personal property, other than motor vehicles designed by the manufacturer to carry a load of more than one ton, to be used by the lessee primarily for business purposes, the sales tax shall be collected by the vendor at the time the lease is consummated and shall be calculated by the vendor on the basis of the total amount to be paid by the lessee under the lease agreement. If the total amount of the consideration for the lease includes amounts that are not calculated at the time the lease is executed, the tax shall be calculated and collected by the vendor at the time such amounts are billed to the lessee. In the case of an open-end lease, the sales tax shall be calculated by the vendor on the basis of the total amount to be paid during the initial fixed term of the lease, and then for each subsequent renewal period as it comes due.~~

~~As used in divisions (H)(3) and (4) of this section, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code, and "watercraft" includes an outdrive unit attached to the watercraft.~~

In the case of a transaction in which telecommunications service, mobile telecommunications service, or cable television service is sold in a bundled transaction with other distinct services for a single price that is not itemized, the entire price is subject to the taxes levied under sections 5739.02, 5739.021, 5739.023, and 5739.026 of the Revised Code, unless the vendor can reasonably identify the nontaxable portion from its books and records kept in the regular course of business. Upon the request of the consumer, the vendor shall disclose to the consumer the selling price for the taxable services included in the selling price for the taxable and nontaxable services billed on an aggregated basis. The burden of proving any nontaxable charges is on the vendor.

(I) "Receipts" means the total amount of the prices of the sales of vendors, provided that cash discounts allowed and taken on sales at the time they are consummated are not included, minus any amount deducted as a bad debt pursuant to section 5739.121 of the Revised Code. "Receipts" does not include the sale price of property returned or services rejected by consumers when the full sale price and tax are refunded either in cash or by credit.

(J) "Place of business" means any location at which a person engages in business.

(K) "Premises" includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.