

department of job and family services under section 5103.03 of the Revised Code in a setting other than with a person seeking to adopt the child, unless the agency has determined and redetermined at intervals of not more than six months the impossibility of adoption by a person listed pursuant to division (B), (C), or (D) of section 5103.154 of the Revised Code, including the impossibility of entering into a payment agreement with such a person. The agency so maintaining such a child shall report its reasons for doing so to the department of job and family services. ~~No agency that fails to so determine, redetermine, and report shall receive more than fifty per cent of the state funds to which it would otherwise be eligible for that part of the fiscal year following placement under section 5101.14 of the Revised Code.~~

The department may take any action permitted under section 5101.24 of the Revised Code for an agency's failure to determine, redetermine, and report on a child's status.

Sec. 5153.60. (A) The department of job and family services shall establish a statewide program that provides ~~the~~ all of the following:

(1) The training section 5153.122 of the Revised Code requires public children services agency caseworkers and supervisors to complete. ~~The program may also provide the;~~

(2) The preplacement and continuing training described in sections 5103.034, 5103.039, 5103.0310, and 5103.0311 of the Revised Code that foster caregivers are required by sections 5103.031, 5103.032, and 5103.033 of the Revised Code to obtain. ~~The;~~

(3) The education programs for adoption assessors required by section 3107.014 of the Revised Code.

(B) The training described in division (A)(3) of this section

shall be conducted in accordance with rules adopted under section 3107.015 of the Revised Code. 46434
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(C) The program established pursuant to division (A) of this section shall be called the "Ohio child welfare training program." 46436
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Sec. 5153.69. The training program steering committee shall 46438
monitor and evaluate the Ohio child welfare training program to 46439
ensure the following: 46440

(A) That the Ohio child welfare training program is a 46441
competency-based training system that satisfies the training 46442
requirements for public children services agency caseworkers and 46443
supervisors under section 5153.122 of the Revised Code; 46444

(B) That, ~~if~~ the Ohio child welfare training program provides 46445
preplacement or continuing training for foster caregivers, ~~it as~~ 46446
required by section 5153.60 of the Revised Code that meets the 46447
~~same~~ requirements ~~that~~ preplacement training programs and 46448
continuing training programs must meet pursuant to section 46449
5103.038 of the Revised Code to obtain approval by the department 46450
of job and family services, except that the Ohio child welfare 46451
training program is not required to obtain department approval. 46452

Sec. 5153.72. Prior to the beginning of the fiscal biennium 46453
that first follows ~~the effective date of this section~~ October 5, 46454
2000, the public children services agencies of Athens, Cuyahoga, 46455
Franklin, Greene, Guernsey, Hamilton, Lucas, and Summit counties 46456
shall each establish and maintain a regional training center. At 46457
any time after the beginning of that biennium, the department of 46458
job and family services, on the recommendation of the training 46459
program steering committee, may direct a public children services 46460
agency to establish and maintain a training center to replace the 46461
center established by an agency under this section. There may be 46462
no more and no less than eight centers in existence at any time. 46463

The department may make a grant to a public children services agency that establishes and maintains a regional training center under this section for the purpose of wholly or partially subsidizing the operation of the center. 46464
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Sec. 5153.78. (A) As used in this section: 46468

(1) "Title IV-B" means Title IV-B of the "Social Security Act of 1967," 81 Stat. 821, 42 U.S.C. 620, as amended. 46469
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(2) "Title IV-E" means Title IV-E of the "Social Security Act," 94 Stat. 501, 42 U.S.C. 670(1980). 46471
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(3) "Title XX" has the same meaning as in section 5101.46 of the Revised Code. 46473
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(B) For purposes of adequately funding the Ohio child welfare training program, the department of job and family services may use any of the following: 46475
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(1) The federal financial participation funds withheld pursuant to division ~~(D)~~ (E) of section 5101.141 of the Revised Code in an amount determined by the department; 46478
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(2) Funds available under Title XX, Title IV-B, and Title IV-E to pay for training costs; 46481
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(3) Other available state or federal funds. 46483

Sec. 5310.15. On filing an application for registration, the applicant shall pay to the clerk of the probate court or the clerk of the court of common pleas ten dollars, which is full payment for all clerk's fees and charges in such proceeding on behalf of the applicant. Any defendant, except a guardian ad litem, on entering ~~his~~ an appearance by filing a pleading of any kind, shall pay to the clerk five dollars, which is full payment for all clerk's fees on behalf of such defendant. When any number of defendants enter their appearance at the same time in one pleading 46484
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by filing a pleading of any kind, one fee shall be paid. 46493

Every required publication in a newspaper shall be paid for 46494
by the party on whose application the order of publication is 46495
made, in addition to the fees prescribed in the first paragraph of 46496
this section. The party at whose request, or on whose behalf, any 46497
notice is issued, shall pay for the service of such notice except 46498
when such notice is sent by mail by the clerk or the county 46499
recorder. 46500

Examiners of titles shall receive for examining title or 46501
original reference, and making report on all matters arising under 46502
the application, including final certificate as to all necessary 46503
parties being made and properly brought before the probate court 46504
or the court of common pleas, and as to the proceedings being 46505
regular and legal, one half of one per cent of the appraised tax 46506
value, the fee in no case to be less than seventy-five or more 46507
than two hundred fifty dollars, for each separate and distinct 46508
parcel of land included in the application although made up of 46509
more than one tract. 46510

Upon a reference to an examiner of titles or to any other 46511
person upon a hearing to take evidence and make report to the 46512
court, the fee of the referee shall be fixed by the court at not 46513
more than fifteen dollars per day for the time actually employed. 46514

For a certificate of an examiner of titles that all necessary 46515
parties are before the court, and the proceedings are regular and 46516
legal in a suit for partition, foreclosure of mortgage, 46517
marshalling of liens, or other suit or proceeding affecting the 46518
title of any interest in, or lien or charge upon registered lands, 46519
the fees shall be fixed by the court, and shall not be more than 46520
twenty-five dollars for each separate and distinct parcel of land 46521
included in the petition or application although such parcel is 46522
made up of more than one tract. 46523

Guardians for the suit in original registration shall receive 46524
three dollars when there is no contest in which the guardian 46525
participates. In other cases such guardians shall receive such 46526
fees as the court fixes, but not more than twenty-five dollars. 46527

For certifying pending suits, judgments, liens, attachments, 46528
executions, or levies, the officers certifying them to the 46529
recorder shall receive a fee of twenty-five cents to be paid by 46530
the party interested and taxed in the costs of the case. 46531

For serving summons, notice, or other paper provided for in 46532
sections 5309.02 to 5310.21 of the Revised Code, the sheriff or 46533
other officer shall receive the same fees as in other similar 46534
cases. 46535

The recorder shall receive the following fees, to include 46536
base fees for services and housing trust fund fees pursuant to 46537
section 317.36 of the Revised Code: 46538

(A) For original registration of title, issuing duplicate 46539
certificate, entering memorials and memorandums, as directed by 46540
the decree, and indexing it, a base fee of thirty dollars and a 46541
housing trust fund fee of thirty dollars; 46542

(B) For examining and registering each transfer of registered 46543
land, including the filing of all papers therewith, entering 46544
memorials, issuing new duplicate certificate of title and indexing 46545
it, a base fee of thirty dollars and a housing trust fund fee of 46546
thirty dollars for the first distinct body or parcel of land 46547
contained in such certificate, and a base fee of two dollars and a 46548
housing trust fund fee of two dollars for each additional distinct 46549
body or parcel of land contained in such certificate; 46550

(C) For filing, examining, and entering a memorial of each 46551
mortgage or lease, upon registered land, and indexing it, for each 46552
separately registered parcel, a base fee of ten dollars and a 46553
housing trust fund fee of ten dollars; 46554

(D) For filing, examining, and entering a memorial of each 46555
lien, charge, or demand upon registered land, and indexing it, for 46556
each separately registered parcel of land, a base fee of five 46557
dollars and a housing trust fund fee of five dollars; 46558

(E) For cancellation of any memorial or memorandum, a base 46559
fee of five dollars and a housing trust fund fee of five dollars; 46560
for entry of change of address, or notice of dower, for each 46561
separately registered parcel, a base fee of five dollars and a 46562
housing trust fund fee of five dollars; 46563

(F) For each certified copy of a registered certificate, or 46564
issuing a mortgagee's duplicate certificate, or issuing a new 46565
owner's duplicate certificate to replace one which has been lost 46566
or destroyed, a base fee of fifteen dollars and a housing trust 46567
fund fee of fifteen dollars; 46568

(G) For filing, examining, and entering a memorial of each 46569
release, assignment, or waiver of priority of a mortgage, lease, 46570
lien, charge, or demand upon registered land and indexing it, for 46571
each separately registered parcel, a base fee of five dollars and 46572
a housing trust fund fee of five dollars; 46573

(H) For filing, examining, and entering a memorial of each 46574
official certificate of pending suit, judgment, lien, attachment, 46575
execution, or levy, upon registered land and indexing it, for each 46576
separately registered parcel, a base fee of five dollars and a 46577
housing trust fund fee of five dollars; 46578

(I) For continuing an owner's duplicate certificate, or 46579
mortgagee's duplicate certificate and entering and certifying 46580
memorials and notations thereon, a base fee of five dollars and a 46581
housing trust fund fee of five dollars; 46582

(J) For certificate as to taxes and special assessments, for 46583
each separately registered parcel, a base fee of ten dollars and a 46584
housing trust fund fee of ten dollars; 46585

(K) For filing, recording, and indexing any papers or instruments other than those provided in this section, any certified copy of record, or of any instrument on file in ~~his~~ the recorder's office, the same fees allowed by law for like services;

(L) For issuing subpoenas and notices and swearing witnesses, the same fees allowed the clerk for like services.

Costs as provided in this section may be taxed and by the court ordered to be paid by the parties in such manner as is just.

Sec. 5501.03. (A) The department of transportation shall:

(1) Exercise and perform such other duties, powers, and functions as are conferred by law on the director, the department, the assistant directors, the deputy directors, or on the divisions of the department;

(2) Coordinate and develop, in cooperation with local, regional, state, and federal planning agencies and authorities, comprehensive and balanced state policy and planning to meet present and future needs for adequate transportation facilities in this state, including recommendations for adequate funding of the implementation of such planning;

(3) Coordinate its activities with those of other appropriate state departments, public agencies, and authorities, and enter into any contracts with such departments, agencies, and authorities as may be necessary to carry out its duties, powers, and functions;

(4) Cooperate with and assist the public utilities commission in the commission's administration of sections 4907.47 to 4907.476 of the Revised Code, particularly with respect to the federal highway administration.

(5) Give particular consideration to the development of policy and planning for public transportation facilities, and to

the coordination of associated activities relating thereto, as 46616
prescribed under divisions (A)(2) and (3) of this section; 46617

(6) Conduct, in cooperation with the Ohio legislative service 46618
commission, any studies or comparisons of state traffic laws and 46619
local traffic ordinances with model laws and ordinances that may 46620
be required to meet program standards adopted by the United States 46621
department of transportation pursuant to the "Highway Safety Act 46622
of 1966," 80 Stat. 731, U.S.C.A. 401; 46623

(7) Prepare, print, distribute, and advertise books, maps, 46624
pamphlets, and other information that, in the judgment of the 46625
director, will inform the public and other governmental 46626
departments, agencies, and authorities as to the duties, powers, 46627
and functions of the department; 46628

(8) In its research and development program, consider 46629
technologies for improving roadways, including construction 46630
techniques and materials to prolong project life, being used or 46631
developed by other states that have geographic, geologic, or 46632
climatic features similar to this state's, and collaborate with 46633
those states in that development. 46634

Nothing contained in division (A)(1) of this section shall be 46635
held to in any manner affect, limit, restrict, or otherwise 46636
interfere with the exercise of powers relating to transportation 46637
facilities by appropriate agencies of the federal government, or 46638
by counties, municipal corporations, or other political 46639
subdivisions or special districts in this state authorized by law 46640
to exercise such powers. 46641

(B) The department may use all appropriate sources of revenue 46642
to assist in the development and implementation of rail service as 46643
defined by division (C) of section ~~4981.01~~ 5507.01 of the Revised 46644
Code. 46645

(C) The director of transportation may enter into contracts 46646

with public agencies including political subdivisions, other state 46647
agencies, boards, commissions, regional transit authorities, 46648
county transit boards, and port authorities, to administer the 46649
design, qualification of bidders, competitive bid letting, 46650
construction inspection, and acceptance of any projects 46651
administered by the department, provided the administration of 46652
such projects is performed in accordance with all applicable state 46653
and federal laws and regulations with oversight by the department. 46654

Sec. 5502.13. The department of public safety shall maintain 46655
an investigative unit in order to conduct investigations and other 46656
enforcement activity authorized by Chapters 4301., 4303., 5101., 46657
5107., ~~and 5108.,~~ and 5115. and sections 2903.12, 2903.13, 46658
2903.14, 2907.09, 2913.46, 2917.11, 2921.13, 2921.31, 2921.32, 46659
2921.33, 2923.12, 2923.121, 2925.11, 2925.13, 2927.02, and 46660
4507.30, ~~and 5115.03~~ of the Revised Code. The director of public 46661
safety shall appoint the employees of the unit who are necessary, 46662
designate the activities to be performed by those employees, and 46663
prescribe their titles and duties. 46664

Sec. ~~4981.01~~ 5507.01. As used in sections ~~4981.01~~ 5507.01 to 46665
~~4981.34~~ 5507.34 of the Revised Code: 46666

(A) "Person" means, in addition to the meaning given that 46667
term in division (C) of section 1.59 of the Revised Code, any unit 46668
of local government, any local or regional transportation 46669
authority, and any private corporation or organization. 46670

(B) "Rail property" means any asset or right that is used or 46671
is useful in providing rail service, including tracks, rolling 46672
stock, rights-of-way, bridges, grade crossing equipment, 46673
terminals, stations, parking facilities, and other rail 46674
facilities. 46675

(C) "Rail service" means freight, intercity passenger, 46676

commuter, and high speed rail transportation service. 46677

(D) "Regional rail reorganization act" means the "Regional 46678
Rail Reorganization Act of 1973," 87 Stat. 986, 45 U.S.C.A. 701, 46679
as amended. 46680

(E) "Local or regional transportation authority" includes a 46681
county transit board, a board of county commissioners operating a 46682
county transit system, a regional transit authority, a regional 46683
transit commission, or any other local or regional transportation 46684
authority or agency. 46685

(F) "Qualifying subdivision" means a county, township, or 46686
municipal corporation in this state that is levying a tax for the 46687
purpose of acquiring, rehabilitating, or developing rail service 46688
or rail property pursuant to division (CC) of section 5705.19 of 46689
the Revised Code. 46690

(G) "Ancillary system facilities" means all facilities 46691
desirable in connection with the operation and maintenance of a 46692
rail system such as parking lots, retail establishments, 46693
restaurants, hotels, offices, and other commercial or support 46694
facilities, located within or outside the right-of-way of the rail 46695
system. 46696

(H) "Corridor" means a designated portion of a rail system 46697
serving two or more designated urban areas. 46698

(I) "Franchise" means a license approved by the ~~Ohio rail~~ 46699
~~development commission~~ director of transportation that grants 46700
exclusive rights to a private corporation or organization to plan, 46701
construct, finance, lease, improve, use, operate, maintain, and 46702
set and collect charges for the use of a rail system or a portion 46703
of a rail system, such as a corridor, for a period of years as 46704
permitted by section ~~4981.29~~ 5507.29 of the Revised Code, as 46705
system owner or as lessee from or agent of the ~~commission~~ 46706
department of transportation. 46707

(J) "Franchise agreement" means the agreement executed 46708
between the ~~Ohio rail development commission~~ director of 46709
transportation and a person to whom a franchise is awarded. 46710

(K) "3-C corridor" means the corridor connecting Cincinnati, 46711
Columbus, and Cleveland. 46712

Sec. ~~4981.03~~ 5507.03. (A) The ~~Ohio rail development~~ 46713
~~commission~~ director of transportation shall do all of the 46714
following: 46715

(1) Develop, promote, and support safe, adequate, and 46716
efficient rail service throughout the state; 46717

(2) Maintain adequate programs of investigation, research, 46718
promotion, planning, and development for rail service, which 46719
programs shall include the consideration of recommendations by 46720
public or private planning organizations; 46721

(3) Provide for the participation of private corporations or 46722
organizations and the public in the development, construction, 46723
operation, and maintenance of rail service, and as franchisees 46724
thereof. 46725

(B) In regard to rail service, the ~~Ohio rail development~~ 46726
~~commission~~ department of transportation is the successor of the 46727
Ohio ~~high speed rail authority and the division of rail~~ 46728
~~transportation of the department of transportation~~ development 46729
commission. The ~~commission~~ department shall succeed to all federal 46730
allotments, entitlements, subsidies, and grants now existing, 46731
whether such allotments, entitlements, subsidies, and grants are 46732
encumbered or unencumbered, in the same manner and with the same 46733
authority as the Ohio ~~high speed rail authority and the division~~ 46734
~~of rail transportation~~ development commission exercised prior to 46735
~~the effective date of this amendment~~ the effective date of this 46736
amendment. 46737

For the purpose of succession to all duties, powers, and functions transferred, and of the conduct and completion of related matters, the director of transportation or the department of transportation shall be held to constitute the continuation of the Ohio rail development commission. All rules, acts, determinations, and decisions pertaining to the duties, powers, and functions of the commission, in effect at the time of the transfer, shall continue in effect until further action by the director of the department. 46738
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Wherever the commission is referred to in any provision of law, or in any contract or document that pertains to the duties, powers, and functions of the commission, the reference or designation shall be held to refer to the director or the department. Wherever the commission is named in a deed or other evidence of an interest in real property, the designation shall be held to refer to the director or the department. 46747
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No pending action or proceeding to which the commission is a party and that pertains to the duties, powers, and functions of the commission shall be affected by any provision effecting the transfer of the duties, powers, and functions, but any such pending action or proceeding may be prosecuted or defended in the name of the director or department. In any pending action or proceeding to which the commission is a party and that pertains to its duties, powers, and functions, the director or department, upon application to the court, shall be substituted as a party. 46754
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(C) Every authority, commission, department, or other agency of this state shall provide the ~~commission~~ department with data, plans, research, and any other information that the ~~commission~~ department requests to assist it in performing its duties pursuant to this chapter. 46763
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(D) The ~~commission~~ department may request and contract with 46768

any railroad to provide it with data and information necessary to 46769
carry out the purposes of this chapter. All railroads operating 46770
within this state shall provide the requested data and information 46771
to the ~~commission~~ department. The ~~commission~~ department shall not 46772
disclose any confidential data or information supplied to it. 46773

(E) The ~~commission~~ department shall cooperate with the 46774
director of development by exercising the ~~commission's~~ 46775
department's duty to promote and develop rail service in this 46776
state in conjunction with the ~~director's~~ director of development's 46777
exercise of ~~his~~ the duty to promote the economic development of 46778
this state. 46779

(F) The ~~commission~~ department, when developing rail service 46780
throughout the state, may give priority to projects undertaken 46781
within the geographic boundaries of qualifying subdivisions. 46782

~~(G) Notwithstanding any other provision of law, the 46783
commission is subject to section 123.151 of the Revised Code when 46784
entering into contracts for the performance of labor, the 46785
furnishing of materials, goods, or services, or the construction 46786
of any structures or buildings necessary for the maintenance, 46787
control, or management of any rail service project, as defined in 46788
section 4981.11 of the Revised Code. 46789~~

Sec. ~~4981.031~~ 5507.031. (A) The ~~Ohio rail development 46790
commission or the department of transportation, on behalf of the 46791
commission,~~ may apply for and receive from the United States 46792
government loans and grants in accordance with any federal law or 46793
program concerning rail transportation. 46794

(B) It is hereby found and determined that rail 46795
transportation is an essential and indispensable part of the 46796
commerce and industry of the state and is of vital importance to 46797
the creation and preservation of jobs and employment opportunities 46798
and to the improvement of the economic welfare of the people of 46799

the state, and that rail transportation creates, promotes, and is 46800
a part of the continuous exchange of goods and services in the 46801
state economy. It is further found and determined that the 46802
authority granted by Chapter ~~4981-~~ 5507. of the Revised Code is 46803
consistent with and will effect the purposes of Section 13 of 46804
Article VIII, Ohio Constitution, that rail transportation is part 46805
of and is directly related to industry, commerce, distribution, 46806
and research under Section 13 of Article VIII, Ohio Constitution, 46807
and that it is in the public interest and a proper public purpose 46808
under Section 13 of Article VIII, Ohio Constitution, for the state 46809
to acquire, construct, enlarge, improve, or equip, and to sell, 46810
lease, or exchange, or otherwise dispose of property, structures, 46811
equipment, and facilities for rail transportation, all as provided 46812
in Chapter ~~4981-~~ 5507. of the Revised Code, and that such 46813
activities will contribute to the creation or preservation of jobs 46814
or employment opportunities or the improvement of the economic 46815
welfare of the people of the state. Chapter ~~4981-~~ 5507. of the 46816
Revised Code, being necessary for the welfare of the state and its 46817
people, shall be liberally construed to effect its purposes. 46818

Sec. ~~4981.032~~ 5507.032. The ~~Ohio rail development commission~~ 46819
department of transportation may issue grants and loans to any 46820
transportation authority or to any person for the purpose of 46821
continuing or instituting rail transportation in the state. The 46822
grants and loans may be used for rehabilitation, construction, 46823
planning, relocation, or acquisition of rail transportation or 46824
rail property, or for substitute service. The grants and loans may 46825
be provided by the ~~commission~~ department with funds from the 46826
United States government, the state, any transportation authority, 46827
or any person, or from any combination of those sources. The 46828
~~commission~~ department shall establish eligibility and distribution 46829
criteria for the grants and loans. 46830

Sec. ~~4981.033~~ 5507.033. (A) Notwithstanding section 4961.37 46831
of the Revised Code, a railroad company, public agency, or other 46832
person operating passenger rail service on a right-of-way owned by 46833
another shall indemnify and hold harmless the owner, user, or 46834
other rights holder for liability for any damages arising out of 46835
passenger operations conducted by or on behalf of the railroad 46836
company, public agency, or other person operating passenger rail 46837
service and for all claims for damages for harm arising from any 46838
accident or incident occurring in connection with the operations 46839
conducted by or on behalf of the railroad company, public agency, 46840
or other person operating passenger rail service. 46841

(B) Each railroad company, public agency, or other person 46842
operating passenger rail service on a right-of-way owned by 46843
another shall maintain an aggregate limit of liability coverage of 46844
no less than two hundred million dollars. 46845

(C) The liability for damages for harm, including any 46846
punitive damages, of a railroad company or other entity over whose 46847
tracks passenger rail service operations are conducted by another 46848
shall not be in an amount greater than the limits of the liability 46849
coverage maintained by the railroad company, public agency, or 46850
other person operating passenger rail service. 46851

(D) Division (A) of this section shall not apply if the 46852
railroad company or other entity over whose tracks the passenger 46853
rail service operations are conducted, committed an act or 46854
omission with reckless, wanton, willful, or gross negligence and 46855
the act or omission proximately caused the harm in question. 46856

(E) The operator of an excursion rail service and the owner 46857
of any railroad property over which the excursion rail service 46858
will be provided may negotiate to determine the amount of 46859
liability coverage necessary to satisfy the owner's private 46860
insurance requirements. If the operator and owner reach agreement 46861

on the amount of private insurance coverage so required, division 46862
(B) of this section shall not apply to the operation of the 46863
excursion rail service over that railroad property. 46864

This division does not require any owner of railroad property 46865
to enter into such negotiations, to agree to an amount of 46866
liability coverage that the owner determines to be insufficient 46867
indemnification, nor to permit any excursion rail service operator 46868
to have access to the railroad property. 46869

(F) This section shall not be construed to require the state 46870
or any political subdivision of the state to indemnify any owner, 46871
user, or other person or entity for damages of any kind in 46872
violation of the Constitution of this state or a municipal or 46873
county charter. This section shall not be construed to require the 46874
state to carry liability insurance for any purpose. 46875

(G) As used in this section: 46876

(1) "Harm" means injury, death, or loss to person or 46877
property. 46878

(2) "Passenger rail service" includes intercity passenger, 46879
commuter, or high speed rail transportation service. 46880

(3) "Excursion rail service" means any rail passenger service 46881
that is undertaken primarily for education, entertainment, 46882
recreation, or scenic observation and that does not involve any of 46883
the following: 46884

(a) The carrying of freight other than the personal luggage 46885
of the passengers or crew, or supplies and equipment necessary to 46886
serve the needs of the passengers or crew; 46887

(b) The carrying of passengers who are commuting to work; 46888

(c) The carrying of passengers who are traveling to a final 46889
destination solely for business or commercial purposes. 46890

Sec. ~~4981.04~~ 5507.04. (A) The ~~Ohio rail development~~ 46891
~~commission~~ department of transportation shall prepare a plan for 46892
the construction and operation of an intercity conventional or 46893
high speed passenger transportation system in this state. The 46894
system shall be constructed and operated by the ~~commission~~ 46895
department. The plan for construction and operation shall be based 46896
on existing studies, and shall state that the system's initial 46897
route will connect Cleveland, Columbus, and Cincinnati and any 46898
points in between those cities determined by the ~~authority~~ 46899
department. The plan shall include the following information: 46900

- (1) The route alignment of the proposed system; 46901
- (2) The proposed technology; 46902
- (3) The size, nature, and scope of the proposed system; 46903
- (4) The sources of the public and private revenue needed to 46904
finance the system; 46905
- (5) The projected ability of all revenue sources to meet both 46906
capital and operating funding requirements of the proposed system; 46907
- (6) The construction, operation, and management plan for the 46908
system, including a timetable for construction and the proposed 46909
location and number of transit stations considered necessary; 46910
- (7) The likelihood that Ohio-based corporations will be used 46911
to manufacture or supply components of the proposed system; 46912
- (8) The likelihood that additional or subsidiary development 46913
will be generated; 46914
- (9) The extent to which the proposed system will create an 46915
additional or reduced demand for sources of energy; 46916
- (10) Any changes in the law necessary to implement the 46917
proposed system; 46918
- (11) The proposed system's impact on the economy of the state 46919

and on the economic and other public policies of the state. 46920

(B) The ~~commission~~ department may revise any plan of the Ohio 46921
high speed rail authority or the Ohio rail development commission 46922
or may submit a separate plan for construction and operation and a 46923
funding request to the governor, the speaker of the house of 46924
representatives, and to the president of the senate. Any plan for 46925
an intercity conventional or high speed passenger transportation 46926
system submitted by the ~~commission~~ department pursuant to this 46927
section shall not propose the operation of such a system by the 46928
state other than through the ~~commission~~ department. 46929

Sec. ~~4981.05~~ 5507.05. (A) Any local or regional 46930
transportation authority may apply for a rail service continuation 46931
subsidy, acquisition or modernization loan, or any other 46932
assistance provided by the Regional Rail Reorganization Act for 46933
the purpose of providing any rail service that is consistent with 46934
rail service provided under this chapter. Any local or regional 46935
transportation authority may exercise, or may be created to 46936
exercise, such authority, administrative jurisdiction, and fiscal 46937
control as is necessary to obtain such assistance and provide such 46938
rail service. 46939

(B) For the purposes of this section, "transit system" as 46940
used in section 306.04 of the Revised Code, and "transit facility" 46941
as used in sections 306.30 and 306.81 of the Revised Code, include 46942
rail service. 46943

Sec. ~~4981.06~~ 5507.06. (A) The ~~Ohio rail development~~ 46944
~~commission~~ department of transportation may purchase or lease any 46945
portion of the rail property of a railroad corporation, and may 46946
purchase or lease any other property, facilities, or equipment 46947
considered necessary by the ~~commission~~ department for the 46948
operation of rail services, and the maintenance of track and other 46949

rail property. For the purpose of acquiring such property the 46950
~~commission~~ department may obtain acquisition loans from the 46951
federal government. 46952

(B) Where it is necessary for the purpose of implementing 46953
rail service under this chapter, the ~~commission, with the approval~~ 46954
~~of the director of transportation,~~ department may appropriate real 46955
property. All such appropriations shall be made pursuant to 46956
sections 163.01 to 163.22 of the Revised Code. 46957

Sec. ~~4981.07~~ 5507.07. (A) The ~~Ohio rail development~~ 46958
~~commission~~ department of transportation may restore, repair, 46959
relocate, or upgrade any rail property purchased, leased, or 46960
maintained by the ~~commission~~ department. The ~~commission~~ department 46961
may restore, repair, relocate, or upgrade any rail property owned 46962
by another person as long as such action is necessary for the 46963
efficient operation of rail services provided by the ~~commission~~ 46964
department. The ~~commission~~ department may obtain modernization 46965
loans from the federal government to restore or repair rail 46966
property acquired by the ~~commission~~ department for the purpose of 46967
implementing rail service. 46968

(B) The ~~commission~~ department may operate any rail property 46969
acquired by it over track owned or leased by the ~~commission~~ 46970
department, or over track owned by another person pursuant to an 46971
agreement with that person as long as such action is necessary for 46972
the efficient operation of rail service provided by the ~~commission~~ 46973
department pursuant to this chapter. 46974

(C) The ~~commission~~ department may enter into agreements with 46975
~~the department of transportation,~~ boards of county commissioners, 46976
boards of township trustees, legislative authorities of municipal 46977
corporations, with other governmental agencies or organizations, 46978
and with private corporations or organizations in order to 46979
facilitate implementation of rail service. 46980

Sec. ~~4981.08~~ 5507.08. (A) The ~~Ohio rail development~~ 46981
~~commission~~ department of transportation may sell, transfer, or 46982
lease any of the rail property that it possesses to any person for 46983
the continuation and operation of any rail service that is 46984
provided for pursuant to this chapter. 46985

(B) The ~~commission~~ department may assist any person to obtain 46986
~~an~~ any order or certificate required by the ~~interstate commerce~~ 46987
~~commission~~ surface transportation board for the performance of 46988
rail services in this state. 46989

(C) The ~~commission~~ department may cooperate with other states 46990
in carrying out the provisions of this chapter and may enter into 46991
any agreements with other states for the operation of rail 46992
services, including the joint purchasing or leasing of rail 46993
property. 46994

Sec. ~~4981.09~~ 5507.09. There is hereby created in the state 46995
treasury the rail development fund. The fund shall consist of such 46996
moneys as may be provided by law, including moneys received from 46997
the sale, transfer, or lease of any rail property pursuant to 46998
section ~~4981.08~~ 5507.08 of the Revised Code. Moneys in the fund 46999
shall be used for the purpose of acquiring, rehabilitating, or 47000
developing rail property or service, or for participation in the 47001
acquisition of rail property with the federal government, 47002
municipal corporations, townships, counties, or other governmental 47003
agencies. For the purpose of acquiring such rail property, the 47004
~~Ohio rail development commission~~ department of transportation may 47005
obtain acquisition loans from the federal government or from any 47006
other source. 47007

The fund shall also be used to promote, plan, design, 47008
construct, operate, and maintain passenger and freight rail 47009
transportation systems, and may be used to pay the administrative 47010

costs of the ~~Ohio rail development commission~~ department 47011
associated with conducting any authorized rail program, and for 47012
any purpose authorized by sections ~~4981.03~~ and 5501.56 and 5507.03 47013
of the Revised Code. The fund shall not be used to provide loan 47014
guarantees. 47015

Sec. ~~4981.091~~ 5507.091. There is hereby created in the state 47016
treasury the federal rail fund. The fund shall consist of money 47017
received pursuant to section ~~4981.08~~ 5507.08 of the Revised Code 47018
and such other money as may be provided by law. The fund shall be 47019
used to acquire, rehabilitate, or develop rail property or 47020
service; to participate in the acquisition of rail property with 47021
the federal government, municipal corporations, townships, 47022
counties, or other governmental agencies; and to promote, plan, 47023
design, construct, operate, and maintain passenger and freight 47024
rail transportation systems. The fund also may be used to pay the 47025
administrative costs of the ~~Ohio rail development commission~~ 47026
department of transportation associated with conducting any 47027
authorized rail program, and for any purpose authorized by 47028
sections ~~4981.03~~ and 5501.56 and 5507.03 of the Revised Code. The 47029
fund shall not be used to provide loan guarantees. Investment 47030
earnings on moneys credited to the fund shall be retained by the 47031
fund. 47032

In acquiring rail property, the ~~Ohio rail development~~ 47033
~~commission~~ department may obtain acquisition loans from the 47034
federal government or from any other source. 47035

Sec. ~~4981.10~~ 5507.10. As long as such action does not violate 47036
covenants made on behalf of or for the benefit of the holders of 47037
bonds, notes, or other obligations of the ~~Ohio rail development~~ 47038
~~commission~~ department of transportation, the ~~Ohio rail development~~ 47039
~~commission~~ department may purchase any portion of the rail 47040
property of a railroad corporation and may purchase any other 47041

property, facilities, or equipment considered necessary by the 47042
~~commission department~~ for the operation of rail services, ~~subject~~ 47043
~~to the following conditions:~~ 47044

~~(A) Upon if, upon~~ inspection of the rail property, the 47045
~~commission department~~ determines that the rail property is 47046
suitable for the efficient operation of rail services. 47047

~~(B) The controlling board approves the purchase of the rail~~ 47048
~~property by an affirmative vote of no fewer than five members.~~ 47049

Sec. 4981.11 5507.11. As used in sections 5507.11 to 5507.26 47050
of the Revised Code: 47051

(A) "~~Commission~~" "Department" means the ~~Ohio rail development~~ 47052
~~commission created in section 4981.02 of the Revised Code, the~~ 47053
~~duties, powers, responsibilities, and functions of which are~~ 47054
~~specified in this chapter~~ department of transportation. 47055

(B) "Bond" means revenue bonds, notes, or other obligations 47056
including current or advance refunding bonds issued by the 47057
~~commission department~~ to effect the intents and purposes of this 47058
chapter and any bond issued by a qualifying subdivision or local 47059
or regional transportation authority pursuant to Chapter 133. of 47060
the Revised Code ~~or otherwise as provided by the constitution and~~ 47061
~~laws of this state.~~ 47062

(C) "Bond proceedings" means any bond proceedings, as defined 47063
in division (E) of section 9.98 of the Revised Code, with respect 47064
to bonds, including, without limitation, the bond legislation with 47065
respect thereto. 47066

(D) "Cost," as applied to rail service projects, means the 47067
cost of acquisition, repair, renovation, and construction thereof; 47068
the cost of acquisition of all land, rights-of-way, property 47069
rights, easements, franchise rights, credit enhancements, or 47070
credit facility and interests required by any person, qualifying 47071

subdivision, a local or regional transportation authority, or the 47072
~~commission~~ department for such acquisition, renovation, repair, or 47073
construction, the cost of demolishing or removing any buildings or 47074
structures on land so acquired, including the cost of acquiring 47075
any lands to which buildings or structures may be moved; the cost 47076
of diverting highways, interchange of highways, access roads to 47077
private property, railroad rights-of-way including the cost of 47078
land or easement therefor; the cost of all machinery, furnishing, 47079
and equipment; all finance charges, and interest prior to and 47080
during the construction and for no more than eighteen months after 47081
completion of construction or acquisition; the cost of all legal 47082
services and expenses; the cost of all plans, specifications, 47083
surveys, and estimates of cost; all working capital and other 47084
expenses necessary or incident to determining the feasibility or 47085
practicability of acquiring, renovating, repairing, or 47086
constructing any such project; the financing of such acquisition, 47087
renovation, repair, refunding, or construction, including the 47088
amount authorized ~~in the resolution of the commission providing~~ 47089
for the issuance of bonds to be paid into any special funds from 47090
the proceeds of such bonds; and the financing of the placing of 47091
any such rail service project in operation, if necessary. ~~Any~~ 47092

Any obligations or expenses incurred after December 19, 1986, 47093
by any person, qualifying subdivision, or local or regional 47094
transportation authority, with the approval of the ~~commission~~ 47095
department, for surveys, borings, preparation of plans and 47096
specifications, and other engineering services in connection with 47097
the acquisition, renovation, repair, or construction of a project 47098
shall be regarded as a part of the cost of such project and shall 47099
be reimbursed out of the proceeds of grants, loans, or bonds as 47100
authorized by this chapter. 47101

(E) "Credit facility" means any credit facility, as defined 47102
in division (G) of section 9.98 of the Revised Code, with respect 47103

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| to bonds. | 47104 |
| (F) "Floating rate interest structure" means any floating rate interest structure, as defined in division (I) of section 9.98 of the Revised Code, with respect to bonds. | 47105 47106 47107 |
| (G) "Indexing agent" means any indexing agent, as defined in division (J) of section 9.98 of the Revised Code, with respect to bonds. | 47108 47109 47110 |
| (H) "Rail service project" or "project" means any project of an essential public nature which is considered a part of the rail service system, including, without limitation, permitted loan purposes which are specifically declared to be for an essential public purpose. | 47111 47112 47113 47114 47115 |
| (I) "Interest rate period" means any interest rate period, as defined in division (K) of section 9.98 of the Revised Code, with respect to bonds. | 47116 47117 47118 |
| (J) "Issuer" means the commission <u>department</u> . | 47119 |
| (K) "Participation agreement" means any participation agreement, loan agreement, lease agreement, bond purchase agreement, or other agreement between or among any person, qualifying subdivision, or local or regional transportation authority and the commission <u>department</u> pursuant to which the commission <u>department</u> agrees to lend moneys to the person, qualified subdivision, or local or regional transportation authority, and the person, qualifying subdivision, or local or regional transportation authority agrees to repay the moneys so lent, in accordance with this chapter and the applicable bond proceedings and on the terms and subject to the conditions set forth in such agreement. | 47120 47121 47122 47123 47124 47125 47126 47127 47128 47129 47130 47131 |
| (L) "Permitted loan purpose" means any of the following: | 47132 |
| (1) The payment of the costs of the acquisition or | 47133 |

construction of any property, asset, or improvement with an 47134
estimated life or usefulness of one year or more, including land 47135
and interests therein, and including reconstructions, 47136
enlargements, and extensions of any such property, asset, or 47137
improvement having an estimated life or usefulness of one year or 47138
more, of the ~~commission~~ department provided that such estimated 47139
life or usefulness shall be certified by the fiscal officer of the 47140
person, qualifying subdivision, or local or regional 47141
transportation authority to which the loan is to be made to that 47142
person, qualifying subdivision, or local or regional 47143
transportation authority; 47144

(2) The payment of any final judgment, regardless of whether 47145
such judgment arose out of a contractual or noncontractual cause 47146
of action; 47147

(3) The reimbursement to any person, qualifying subdivision, 47148
or local or regional transportation authority of moneys expended 47149
by it for a permitted loan purpose described in divisions (L)(1) 47150
and (2) of this section, including, without limitation, rental 47151
payments made by any person, qualifying subdivision, or local or 47152
regional transportation authority under a lease with an option to 47153
purchase if the proceeds of the loan are to be applied to the 47154
payment of the purchase price upon the exercise of the option to 47155
purchase; 47156

(4) The refunding, including funding and retirement, or 47157
advance refunding of the outstanding principal amount of any debt 47158
obligation issued or incurred by the ~~commission~~ department or by 47159
any person, qualifying subdivision, or local or regional 47160
transportation authority, including, without limitation, any loan 47161
previously made from the ~~commission~~ department for a permitted 47162
loan purpose of the sort described in divisions (L)(1) and (2) of 47163
this section; 47164

(5) The costs and expenses incurred by the ~~commission~~ 47165

department or by any person, qualifying subdivision, or local or 47166
regional transportation authority in obtaining a loan from the 47167
~~commission~~ department, including, without limitation, the fees and 47168
expenses of attorneys, accountants, engineers, and consultants and 47169
the costs and expenses of preparing, printing, and delivering any 47170
documents or instruments required to be delivered by any person, 47171
qualifying subdivision, or local or regional transportation 47172
authority under its participation agreement with the ~~commission~~ 47173
department. 47174

(M) "Person" means any natural person, partnership, joint 47175
venture, corporation, foreign or domestic, state or subdivision 47176
thereof, or sovereign government, or province thereof including 47177
the United States or any agency or instrumentality thereof. 47178

(N) "Put arrangement" means any put arrangement, as defined 47179
in division (N) of section 9.98 of the Revised Code, with respect 47180
to bonds. 47181

(O) "Remarketing agent" means a remarketing agent as defined 47182
in division (O) of section 9.98 of the Revised Code, with respect 47183
to bonds. 47184

(P) "Revenue" means any money or thing of value collected by, 47185
or paid to, the ~~commission~~ department in connection with any rail 47186
project or as principal of or interest, charges, or other fees on 47187
loans, including any moneys derived from taxation or any other 47188
collections on loans made by the ~~commission~~ department to any 47189
person, qualifying subdivisions, or local or regional 47190
transportation authorities to finance in whole or in part the 47191
acquisition, renovation, repair, refunding, or construction of any 47192
rail service project or projects, or other money or property which 47193
is received by the ~~commission~~ department and may be expended for 47194
or pledged as revenues pursuant to this chapter. 47195

(Q) "Special fund" means any fund required to be established 47196

by the ~~commission~~ department pursuant to the bond proceedings with 47197
respect to any bonds and into which the bond proceedings require 47198
that pledged receipts be deposited and from which the bond 47199
proceedings permit the disbursement of the pledged receipts at the 47200
times, in the amounts, and for the purposes set forth therein. 47201

(R) "Special revenue loan" means a loan to a qualifying 47202
subdivision or local or regional transportation authority by the 47203
~~commission~~ department that is payable solely from and secured 47204
solely by one or more sources of county or municipal tax or other 47205
revenue other than ad valorem property taxes. 47206

Sec. ~~4981.12~~ 5507.12. (A) The general assembly hereby finds 47207
and declares that increasing requirements for rail service for the 47208
people of the state and escalating costs of providing such rail 47209
service have created inordinate demands upon the financial 47210
resources of the state, qualifying subdivisions, private 47211
corporations and organizations, and local and regional 47212
transportation authorities necessitating legislation to enable the 47213
people of the state to attain a more competitive position in 47214
capital markets to provide rail service. 47215

(B) The general assembly hereby finds and declares further 47216
that it is in the public interest and is the responsibility of the 47217
state to foster and promote by all lawful means the provision of 47218
adequate capital markets and facilities for borrowing money for 47219
the financing of rail service and the fulfillment of public 47220
purposes, and to make it possible for the ~~commission~~ department of 47221
transportation, qualifying subdivisions, private corporations or 47222
organizations, and local or regional transportation authorities to 47223
obtain new or additional sources of capital funds at acceptable 47224
interest costs, including activities to encourage investor 47225
interest in the purchase of bonds, notes or other obligations of 47226
the ~~commission~~ department, or issued by the ~~commission~~ department 47227

to fund loans it may make to private corporations or organizations 47228
under sections ~~4981.01~~ 5507.01 to ~~4981.26~~ 5507.26 of the Revised 47229
Code, as sound and preferred securities for investments. 47230

(C) The general assembly hereby finds and declares further 47231
that it is in the public interest and is the responsibility of the 47232
state to encourage qualifying subdivisions, local or regional 47233
transportation authorities, and other persons to continue their 47234
independent undertakings of rail service and fulfillment of public 47235
purposes and the financing thereof and to improve or enhance the 47236
possibilities of qualifying subdivisions, local or regional 47237
transportation authorities, and other persons obtaining funds, to 47238
the extent possible, at reduced interest costs, for the orderly 47239
financing of rail service projects and fulfillment of public 47240
purposes. 47241

(D) The general assembly hereby finds and declares further 47242
that it is in the public interest, in order to implement and aid 47243
in the discharge of these responsibilities, that a state 47244
instrumentality, having been created as a public body corporate 47245
with full powers to borrow money and issue its bonds, notes, and 47246
other obligations to the end that funds obtained thereby may be 47247
used or made available to franchisees to provide capital 47248
facilities for rail service by the ~~commission~~ department or for 47249
the purposes of making loans to qualifying subdivisions, local or 47250
regional transportation authorities, private corporations or 47251
organizations, and other persons for rail service projects, that 47252
such state instrumentality be granted all powers necessary or 47253
appropriate to accomplish and carry out these essential public 47254
purposes and responsibilities of the state in a manner to make it 47255
possible to sell bonds and borrow funds at as low an interest rate 47256
as the instrumentality finds and determines to be feasible. 47257

(E) The general assembly further finds and declares that in 47258
accomplishing these purposes, the ~~commission, created and~~ 47259

~~established by this chapter, department~~ will be acting in all 47260
respects for the benefit of the people of the state to serve the 47261
public purposes of improving and otherwise promoting their health, 47262
education, welfare, safety, and prosperity, and that the 47263
~~commission~~ department may act on behalf of the state and its 47264
people in serving the essential public purposes described in this 47265
section for the benefit of the general public of the state. 47266

Sec. ~~4981.13~~ 5507.13. To accomplish the public policies and 47267
purposes and to meet the responsibility of the state as set forth 47268
in this chapter, the ~~Ohio rail development commission~~ department 47269
of transportation may directly undertake and implement and make 47270
loans to qualifying subdivisions, local or regional transportation 47271
authorities, and other persons for the acquisition, renovation, 47272
repair, refunding, or construction of rail service projects by 47273
such qualifying subdivisions and local or regional transportation 47274
authorities, and may issue bonds, payable solely from revenues, to 47275
pay the cost of, or finance, in whole or in part, rail service 47276
projects of the ~~commission~~ department or loans to any person, 47277
qualifying subdivision, or local or regional transportation 47278
authority. A project shall not be undertaken unless it has been 47279
determined by the ~~commission~~ department, based upon information 47280
provided to it by the qualifying subdivision, local or regional 47281
transportation authority, or other person or agency charged or 47282
empowered by law with the responsibility of reporting, to be 47283
consistent with any applicable requirements of law. ~~Any resolution~~ 47284
~~of the commission providing for making a loan for any permitted~~ 47285
~~loan purpose or execution of any participation agreement pursuant~~ 47286
~~to this chapter shall include a finding by the commission that~~ 47287
~~such determinations have been made.~~ A participation agreement may 47288
be entered into between the ~~commission~~ department and each 47289
qualifying subdivision, local or regional transportation 47290
authority, or other person to which a loan is made or from which 47291

bonds are purchased for the acquisition, renovation, repair, or 47292
construction of a rail service project, which participation 47293
agreement shall include, without limitation, all of the following 47294
provisions: 47295

(A) The cost of such project, the amount of the loan or bond 47296
purchase, the terms of repayment of such loan or bond purchase and 47297
the security therefor; 47298

(B) The specific purposes for which the proceeds of the loan 47299
or bond purchase shall be expended, the procedures as to the 47300
disbursements of loan or bond purchase proceeds, and the duties 47301
and obligations imposed upon the qualifying subdivision, local or 47302
regional transportation authority, or other person in regard to 47303
the construction, renovation, repair, refunding, or acquisition of 47304
the project; 47305

(C) The agreement of the qualifying subdivision, local or 47306
regional transportation authority, or other person to ~~raise the~~ 47307
~~funds of~~ provide sufficient credit or guarantee for repayment, 47308
through levy, pursuant to an election, contract, lease, fee 47309
charges, or otherwise; 47310

(D) The agreement of the qualifying subdivision, local or 47311
regional authority, or other person to provide the opinion of its 47312
counsel that the obligations of the qualifying subdivision, local 47313
or regional transportation authority, or other person comply with 47314
all applicable laws, rules, and regulations issued by the 47315
~~commission~~ department or other state, federal, or local bodies in 47316
regard to the construction, repair, renovation, funding, 47317
refunding, or acquisition of the project. 47318

Sec. ~~4981.131~~ 5507.131. (A) The power and authority provided 47319
by this chapter to qualifying subdivisions and local or regional 47320
transportation authorities to borrow for permitted loan purposes 47321
is in addition and supplemental to, not in derogation of, any 47322

other power or authority provided by law for the same or similar 47323
purposes, and this chapter provides to qualifying subdivisions or 47324
local or regional transportation authorities alternative, not 47325
exclusive, means of accomplishing those purposes. 47326

(B) Chapter 133. of the Revised Code shall not apply to 47327
issuance of bonds by the ~~Ohio rail development commission~~ 47328
department of transportation under this chapter or to the 47329
authorizing, obtaining, or incurring of any general obligation 47330
loan or special revenue loan or to its entering into any 47331
participation agreement or delivering any such other instrument to 47332
the ~~commission~~ department in connection therewith, by any 47333
qualifying subdivision or local or regional transportation 47334
authority, except to the extent, if any, that provisions of 47335
Chapter 133. of the Revised Code are expressly made applicable 47336
thereto by this chapter or by the bond proceedings applicable to 47337
the bonds from the proceeds of which such loan was made. 47338

(C) For purposes of division (A) of section 5705.41 of the 47339
Revised Code, the authorization by a qualifying subdivision or 47340
local or regional transportation authority of a loan from the 47341
~~commission~~ department pursuant to section ~~4981.12~~ 5507.12 of the 47342
Revised Code shall be deemed to be the authorization of a bond 47343
issue, and the purpose for which such loan was obtained shall be 47344
deemed to be the purpose for which such bonds were issued. For 47345
purposes of division (D) of section 5705.41 of the Revised Code, 47346
the proceeds to be derived from a loan authorized by a qualifying 47347
subdivision or local or regional transportation authority to be 47348
obtained pursuant to section ~~4981.12~~ 5507.12 of the Revised Code 47349
shall be deemed to be proceeds to be derived from authorized 47350
bonds. 47351

(D) Sections ~~4981.01~~ 5507.01 to ~~4981.26~~ 5507.26 of the 47352
Revised Code shall be liberally construed to effect the purposes 47353
described in section 1.11 of the Revised Code. 47354

~~Sec. 4981.14~~ 5507.14. (A) The Ohio rail development 47355
~~commission~~ department of transportation may exercise all powers 47356
necessary or appropriate to carry out ~~its corporate~~ the purposes 47357
of this chapter. 47358

(B) The ~~commission~~ department may do all of the following in 47359
connection with activities authorized by this chapter: 47360

~~(1) Adopt, and from time to time, ratify, amend, and repeal~~ 47361
~~bylaws necessary and proper for the regulation of its affairs and~~ 47362
~~the conduct of its business and rules to implement and make~~ 47363
~~effective its powers and duties;~~ 47364

~~(2) Adopt an official seal;~~ 47365

~~(3) Maintain a principal office in Columbus and, if~~ 47366
~~necessary, regional sub-offices at locations properly designated~~ 47367
~~or provided;~~ 47368

~~(4) Sue and be sued in its own name and plead and be~~ 47369
~~impleaded in its own name, particularly to enforce the obligations~~ 47370
~~and covenants made under sections 4981.13, 4981.14, and 4981.29 of~~ 47371
~~the Revised Code. Any actions against the commission shall be~~ 47372
~~brought in the court of common pleas in Franklin county, in which~~ 47373
~~the principal office of the commission shall be located.~~ 47374

~~(5) Undertake or cause to be undertaken the acquisition,~~ 47375
~~renovation, repair, refunding, operation, maintenance, or~~ 47376
~~construction of any rail service project;~~ 47377

~~(6)~~(2) Establish and operate a revolving loan fund for the 47378
purpose of making loans to qualifying subdivisions, local or 47379
regional transportation authorities, or other persons for the 47380
acquisition, renovation, repair, refunding, or construction of 47381
rail service projects by such qualifying subdivisions, local or 47382
regional transportation authorities, and private corporations or 47383
organizations, and the repayment thereof from project financing 47384

proceeds and revenues; purchase the obligations of counties and 47385
municipal corporations issued for the acquisition, renovation, 47386
repair, or construction of rail service projects by such 47387
qualifying subdivisions and local or regional transportation 47388
authorities; and adopt rules and procedures for making those loans 47389
or purchasing those obligations; 47390

~~(7)(3)~~ Issue bonds and notes and refunding obligations of the 47391
state, payable as provided in this chapter unless the bonds are 47392
refunded by refunding bonds, for the purpose of borrowing money to 47393
implement any power granted by ~~divisions (B)(5) and (6)~~ of this 47394
section for one or more rail service projects or parts thereof; 47395

~~(8)~~ Acquire by gift or purchase, hold, or dispose of real and 47396
personal property in the exercise of its powers and performance of 47397
its duties as set forth in this chapter; 47398

~~(9)~~ Make and enter into all contracts and agreements and 47399
execute all instruments necessary or incidental to the performance 47400
of its duties and the execution of its powers and to employ 47401
natural persons to act on behalf of the commission, and to 47402
establish the terms and conditions of such employment; 47403

~~(10)~~ Receive and accept from any federal agency or other 47404
person, subject to the approval of the governor, grants for or in 47405
aid of the construction, repair, renovation, operation, 47406
maintenance, or acquisition of rail service projects, and receive 47407
and accept aid or contributions from any source of money, 47408
property, labor, or other things of value, to be held, used, and 47409
applied only for the purposes for which the grants and 47410
contributions are made; 47411

~~(11)~~ Purchase property coverage and liability insurance for 47412
any rail service project and for any offices of the commission, 47413
insurance protecting the commission and its officers and employees 47414
against liability, if any, or damage to property or injury to or 47415

~~death of persons arising from its operations, and any other 47416
insurance the commission may agree to provide under any resolution 47417
authorizing the issuance of bonds in accordance with sections 47418
4981.11 to 4981.26 of the Revised Code, or in any trust agreement 47419
securing the same; 47420~~

~~(12) Establish or increase reserves from moneys received or 47421
to be received by the commission to secure or pay the principal of 47422
and interest on bonds, notes, or other obligations issued by the 47423
commission pursuant to this chapter or other law. Moneys, funds, 47424
and accounts of the commission, however, are subject only to audit 47425
by the auditor of state and all moneys, funds, and accounts shall 47426
be held in custody or deposited as directed by resolution of the 47427
commission and unless otherwise provided by law all moneys of the 47428
commission not pledged to the holders of bonds of the commission 47429
shall be appropriated by the general assembly. 47430~~

~~(13) Receive and disburse the proceeds of general obligation 47431
or other bonds of the state or agencies thereof as may be allowed 47432
by law pursuant to any resolution or act of the general assembly; 47433~~

~~(14)(4) To the extent permitted under its contracts with the 47434
holders of bonds or notes of the commission department, consent to 47435
modification of the rate of interest, time and payment of 47436
installment of principal or interest, security, or any other term 47437
of a bond, contract, or agreement of any kind to which the 47438
commission department is a party; 47439~~

~~(15)(5) Make grants to counties or municipal corporations, 47440
qualifying subdivisions, local or regional transportation 47441
authorities, or other persons for one or more rail service 47442
projects of parts thereof; 47443~~

~~(16)(6) Provide consultation services to any qualifying 47444
subdivision, local or regional transportation authority, or other 47445
person in connection with the acquisition, renovation, repair, or 47446~~

construction of any rail service project; 47447

~~(17)~~(7) Establish and amend the criteria and qualifications 47448
for the making of any loan to or the purchasing of any bond from 47449
any qualifying subdivision, local or regional transportation 47450
authority, or other person and the terms not inconsistent with 47451
this chapter of any loan or bond purchase agreement with any 47452
qualifying subdivision, local or regional transportation 47453
authority, or other person; 47454

~~(18)~~(8) Do all acts necessary and proper to carry out the 47455
powers expressly granted to the ~~commission~~ department in this 47456
chapter. 47457

(C) Any instrument by which real property is acquired 47458
pursuant to this section shall identify the agency of the state 47459
that has the use and benefit of the real property as specified in 47460
section 5301.012 of the Revised Code. 47461

Sec. ~~4981.15~~ 5507.15. (A) The ~~Ohio rail development~~ 47462
~~commission~~ department of transportation, from time to time, may 47463
issue bonds in such principal amounts as the ~~commission~~ department 47464
finds necessary to finance one or more rail service projects. 47465
Sections 9.98 to 9.983 of the Revised Code are hereby made 47466
applicable in their entirety to any bonds authorized to be issued 47467
under this chapter except as otherwise provided herein. 47468

(B) The ~~commission~~ department, from time to time, may issue 47469
renewal bonds, issue bonds to pay such obligations and, whenever 47470
it considers refunding expedient, refund any bonds by the issuance 47471
of bonds by the authority granted by this chapter. Except as may 47472
otherwise be expressly provided in this chapter or by the 47473
~~commission~~ department, every issue of its bonds or notes is an 47474
obligation of the ~~commission~~ department payable out of the 47475
revenues and reserves created for such purposes by the ~~commission~~ 47476
department, which are expressly pledged for such payment, without 47477

preference or priority of the first bonds issued, subject only to 47478
any agreements with the holders of particular bonds or notes 47479
pledging any particular revenues. Such pledge shall be valid and 47480
binding from the time the pledge is made and the revenues so 47481
pledged and thereafter received by the ~~commission~~ department 47482
immediately shall be subject to the lien of such pledge without 47483
any physical delivery thereof or further act and the lien of any 47484
such pledge shall be valid and binding as against all parties 47485
having claims of any kind, in tort, contract, or otherwise, 47486
against the ~~commission~~ department irrespective of whether such 47487
parties have notice thereof. 47488

(C) All such bonds shall have and are hereby declared to have 47489
all the qualities of negotiable instruments. The bonds shall ~~be~~ 47490
~~authorized by resolution of the commission, shall~~ bear such date 47491
and shall mature at such time, in case of any such note or any 47492
renewal thereof not exceeding five years from the date of issue of 47493
such original note, and in the case of any such bond not exceeding 47494
fifty years from the date of issue, ~~as such resolution may~~ 47495
~~provide.~~ The bonds and notes shall bear interest at such rate or 47496
rates, including variable rates, be in such denominations, be in 47497
such form, either coupon or registered, carry such registration 47498
privileges, be payable in such medium of payment, in such place, 47499
and be subject to such terms of redemption as otherwise set forth 47500
in this chapter as the ~~commission~~ department may authorize. The 47501
bonds of the ~~commission~~ department may be sold by the ~~commission~~ 47502
department at public or private sale, at or not less than the 47503
price the ~~commission~~ director of transportation determines. The 47504
bonds shall be ~~executed by a voting member of the commission,~~ 47505
~~selected by the commission and approved by the speaker of the~~ 47506
~~house of representatives and the president of the senate, who may~~ 47507
~~use a facsimile signature. The official seal of the commission, or~~ 47508
~~a facsimile, shall be affixed thereto or printed thereon and~~ 47509
~~attested, manually, or by facsimile signature, by the~~ 47510

~~secretary treasurer of the commission. Coupons, if any, attached 47511
thereto shall bear the signature or facsimile signature of the 47512
chairperson of the commission. In case any officer whose 47513
signature, or a facsimile of whose signature appears on any bonds, 47514
notes, or coupons ceases to be such officer before delivery of 47515
such bonds or notes, such signature or facsimile is nevertheless 47516
sufficient for all purposes the same as if the officer had 47517
remained in office until such delivery. In case the seal of the 47518
commission changes after a facsimile is imprinted on such bonds or 47519
notes, such facsimile continues to be sufficient for all purposes 47520
in the form prescribed by the treasurer of state. 47521~~

(D) Any ~~resolution~~ language authorizing any bonds or any 47522
issue thereof may contain provisions, subject to such agreements 47523
with bondholders or noteholders as may then exist, which 47524
provisions shall be a part of the contract with the holders 47525
thereof, as to pledging all or any part of the revenues of the 47526
~~commission~~ department to secure the payment of the bonds of any 47527
issue thereof; the issue and disposition of revenues of the 47528
~~commission~~ department; the setting aside of reserve funds, sinking 47529
funds, or replacement and improvement funds and the regulation and 47530
disposition thereof; the crediting of the proceeds of the sale of 47531
bonds to and among the funds referred to and provided for in the 47532
~~resolution~~ language authorizing the issuance of the bonds; 47533
providing for the pledge or use of the rail development fund 47534
created by section ~~4981.09~~ 5507.09 of the Revised Code; the use, 47535
lease, sale, or other disposition of any assets of the ~~commission~~ 47536
department; limitations on the purpose to which the proceeds of 47537
the sale of bonds may be applied; the agreement of the ~~commission~~ 47538
department to do all things necessary for the authorization, 47539
issuance, and sale of such bonds which may be issued in such 47540
amounts as may be necessary for the timely retirement of such 47541
bonds; limitation on the issuance of additional bonds which may be 47542
issued and secured; the refunding of outstanding bonds; the 47543

procedure, if any, by which the terms of any contract with 47544
bondholders or noteholders may be amended or abrogated; the amount 47545
of bonds the holders of which must consent may be given; 47546
limitations on the amount of moneys to be expended by the 47547
~~commission~~ department for operating, administrative, or other 47548
expenses of the ~~commission~~ department securing any bonds by a 47549
trust agreement; and any other matter, of like or different 47550
character, which in any way affects the security or protection of 47551
the bonds. 47552

(E) In connection with each such issuance of bonds, the 47553
~~commission~~ department shall establish in its name an improvement 47554
fund or funds in the name of the rail service project or projects 47555
for which the permitted loan or expenditure is to be made. The 47556
proceeds of each issue of bonds, except for any portion thereof 47557
required under the bond proceedings to be deposited in a bond 47558
service fund, bond service reserve fund, or other special fund 47559
established pursuant to the bond proceedings for such issue of 47560
bonds, shall be deposited in the designated fund, and together 47561
with any investment income thereof, shall be held in trust and 47562
applied solely to permitted bond purposes and in accordance with 47563
such bond proceedings. 47564

(F) The right of holders of bonds issued by the ~~commission~~ 47565
department to payment of debt service on such bonds shall be 47566
limited to the pledged receipts and special funds pledged thereto 47567
pursuant to the bond proceedings and any moneys available for such 47568
payment under any credit facility issued with respect to such 47569
bonds. The holders of such bonds shall have no right to have 47570
moneys raised by ad valorem taxation obligated or pledged, and 47571
moneys raised by ad valorem taxation shall not be obligated or 47572
pledged for the payment of debt service on bonds issued by the 47573
~~commission~~ department, except to the extent, if any, that the 47574
general assembly or legislative authority of qualifying 47575

subdivisions and local or regional transportation authorities that 47576
borrows moneys derived from the proceeds of such bonds pledge any 47577
moneys they raise by ad valorem taxation to the repayment of such 47578
borrowings and the moneys so raised and paid to the ~~commission~~ 47579
department are obligated or pledged to the payment of debt service 47580
on the bonds pursuant to the bond proceedings. 47581

(G) The bond proceedings adopted by the ~~commission~~ department 47582
authorizing the issuance of bonds shall provide for the general 47583
purpose thereof and shall specify, ~~or shall authorize one or more~~ 47584
~~officers of the board of directors to determine,~~ subject to 47585
limitations set forth in the bond proceedings: the aggregate 47586
principal amount of the bonds; the form and manner of execution 47587
and authentication of the bonds; the principal maturity or 47588
maturities; whether the bonds are to bear interest at a fixed rate 47589
or rates or under a floating rate interest structure; if a fixed 47590
rate or fixed rates of interest are to be borne by the bonds, the 47591
interest rate or rates: if the bonds are to bear interest under a 47592
floating rate interest structure, the manner in which the floating 47593
rate is to be determined for each interest-rate period, the length 47594
of each interest-rate period, and the extent to which and manner 47595
in which the interest-rate period may be changed from time to 47596
time; the put arrangement or arrangements, if any, to be available 47597
to holders of the bonds; and the paying agents, remarketing 47598
agents, indexing agents, or other agents, if any, to be engaged in 47599
connection with the issuance of the bonds. The bond proceedings, 47600
either expressly or by reference to other bond proceedings thereby 47601
approved or otherwise applicable, also shall specify: the pledged 47602
receipts and the special fund or funds to be pledged to secure the 47603
payment of the debt service on the bonds; whether the pledged 47604
receipts are pledged on a basis prior or subordinate to other 47605
expenses, claims, or payments and whether other bonds have been or 47606
may be issued by the ~~commission~~ department secured by the pledged 47607
receipts on a basis prior to or on a parity with the bonds; the 47608

credit facility or facilities, if any, to be obtained with respect 47609
to the bonds; and the rights and remedies that may be exercised by 47610
the holders of the bonds or by a trustee on their behalf upon the 47611
occurrence of an event constituting an event of default under the 47612
bond proceedings, which rights and remedies shall include, except 47613
to the extent restricted by the bond proceedings, any rights and 47614
remedies available under the laws of the state for the enforcement 47615
of the payments required under and any other agreements made in, 47616
the bond proceedings. The bond proceedings, either expressly or by 47617
reference to other bond proceedings thereby approved or otherwise 47618
applicable, also may provide for: the mandatory or optional 47619
redemption of the bonds prior to their stated maturity; 47620
limitations on the issuance of additional bonds by the ~~commission~~ 47621
department; the investment of moneys in the improvement fund and 47622
any special funds, without regard to Chapter 131. or 135. of the 47623
Revised Code, but subject to any provisions of Chapter ~~4981.~~ 5507. 47624
of the Revised Code, and the bond proceedings with respect 47625
thereto; a maximum rate of interest that bonds with a floating 47626
rate interest structure may bear, without regard to section 9.95 47627
of the Revised Code; any restrictions not inconsistent with this 47628
chapter on the amount and terms of and security for the repayment 47629
for loans made to qualifying subdivisions, local or regional 47630
transportation authorities, or other persons from the improvement 47631
fund; and any other term, condition, or provision of or with 47632
respect to the bonds which may be included in the bond 47633
proceedings. 47634

(H) The revenues and any special funds pledged to the payment 47635
of debt service on bonds pursuant to the bond proceedings for such 47636
bonds and thereafter received by the ~~commission~~ department or by 47637
an agent on behalf of the ~~commission~~ department are immediately 47638
subject to the lien of such pledge without any physical delivery 47639
thereof or further act. The lien of any such pledge is valid and 47640
binding against all parties having claims of any kind against the 47641

~~commission~~ department or against any person, qualifying 47642
subdivision, or local or regional transportation authority or 47643
municipal corporation that is an absolute obligor with respect to 47644
such bonds, irrespective of whether such parties have notice 47645
thereof, and shall create a perfected security interest for all 47646
purposes of Chapter 1309. of the Revised Code, without the 47647
necessity for separation or delivery of funds or for the filing or 47648
recording of the bond proceedings by which such pledge is created, 47649
or any certificate, statement, or other document with respect 47650
thereto; and the pledge of such pledged receipts and special funds 47651
is effective and the moneys therefrom and thereof may be applied 47652
to the purposes for which pledged without necessity for any act of 47653
appropriation. Every pledge, and every covenant and agreement made 47654
in the bond proceedings with respect thereto, may therein be 47655
extended to the benefit of the owners and holders of the bonds 47656
authorized to be issued under this section and to any trustee or 47657
paying agent for such owners and holders for further security of 47658
the payment of the debt service on such bonds. 47659

(I) Each duty of the ~~commission~~ department and of its 47660
~~members, directors, or officers~~ employees and each duty of any 47661
other governmental agency and its officials, members, or employees 47662
undertaken pursuant to the bond proceedings or in any 47663
participation agreement is hereby established as a duty of the 47664
~~commission~~ department or of such qualifying subdivision or local 47665
or regional transportation authority or governmental agency and of 47666
each such member, officer, official, or employee having authority 47667
to perform such duty, specifically enjoined by law resulting from 47668
an office, trust, or station within the meaning of section 2731.01 47669
of the Revised Code. ~~The persons who are at the time the members,~~ 47670
~~directors, officers, or employees of the commission are not liable~~ 47671
~~in their personal capacities on any bonds issued by the commission~~ 47672
~~or under any of the bond proceedings with respect thereto~~ Section 47673
9.86 of the Revised Code applies to all bond proceedings under 47674

this chapter. 47675

(J) Bonds issued under this section are lawful investments of 47676
banks, savings and loan associations, deposit guarantee 47677
associations, trust companies, trustees, fiduciaries, insurance 47678
companies, including domestic for life and domestic not for life, 47679
trustees or other officers having charge of sinking and bond 47680
retirement funds or other funds of the state and of political 47681
subdivisions and taxing districts of the state, the commissioners 47682
of the sinking fund of the state, the industrial commission, the 47683
state teachers retirement system, the public employees retirement 47684
system, the school employees retirement system, and the Ohio 47685
police and fire pension fund, notwithstanding any other provisions 47686
of the Revised Code or rules adopted by any state agency with 47687
respect to investments by them, and are also acceptable as 47688
security for the deposit of public moneys. For the purpose of 47689
causing bonds issued by the ~~commission~~ department to be eligible 47690
for investment of interim moneys of the state or any subdivision 47691
of the state under section 135.14 of the Revised Code, but solely 47692
for that purpose, bonds issued by the ~~commission~~ department shall 47693
be deemed to be bonds or other obligations of this state for 47694
purposes of division (B)(4) of section 135.14 of the Revised Code. 47695

(K) The bonds issued by the ~~commission~~ department, the 47696
transfer thereof, and the income therefrom, including any profit 47697
made on the sale thereof, shall at all times be free from taxation 47698
within the state. 47699

(L) Any bonds which recite that they are issued pursuant to 47700
this section, which comply on their face with such section, which 47701
are issued for one or more permitted bond purposes, and for which 47702
the ~~commission~~ department has been paid in full, shall in any 47703
action or proceeding involving their validity be conclusively 47704
deemed to have been issued, sold, executed, and delivered in 47705
conformity with law and shall be incontestable unless such action 47706

or proceeding is begun prior to the delivery of such bonds to the 47707
original purchaser or purchasers thereof. 47708

(M) In the event that the sum of all reserves pledged to the 47709
payment of such bonds shall be less than the minimum reserve 47710
requirements established ~~in any resolution or resolutions~~ 47711
~~authorizing for~~ the issuance of such bonds, the ~~chairperson~~ 47712
director of the ~~commission~~ transportation shall certify, on or 47713
before the first day of December of each year, the amount of such 47714
deficiency to the governor for inclusion, if the governor shall so 47715
elect, of the amount of such deficiency in the budget to be 47716
submitted to the next session of the general assembly for 47717
appropriation to the ~~commission~~ department to be pledged for 47718
payment of such bonds or notes. The general assembly shall not be 47719
required to make any appropriations so requested, and the amount 47720
of such deficiencies do not constitute a debt or liability of the 47721
state. 47722

(N) All property of the ~~commission~~ department is exempt from 47723
levy and sale by virtue of an execution and no execution or other 47724
judicial process may issue against the property. A judgment 47725
against the ~~commission~~ department may not be a charge or lien upon 47726
its property. However, nothing in this section applies to or 47727
limits the rights of the holder of bonds or notes to pursue a 47728
remedy for the enforcement of a pledge or lien given by the bank 47729
on its revenues or other money. 47730

(O) No action to contest the validity of any bonds of the 47731
~~commission~~ department to be sold at public sale may be brought 47732
after the fifteenth day following the first publication of notice 47733
of the sale of the bonds. No action to contest the validity of any 47734
bond sale under this chapter may be brought after the fifth day 47735
following the bond sale. 47736

(P) If bonds are sold at private sale, the ~~commission~~ 47737
department may publish notice of the execution of the contract of 47738

sale of the bonds one time in a newspaper published and of general 47739
circulation in the city of Columbus. If notice is published as 47740
permitted in this division, no action to contest the validity of 47741
such bonds or notes sold at private sale may be brought after the 47742
fifteenth day following the publication of notice of the execution 47743
of the contract of sale pertaining to the bonds. 47744

(Q) If an action challenging the bonds of the ~~commission~~ 47745
department is not brought within the time prescribed by division 47746
(O) or (P) of this section, whichever is applicable, all bonds ~~of~~ 47747
~~the commission~~ shall be conclusively presumed to be fully 47748
authorized and issued under the laws of the state, and a person or 47749
a qualified entity is estopped from questioning their 47750
authorization, sale, issuance, execution, or delivery by the 47751
~~commission~~ department. 47752

(R) Insofar as the provisions of this section are 47753
inconsistent with the provisions of any other law, general, 47754
special, or local, the provisions of this chapter shall be 47755
controlling. 47756

Sec. ~~4981.16~~ 5507.16. The ~~Ohio rail development commission~~ 47757
department of transportation may make the following determinations 47758
in connection with any issuance of its bonds under this chapter: 47759

(A) The number, location, and other characteristics of 47760
projects, including to the extent reasonably possible, assurance 47761
that the projects to be financed by bonds will create or preserve 47762
jobs and employment opportunities or improve the economic welfare 47763
of the people of the state; 47764

(B) Eligibility requirements, including requirements for 47765
credit worthiness, for projects for which loans are made from 47766
proceeds of the bonds. In determining eligibility requirements the 47767
issuer shall take into consideration all of the following factors: 47768

| | |
|---|---|
| (1) The length of time any borrower has been engaged in rail service; | 47769 47770 |
| (2) The net income or net worth of any borrower; | 47771 |
| (3) The availability or feasibility of alternative financing methods for any borrower; | 47772 47773 |
| (C) The type and amount of collateral, security, or credit enhancement to be provided to assure repayment of loans or of bonds; | 47774 47775 47776 |
| (D) The amounts and types of insurance coverage required on projects and loans; | 47777 47778 |
| (E) Any other matters relating to the exercise of the powers or duties of the issuer under sections 4981.11 <u>5507.11</u> to 4981.26 <u>5507.26</u> of the Revised Code. | 47779 47780 47781 |
| Sec. 4981.17 <u>5507.17</u>. (A) In the discretion of the Ohio rail development commission <u>department of transportation</u> , the bonds <u>issued under this chapter</u> may be secured by a trust agreement or indenture of mortgage between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without this state but authorized to exercise trust powers within this state. | 47782 47783 47784 47785 47786 47787 47788 |
| (B) Any such trust agreement or indenture of mortgage may contain the resolution or ordinance <u>language</u> authorizing the issuance of the bonds and other provisions that are customary or appropriate in an agreement or indenture of such type, including, but not limited to: | 47789 47790 47791 47792 47793 |
| (1) A pledge of the rentals, revenues, and other income, charges, and moneys out of which the principal of and interest on the bonds shall be payable and a mortgage of all or any part of the pledged facilities, including any enlargements of and additions to such pledged facilities thereafter made; | 47794 47795 47796 47797 47798 |

(2) Maintenance of each pledge, trust agreement, and indenture of mortgage made for the security of any of the bonds until the issuer has fully paid the principal of and interest on the bonds, or provision therefor has been made, for the security of which the pledge has been made and the trust agreement or indenture of mortgage has been given;

(3) In the event of default in any payments required to be made by the bond proceedings or any other agreement of the issuer made as a part of the contract under which the bonds were issued, enforcement of such payments or agreement by mandamus, the appointment of a receiver in equity, or if a mortgage has been given, the foreclosure of such mortgage or any combination of the foregoing;

(4) The rights and remedies of the bondholders and of the trustee and provisions for protecting and enforcing them, including limitations on rights of individual bondholders;

(5) Such other provisions as the trustee, the original purchaser of the bonds, and the issuer agree upon.

Sec. ~~4981.18~~ 5507.18. (A) Any holder of bonds issued pursuant to sections ~~4981.11~~ 5507.11 to ~~4981.26~~ 5507.26 of the Revised Code or a trustee under a trust agreement or indenture of mortgage entered into pursuant to section ~~4981.17~~ 5507.17 of the Revised Code, except to the extent that their rights are restricted by the bond proceedings or by the terms of the bonds, may by any suitable form of legal proceedings, protect and enforce any rights under the laws of this state or granted by the bond proceedings. Such rights include the right to compel the performance of all duties of the ~~Ohio rail development commission~~ department of transportation required by sections ~~4981.11~~ 5507.11 to ~~4981.26~~ 5507.26 of the Revised Code or the bond proceedings; to enjoin unlawful activities; and in the event of default with respect to

the payment of any principal of and interest on any bond or in the 47830
performance of any covenant or agreement on the part of the issuer 47831
in the resolution, ordinance, trust agreement, or indenture, to 47832
apply to a court having jurisdiction of the cause to appoint a 47833
receiver to administer and operate the pledged facilities, the 47834
rentals, revenues, and other income, charges, and moneys of which 47835
are pledged to the payment of principal of and interest on such 47836
bonds or which are the subject of the covenant or agreement, with 47837
full power to pay, and to provide for payment of, principal of and 47838
interest on such bonds, and with such powers, subject to the 47839
direction of the court, as are accorded receivers in general 47840
equity cases, excluding any power to pledge additional rentals, 47841
revenues, or other income, charges, or moneys of the issuer, 47842
including those derived from taxation, to the payment of such 47843
principal and interest; and to foreclose the mortgage on the 47844
pledged facilities in the same manner as for real estate of 47845
private corporations. 47846

(B) No law heretofore or hereafter enacted providing for a 47847
moratorium, postponement, or restraint upon the rights or remedies 47848
of a mortgagee or secured party to enforce a security interest, 47849
whether by foreclosure, collection or taking possession, judicial 47850
or other sale or disposition, or by any other means, shall apply 47851
to a security interest in all or any part of pledged facilities or 47852
in any way restrict, preclude, or otherwise impair the rights or 47853
remedies of the holders of bonds issued under sections ~~4981.11~~ 47854
5507.11 to ~~4981.26~~ 5507.26 of the Revised Code or of any insurer, 47855
guarantor, or provider of a letter of credit or other credit 47856
facility or security enhancement arrangement pertaining to loans 47857
made or bonds issued under sections ~~4981.11~~ 5507.11 to ~~4981.26~~ 47858
5507.26 of the Revised Code. The provisions of this division may 47859
be included as a covenant in any agreement with the holders of 47860
bonds or any insurer, guarantor, or provider of a letter of credit 47861
or other credit facility or security enhancement arrangement 47862

pertaining to loans made or bonds issued under sections ~~4981.11~~ 47863
5507.11 to ~~4981.26~~ 5507.26 of the Revised Code. 47864

Sec. ~~4981.19~~ 5507.19. All bonds issued under sections ~~4981.11~~ 47865
5507.11 to ~~4981.26~~ 5507.26 of the Revised Code are lawful 47866
investments of banks, societies for savings, savings and loan 47867
associations, deposit guarantee associations, trust companies, 47868
trustees, fiduciaries, insurance companies, including domestic for 47869
life and domestic not for life, trustees or other officers having 47870
charge of sinking and bond retirement or other special funds of 47871
political subdivisions and taxing districts of this state, the 47872
commissioners of the sinking fund of the state, the administrator 47873
of workers' compensation, the state teachers retirement system, 47874
the public employees retirement system, the school employees 47875
retirement system, and the Ohio police and fire pension fund, 47876
notwithstanding any other provision of the Revised Code or rules 47877
adopted pursuant thereto by any governmental agency of the state 47878
with respect to investments by them, and are acceptable as 47879
security for the deposit of public moneys. 47880

Sec. ~~4981.20~~ 5507.20. (A) Any real or personal property, or 47881
both, of the ~~Ohio rail development commission~~ department of 47882
transportation that is acquired, constructed, reconstructed, 47883
enlarged, improved, furnished, or equipped, or any combination 47884
thereof, and leased or subleased under authority of sections 47885
~~4981.11~~ 5507.11 to ~~4981.26~~ 5507.26 of the Revised Code shall be 47886
subject to ad valorem, sales, use, and franchise taxes and to 47887
zoning, planning, and building regulations and fees, to the same 47888
extent and in the same manner as if the lessee-user or 47889
sublessee-user thereof, rather than the issuer, had acquired, 47890
constructed, reconstructed, enlarged, improved, furnished, or 47891
equipped, or any combination thereof, such real or personal 47892
property, and title thereto was in the name of such lessee-user or 47893

sublessee-user. 47894

The transfer of tangible personal property by lease or 47895
sublease under authority of sections ~~4981.11~~ 5507.11 to ~~4981.26~~ 47896
5507.26 of the Revised Code is not a sale as used in Chapter 5739. 47897
of the Revised Code. The exemptions provided in divisions (B)(1) 47898
and ~~(14)~~(12) of section 5739.02 of the Revised Code shall not be 47899
applicable to purchases for a project under sections ~~4981.11~~ 47900
5507.11 to ~~4981.26~~ 5507.26 of the Revised Code. 47901

The issuer shall be exempt from all taxes on its real or 47902
personal property, or both, which has been acquired, constructed, 47903
reconstructed, enlarged, improved, furnished, or equipped, or any 47904
combination thereof, under sections ~~4981.11~~ 5507.11 to ~~4981.26~~ 47905
5507.26 of the Revised Code so long as such property is used by 47906
the issuer for purposes which would otherwise exempt such 47907
property; has ceased to be used by a former lessee-user or 47908
sublessee-user and is not occupied or used; or has been acquired 47909
by the issuer but development has not yet commenced. The exemption 47910
shall be effective as of the date the exempt use begins. All taxes 47911
on the exempt real or personal property for the year should be 47912
prorated and the taxes for the exempt portion of the year shall be 47913
remitted by the county auditor. 47914

(B) Bonds issued under sections ~~4981.11~~ 5507.11 to ~~4981.26~~ 47915
5507.26 of the Revised Code, the transfer thereof, and the 47916
interest and other income from the bonds, including any profit 47917
made on the sale thereof, are free from taxation within the state. 47918

Sec. ~~4981.21~~ 5507.21. When a special assessment is made on 47919
real property owned by the ~~Ohio rail development commission~~ 47920
department of transportation and leased under authority of 47921
sections ~~4981.11~~ 5507.11 to ~~4981.26~~ 5507.26 of the Revised Code, 47922
the installments of the assessment shall be paid by the lessee of 47923
such real property so long as ~~such~~ the property is leased and any 47924

installment ~~thereof~~ remaining unpaid at the termination of any 47925
~~such~~ lease shall thereafter be paid by the issuer so long as ~~such~~ 47926
the property is owned by it. 47927

Sec. ~~4981.22~~ 5507.22. The ~~Ohio rail development commission~~ 47928
department of transportation may issue refunding bonds to refund 47929
any bonds it previously issued under sections ~~4981.11~~ 5507.11 to 47930
~~4981.26~~ 5507.26 of the Revised Code, for any of the following 47931
purposes: 47932

(A) Refunding bonds ~~which~~ that have matured or are about to 47933
mature when the rentals, revenues, and other income, charges, and 47934
moneys pledged for the payment of such bonds are insufficient to 47935
pay bonds ~~which~~ that have matured or are about to mature or to 47936
make payments to other funds required by the bond proceedings; 47937

(B) Refunding any bonds as an incident to providing funds for 47938
reconstructing, enlarging, improving, or providing additional 47939
furnishings or equipment for the pledged facilities as to bonds 47940
originally issued under sections ~~4981.11~~ 5507.11 to ~~4981.26~~ 47941
5507.26 of the Revised Code; 47942

(C) Refunding all of the outstanding bonds of any issue, both 47943
matured and unmatured, when the rentals, revenues, or other 47944
income, charges, or moneys pledged for the payment of such bonds 47945
are insufficient to pay bonds ~~which~~ that have matured or are about 47946
to mature or to make payments to other funds required by the bond 47947
proceedings, if such outstanding bonds can be retired by call, at 47948
maturity, or with the consent of the holders thereof, whether from 47949
the proceeds of the sale of the refunding bonds or by exchange for 47950
the refunding bonds, provided that the principal amount of 47951
refunding bonds shall not exceed in amount the aggregate of the 47952
par value of the bonds to be retired, any redemption premium, past 47953
due and future interest to the date of maturity or proposed 47954
redemption that cannot otherwise be paid, and funds, if any, to 47955

reconstruct, enlarge, improve, furnish, or equip, or any 47956
combination thereof, the pledged facilities as to bonds originally 47957
issued under sections ~~4981.11~~ 5507.11 to ~~4981.26~~ 5507.26 of the 47958
Revised Code; 47959

(D) Refunding any bonds of the issuer previously issued when 47960
the refunding bonds will bear interest at a lower rate than the 47961
bonds to be refunded, or when the interest cost of the refunding 47962
bonds computed to absolute maturity will be less than the interest 47963
cost of the bonds to be refunded, or when the average life of the 47964
refunding bonds will be greater than the remaining average life of 47965
the bonds to be refunded. 47966

Refunding bonds issued pursuant to this section shall mature 47967
not later than thirty years from date of issue. Except as provided 47968
in this section, the terms of the issuance and sale of refunding 47969
bonds shall be as provided in sections ~~4981.11~~ 5507.11 to ~~4981.26~~ 47970
5507.26 of the Revised Code for an original issue of bonds. 47971

Sec. ~~4981.23~~ 5507.23. No bonds shall be issued under sections 47972
~~4981.11~~ 5507.11 to ~~4981.26~~ 5507.26 of the Revised Code unless the 47973
~~resolution language~~ authorizing such issuance of bonds specifies 47974
that all wages paid to laborers and mechanics employed on such 47975
projects for which the bonds are issued shall be paid at the 47976
prevailing rates of wages of laborers and mechanics for the class 47977
of work called for by such project, which wages shall be 47978
determined in accordance with the requirements of Chapter 4115. of 47979
the Revised Code for determination of prevailing wage rates, 47980
provided that the requirements of this section do not apply where 47981
the federal government or any of its agencies furnished by loan or 47982
grant all or any part of the funds used in connection with such 47983
project and prescribes predetermined minimum wages to be paid to 47984
such laborers and mechanics; and provided further that should a 47985
nonpublic user beneficiary of the project undertake, as part of 47986

the project, construction to be performed by its regular 47987
bargaining unit employees who are covered under a collective 47988
bargaining agreement ~~which~~ that was in existence prior to the date 47989
of the commitment instrument undertaking to issue bonds then, in 47990
that event, the rate of pay provided under the collective 47991
bargaining agreement may be paid to such employees. 47992

Sec. ~~4981.25~~ 5507.25. In accordance with Section 13 of 47993
Article VIII, Ohio Constitution, the state, acting through the 47994
~~Ohio rail development commission~~ department of transportation, for 47995
the purpose of implementing rail service, may ~~by resolution~~ 47996
designate a corporation organized under Chapter 1702. or 1724. of 47997
the Revised Code as its agency to acquire, construct, reconstruct, 47998
enlarge, improve, furnish, or equip and to sell, lease, exchange, 47999
or otherwise dispose of property and facilities within the state 48000
for industry, commerce, distribution, and research; may approve 48001
such corporation and obligations of the corporation issued by it 48002
for one or more such purposes; and may have a beneficial interest 48003
in such corporation including the right to the property financed 48004
by such obligations on the retirement of such obligations, or by 48005
acquiring such property for endowment or similar uses or benefits 48006
or for ultimate direct use by it, subject to any lease or mortgage 48007
securing such obligations. 48008

Sec. ~~4981.26~~ 5507.26. (A) A project of the ~~Ohio rail~~ 48009
~~development commission~~ department of transportation authorized by 48010
this chapter shall not be subject to the requirements relating to 48011
public buildings, structures, grounds, works, or improvements 48012
imposed by section 125.81, 713.02, or 713.25 of the Revised Code 48013
or any other similar requirements that may be lawfully waived by 48014
this section. 48015

(B) A project of the ~~commission~~ department authorized by this 48016
chapter shall be constructed, reconstructed, enlarged, improved, 48017

furnished, or equipped and shall be leased, sold, or otherwise 48018
disposed of in the manner determined by the issuer in its sole 48019
discretion and any requirement of competitive bidding or other 48020
restriction, which may be lawfully waived by this section, imposed 48021
on the procedure for award of contracts for such purpose or the 48022
lease, sale, or other disposition of property of the issuer is not 48023
applicable to any action taken under sections ~~4981.11~~ 5507.11 to 48024
~~4981.26~~ 5507.26 of the Revised Code. 48025

Sec. ~~4981.28~~ 5507.28. (A) The general assembly hereby finds 48026
and declares that it is in the public interest for private 48027
corporations or organizations to participate in the providing of 48028
rail service through the financing, design, construction, 48029
reconstruction, operation, and maintenance by private persons of 48030
all or part of a rail system, whether as system owners, lessees 48031
from the ~~Ohio rail development commission~~ department of 48032
transportation, or agents for the ~~commission~~ department. 48033

(B) To the extent that any provisions of sections ~~4981.28~~ 48034
5507.28 to ~~4981.34~~ 5507.34 of the Revised Code conflict with any 48035
state or local statute, regulation, or ordinance, the provisions 48036
of sections ~~4981.28~~ 5507.28 to ~~4981.34~~ 5507.34 of the Revised Code 48037
are controlling. 48038

Sec. ~~4981.29~~ 5507.29. (A) In addition to the powers contained 48039
in section ~~4981.14~~ 5507.14 of the Revised Code, the ~~Ohio rail~~ 48040
~~development commission~~ department of transportation may do all of 48041
the following: 48042

(1) Notwithstanding division (A) of section ~~4981.04~~ 5507.04 48043
of the Revised Code, adopt a plan for private participation in the 48044
financing, design, construction, and operation of all or part of a 48045
rail system; 48046

(2) Grant franchises for terms of up to fifty years and enter 48047

into franchise agreements with private corporations or 48048
organizations in connection therewith. A franchise may be awarded 48049
for the entire rail system or for a designated portion of the 48050
system, such as a corridor. 48051

(3) Use, close, relocate, or alter the grade of existing 48052
streets or highways or facilities of public utilities, and 48053
otherwise ensure compatibility of operation of public facilities 48054
with a franchise, whether in connection with the exercise of the 48055
~~commission's~~ department's power to appropriate property or 48056
otherwise; 48057

(4) Consult with and receive services from other state 48058
agencies and political subdivisions in connection with the 48059
planning, financing, construction, and operation of the rail 48060
system; 48061

(5) In accordance with Chapter 163. of the Revised Code, and 48062
subject to the approval of the director of transportation, 48063
appropriate at a franchisee's expense real property that it may 48064
transfer to the franchisee, if the franchisee previously has made 48065
reasonable efforts to obtain the property in question through 48066
good-faith negotiations; 48067

(6) Make proceeds of bonds issued pursuant to section ~~4981.15~~ 48068
5507.15 of the Revised Code available for financing of all or part 48069
of a privately operated rail system, and serve as the issuer of 48070
bonds to fund loans it may make to private corporations and 48071
organizations under sections ~~4981.01~~ 5507.01 to ~~4981.26~~ 5507.26 of 48072
the Revised Code; 48073

(7) Preserve and defend the confidentiality of trade secrets 48074
and proprietary information received from private corporations or 48075
organizations; 48076

~~(8) Enter into any indemnification agreements that are 48077
necessary to reimburse a franchisee for any injuries or losses 48078~~

~~suffered by any person and for which the franchisee is liable and 48079
must pay money damages, if the injuries or losses are of such a 48080
nature that, if the commission were the responsible party instead 48081
of the franchisee, the commission would not be liable for the 48082
injuries or losses due to any immunity it enjoys under the laws of 48083
this state. 48084~~

(B) The ~~commission~~ department shall not regulate the rates or 48085
fares charged by a franchisee or the return on investment received 48086
by a franchisee, provided the rates are not discriminatory and 48087
overall return is not unreasonable. The ~~commission~~ department 48088
shall not regulate operations of a franchisee so long as the 48089
franchisee operates in accordance with all applicable safety 48090
standards. 48091

Sec. ~~4981.30~~ 5507.30. (A) The ~~Ohio rail development~~ 48092
~~commission~~ department of transportation, in accordance with 48093
Chapter 119. of the Revised Code, shall adopt, and may amend and 48094
rescind, rules governing the process whereby a private corporation 48095
or organization may apply to the ~~commission~~ department for a 48096
franchise for all or part of a rail system. The rules also shall 48097
establish the financial and technical criteria upon which a 48098
franchise is awarded. The criteria may include all of the 48099
following: 48100

(1) The qualifications of each applicant, including the 48101
familiarity of the applicant with the transportation needs and 48102
resources of the state and the applicant's prior involvement and 48103
experience with respect to the development of rail service in this 48104
state; 48105

(2) The level of transport services offered; 48106

(3) The technology proposed; 48107

(4) The timetable for construction; 48108

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| (5) The construction, operation, and management plans; | 48109 |
| (6) The financial plan and the applicant's financial ability to provide reliable service; | 48110 48111 |
| (7) Whether the proposed rail system will meet all applicable state and federal safety requirements; | 48112 48113 |
| (8) Any legislative changes that may be necessary in order to implement the applicant's proposal; | 48114 48115 |
| (9) Any plans and studies prepared for the commission <u>department</u> ; | 48116 48117 |
| (10) The projected ability of each applicant's proposed revenue sources to meet projected capital and operating funding requirements. | 48118 48119 48120 |
| (B) The commission <u>department</u> may solicit letters of intent from private corporations or organizations interested in applying for a franchise, and may require that a nonrefundable fee be submitted with the letter of intent. Any such fee may be applied against costs the commission <u>department</u> incurs in evaluating applications and for subsequent administration of a franchise. | 48121 48122 48123 48124 48125 48126 |
| (C) The commission <u>department</u> may request proposals to be delivered for a franchise to construct, operate, and maintain the rail system or a portion thereof. | 48127 48128 48129 |
| (D) All applications for a franchise shall address the items contained in divisions (A)(1) to (11) of section 4981.04 <u>5507.04</u> of the Revised Code. | 48130 48131 48132 |
| (E) The commission <u>department</u> shall notify all prospective bidders for a franchise that any private corporation or organization that is awarded a franchise with respect to the 3-C corridor shall be obligated to reimburse the commission <u>department</u> for amounts payable by the commission <u>department</u> , up to a maximum of one million five hundred thousand dollars, arising out of | 48133 48134 48135 48136 48137 48138 |

commitments of the ~~commission~~ department in connection with the 48139
preparation of the plan under section ~~4981.04~~ 5507.04 of the 48140
Revised Code, and out of other pre-existing contractual 48141
arrangements of the ~~commission~~ department with respect to the 3-C 48142
corridor. 48143

(F) The ~~commission~~ department may award a franchise for the 48144
rail system or a portion of the system to the applicant the 48145
~~commission~~ department determines is best qualified, in accordance 48146
with standards for evaluation of applicants established by rule 48147
and previously announced. 48148

Sec. ~~4981.31~~ 5507.31. (A) The award by the ~~Ohio rail~~ 48149
~~development commission~~ department of transportation of a franchise 48150
for all or part of a rail system shall be the sole license 48151
required for a franchisee to exercise all specified franchise 48152
powers and enjoy all specified franchise rights. The franchise 48153
shall be for a term of not less than thirty-five, but not more 48154
than fifty years from the date of commencement of actual service 48155
operations. ~~With the approval of the general assembly, the~~ 48156
~~commission~~ The department may extend a franchise beyond the time 48157
period specified in the original franchise award, on terms 48158
mutually agreeable to the franchisee and the ~~commission~~ 48159
department. If the ~~commission~~ department does not grant an 48160
extension, any portion of the rail system owned by the franchisee 48161
shall revert to the state upon expiration of the franchise. 48162

(B) In the absence of a material default by a franchisee 48163
under the franchise agreement, any termination by the ~~commission~~ 48164
department of a franchise prior to the expiration of its stated 48165
terms shall be deemed to be either an impairment of contract by 48166
the state or the equivalent of the commencement of an 48167
appropriation action by the state, as the franchisee may elect, 48168
and shall entitle the franchisee to full compensation for its 48169

loss, including reimbursement of all costs incurred in the 48170
development of the franchise. Any terms of the franchise agreement 48171
designed to protect the reasonable expectations of persons 48172
providing financing for the portion of the system comprising the 48173
franchise shall not be affected by any proposed franchise 48174
termination, and any termination based upon an alleged material 48175
default in performance by the franchisee is subject to the hearing 48176
and appeal provisions of Chapter 119. of the Revised Code. 48177

(C) The franchise agreement may authorize the franchisee to 48178
plan, design, finance, construct, operate, and maintain its 48179
designated portion of the rail system and any ancillary system 48180
facilities. 48181

(D) The franchise agreement shall require the franchisee to 48182
construct, operate, and maintain the rail system in accordance 48183
with the franchise agreement. All minimum technical standards for 48184
the design, construction, and operation of the portion of the 48185
system comprising the franchise shall be included in the franchise 48186
agreement or incorporated by reference. The conditions of the 48187
franchise agreement relating to the actual operation of the 48188
trains, including train speed, capacity, construction and 48189
maintenance standards, environmental enhancement and protection, 48190
safety, and noise levels, supersede any conflicting rule, 48191
ordinance, resolution, standard, or charter provision of any 48192
agency or political subdivision of the state. 48193

(E) Provision may be included in the franchise agreement for 48194
a development and construction schedule, subject to extension for 48195
events beyond the control of the franchisee and changes in 48196
applicable state and federal law. 48197

(F) The franchise agreement shall obligate the ~~commission~~ 48198
department, upon request of the franchisee, to assist in obtaining 48199
permits and licenses necessary for the construction and operation 48200
of the rail system and ancillary facilities. 48201

(G) ~~If a franchisee develops and either transfers its portion of the rail system to the commission and then leases that portion from the commission, or leases its portion to the commission and continues to operate that portion of the rail system, the state shall indemnify the franchisee against claims that, if made against the commission or the state, would be subject to a defense of sovereign immunity.~~ 48202
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~~(H)~~ In the franchise agreement, the ~~commission~~ department may furnish the franchisee with reasonable assurances that the state will not take any action that would have the effect of depriving the franchisee of the anticipated economic benefits of franchise operation, including the award of franchises subsequent to the award of the 3-C corridor franchise which have such effect, and that the ~~commission~~ department will take such reasonable actions to dissuade other agencies of the state from taking actions that might have an adverse economic or regulatory impact on the franchisee. 48209
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~~(I)~~(H) If more than one franchise is awarded, the franchisees shall bear all costs necessary for the interconnection of their respective franchises, which costs shall be allocated equitably by the ~~commission~~ department. 48219
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~~(J)~~(I) After a franchise is awarded, the terms under which it is awarded may be modified only by written agreement of the parties, after observation of notice and comment procedures initially agreed to by the ~~commission~~ department and the franchisee. 48223
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~~(K)~~(J) The ~~commission~~ department shall cooperate with the environmental protection agency in the franchise procurement review and award process. In consultation with the agency, the ~~commission~~ department shall adopt or amend reasonable procedural rules in order to simplify and expedite the process by which the 48228
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franchisee applies for and obtains required state permits. 48233

~~(L)~~(K) The ~~commission~~ department shall assist franchisees in 48234
meeting environmental requirements, including, if requested by a 48235
franchisee, serving as the lead agency in connection with 48236
environmental impact analysis requirements. 48237

Sec. ~~4981.32~~ 5507.32. (A) A franchise agreement shall 48238
authorize the franchisee to do all of the following: 48239

(1) Acquire and dispose of real and personal property and 48240
request the ~~Ohio rail development commission~~ department of 48241
transportation to appropriate real property for sale to the 48242
franchisee in accordance with division (A)(5) of section ~~4981.29~~ 48243
5507.29 of the Revised Code; 48244

(2) Plan, design, finance, construct, reconstruct, improve, 48245
operate, and maintain its portion of the rail system and any 48246
ancillary system facilities; 48247

(3) Set and charge rates and fares for the use of its portion 48248
of the rail system, and retain all revenues in excess of debt 48249
service and operating expenses up to an agreed return on 48250
investment; 48251

(4) Subject to applicable permit requirements, construct and 48252
operate the rail system over or under canals, navigable 48253
watercourses, and existing transportation and public utility 48254
rights-of-way; 48255

(5) Classify users according to reasonable categories for the 48256
assessment of fares, including peak and off-peak time periods; 48257

(6) Make and enforce reasonable regulations regarding usage 48258
and safety of that portion of the rail system comprising its 48259
franchise; 48260

(7) Engage in any other business in addition to that of 48261
operator of its portion of the rail system, including the purchase 48262

and sale of real estate and ownership and operation of ancillary system facilities; 48263
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(8) Establish and fund accounts, including reasonable reserves for contingencies, maintenance, and replacement, in order to ensure the availability of funds to meet future obligations of the franchisee; 48265
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(9) Take all other actions it determines necessary and appropriate in the operation of the franchise, so long as those actions comply with the franchise agreement and with applicable state and federal statutes, rules, and regulations. 48269
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(B) The franchisee shall do all of the following: 48273

(1) Use best efforts to arrange financing for the construction and operation of that portion of the rail system that comprises its franchise, and pledge assets and revenue as may be necessary to secure repayment of obligations; 48274
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(2) Maintain and file with the ~~commission~~ department a schedule of rates and fares, and file and maintain a statement that those rates and fares apply uniformly to all users of the rail system within reasonable categories; 48278
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(3) Construct, maintain, and insure the rail system in accordance with standards agreed with the ~~commission~~ department, and permit access for inspection by the ~~commission~~ department. Construction may be performed in stages pursuant to a schedule or program approved by the ~~commission~~ department. 48282
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(4) Enlarge or expand its portion of the rail system from time to time, as reflected in initial plans for the franchise and as appropriate to meet market requirements; 48287
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(5) Operate the rail system in accordance with applicable legal requirements and any additional reasonable operating and safety standards the ~~commission~~ department approves, or as 48290
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otherwise may be required by applicable state or federal requirements; 48293
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(6) Contract with state, county, or municipal law enforcement agencies, or enter into other arrangements acceptable to the ~~commission~~ department, to provide law enforcement on and around the franchisee's portion of the rail system. 48295
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(C) Any instrument by which real property is acquired pursuant to this section shall identify the agency of the state that has the use and benefit of the real property as specified in section 5301.012 of the Revised Code. 48299
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Sec. ~~4981.33~~ 5507.33. (A) The ~~Ohio rail development~~ commission department of transportation shall review all plans and specifications of a franchisee for its portion of a rail system to ensure that the plans and specifications conform to ~~commission~~ department standards, and shall inspect and approve the construction of all portions of the rail system. ~~The commission shall assume responsibility for and indemnify any franchisee for third party claims arising out of franchisee design and construction activities performed without fault that have been reviewed and approved by the commission.~~ 48303
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(B) The ~~commission~~ department shall monitor maintenance practices of a franchisee or its operator to secure and maintain safety and efficiency in the operation of those portions of the rail system operated by the franchisee. 48313
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(C) All rules adopted by the ~~commission~~ department affecting the rail system or franchises shall be adopted in accordance with Chapter 119. of the Revised Code. 48317
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(D) The ~~commission~~ department shall not regulate rates and fares a franchisee charges for its portion of the rail system. 48320
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(E) The ~~commission~~ department may require a franchisee to 48322

furnish to the ~~commission~~ department data sufficient to enable it 48323
to verify the franchisee's compliance with all terms of its 48324
franchise agreement. 48325

(F) Except for rules adopted by the ~~commission~~ department or 48326
the franchisee pursuant to sections ~~4981.28~~ 5507.28 to ~~4981.34~~ 48327
5507.34 of the Revised Code, the laws of this state relating to 48328
rail carriers apply to all portions of the rail system, and the 48329
powers of arrest of law enforcement officers on and around any 48330
portion of the rail system are the same there as elsewhere in the 48331
state. 48332

Sec. ~~4981.34~~ 5507.34. (A) On behalf of a franchisee and 48333
pursuant to section ~~4981.15~~ 5507.15 of the Revised Code, the ~~Ohio~~ 48334
~~rail development commission~~ department of transportation may issue 48335
bonds for loans to finance development and construction of a 48336
franchisee's portion of a rail system. Any bonds issued pursuant 48337
to this section do not, and shall state that they do not, 48338
represent or constitute a debt or pledge of the faith and credit 48339
of the state, nor do such bonds grant to the bondholders or 48340
noteholders any right to have the general assembly levy any taxes 48341
or appropriate any funds for the payment of the principal or 48342
interest thereon. Such bonds shall be payable solely from the loan 48343
repayments the ~~commission~~ department receives from the franchisee 48344
to which the loan was made. The loan repayments shall be made from 48345
revenues that the franchisee receives from the operation of its 48346
portion of the rail system and that shall be pledged to repay the 48347
~~commission~~ department, or from such other credit sources as the 48348
franchisee may arrange. 48349

(B) The portion of the rail system awarded to a franchisee, 48350
any elements thereof, or the land upon which a franchise is 48351
situated may be owned by the franchisee or owned by the ~~commission~~ 48352
department and leased to the franchisee for the term of the 48353

franchise. 48354

(C) The rail system may be financed partially by the 48355
~~commission~~ department and partially by franchisees. With respect 48356
to that portion of the rail system financed by the ~~commission~~ 48357
department, the ~~commission~~ department may utilize all of the 48358
bonding and financial authority contained in sections ~~4981.01~~ 48359
5507.01 to ~~4981.26~~ 5507.26 of the Revised Code and also may seek 48360
to obtain state funding or federal financing on behalf of the rail 48361
system. ~~Commission~~ Department financing, credit support, and 48362
financial assistance may not be commingled with private financing 48363
obtained by the franchisee, and any moneys of the ~~commission~~ 48364
department to be expended by the ~~commission~~ department to finance 48365
a portion of a rail system shall be kept in accounts that are 48366
separate and apart from and not a part of the accounts in which 48367
are kept any moneys to be expended by a franchisee to finance its 48368
portion of a rail system. 48369

(D) The franchisee may arrange financing and refinancing of 48370
the system through any combination of debt, equity, and public 48371
sources available to it that it determines in its sole discretion. 48372
A franchisee shall not be precluded from utilizing any type of 48373
public or private assistance available to it in connection with 48374
the development of its franchise. A franchisee shall furnish the 48375
~~commission~~ department all relevant and necessary information with 48376
respect to financing terms to enable the ~~commission~~ department to 48377
exercise its oversight responsibilities with respect to the 48378
franchisee's reasonable return on its investment. 48379

(E) When requested by a franchisee, the ~~commission~~ department 48380
shall seek from the office of budget and management an allotment 48381
of proceeds from the issuance of private activity bonds. The 48382
~~commission~~ department shall distribute those proceeds to 48383
franchisees in such proportions and amounts as it determines in 48384
its discretion. 48385

(F)(1) The ~~commission~~ department may levy and collect special 48386
assessments upon all parcels of real property, other than real 48387
property owned by a railroad corporation, in the immediate 48388
vicinity of any rail system station or terminal of the ~~commission~~ 48389
department or a franchisee, including, without limitation, parcels 48390
that abut, are adjacent or contiguous to, or otherwise increase in 48391
value due to the existence of, the station or terminal. An 48392
assessment levied under this division shall be for the purpose of 48393
enabling the ~~commission~~ department to collect a portion of the 48394
increase in the true value in money of any such parcel of property 48395
subsequent to the commencement of operation of a rail system 48396
station or terminal. All assessments shall be applied, directly or 48397
indirectly, to the development and financing of the portion of the 48398
rail system of which the station or terminal is a part. 48399

(2) Upon written request of the ~~commission~~ department, the 48400
county auditor of a county in which a rail system station or 48401
terminal commences operation shall assess each parcel of real 48402
property that is located in the immediate vicinity of the station 48403
or terminal and that the ~~commission~~ department has reasonable 48404
cause to believe has increased in true value in money because of 48405
the existence of the station or terminal. The county auditor shall 48406
utilize appropriate assessment techniques specified in rules 48407
adopted by the tax commissioner pursuant to Chapter 5713. of the 48408
Revised Code to determine the increase in true value, if any, of 48409
the real property. Any increase shall be measured by comparing the 48410
true value of the real property in the year in which the 48411
~~commission adopted the resolution designating~~ department 48412
designated the location of the station or terminal, as reflected 48413
on the tax list for that year, with the highest true value of the 48414
real property as of the month in which rail system operations 48415
commenced at the station or terminal. The county auditor shall 48416
then determine what percentage of the true value increase, if any, 48417

is directly attributable to the existence of and commencement of 48418
operations at the station or terminal. The county auditor shall 48419
convert the percentage increase to an amount certain, and certify 48420
the results of the assessments to the ~~commission~~ department. 48421
Within thirty days after receipt of the certified results, the 48422
~~commission~~ department shall reimburse the county auditor for the 48423
actual cost to the auditor of making the assessments. 48424

(3) In no case shall any special assessment levied by the 48425
~~commission~~ department upon a parcel of real property exceed twenty 48426
per cent of the increase in the true value of the property that 48427
the county auditor certifies to the ~~commission~~ department as being 48428
directly attributable to the existence of and commencement of 48429
operations at the station or terminal. A special assessment shall 48430
constitute a lien against the property and shall be added to the 48431
tax list and duplicate for collection. Payments on the special 48432
assessment shall be made semiannually at the same time as real 48433
property taxes are required to be paid, but upon written request 48434
of the owner of the real property assessed, the county auditor may 48435
permit the owner to pay the assessment in equal installments over 48436
a period of not longer than ten years. 48437

(4) An owner of real property upon which a special assessment 48438
is levied under this section may file a petition in the court of 48439
common pleas of the county in which the real property is located 48440
challenging any aspect of the assessment, including the fact of 48441
the special assessment itself or the amount. The filing of such a 48442
petition shall stay the collection of any part of the special 48443
assessment, and collection shall not commence until a decision on 48444
the merits is rendered by the court. 48445

(G) Nothing in this section shall be construed as limiting 48446
the power of the ~~commission~~ department to issue bonds pursuant to 48447
section ~~4981.15~~ 5507.15 of the Revised Code for the purposes 48448
stated in that section. 48449

Sec. ~~4981.35~~ 5507.35. The "Interstate High Speed Intercity Rail Passenger Network Compact" is hereby ratified, enacted into law and entered into by the state of Ohio with all other states legally joining therein the form substantially as follows:

"INTERSTATE HIGH SPEED INTERCITY RAIL PASSENGER
NETWORK COMPACT

Article I
Policy and Purpose

Because the beneficial service of and profitability of a high speed intercity rail passenger system would be enhanced by establishing such a system which would operate across state lines, it is the policy of the states party to this compact to cooperate and share jointly the administrative and financial responsibilities of preparing a feasibility study concerning the operation of such a system connecting major cities in Ohio, Indiana, Michigan, Pennsylvania, Illinois, West Virginia, and Kentucky.

Article II
Cooperation

The states of Ohio, Indiana, Michigan, Pennsylvania, Illinois, West Virginia, and Kentucky, hereinafter referred to as participating states, agree to, upon adoption of this compact by the respective states, jointly conduct and participate in a high speed intercity rail passenger feasibility study by providing such information and data as is available and may be requested by a participating state or any consulting firms representing a participating state or the compact. It is mutually understood by the participating states that such information shall not include matters not of public record or of a nature considered to be privileged and confidential unless the state providing such

information agrees to waive the confidentiality. 48481

The participating states further agree to: 48482

(A) Make available to each other and to any consulting firm 48483
representing the member states or the compact such assistance as 48484
may be legal, proper and available, including but not limited to 48485
personnel, equipment, office space, machinery, computers, 48486
engineering and technical advice and services; and 48487

(B) Provide such financial assistance for the implementation 48488
of the feasibility study as may be legal, proper and available. 48489

Article III 48490

Interstate Rail Passenger Advisory Council 48491

There is hereby created an interstate rail passenger advisory 48492
council, the membership of which shall consist of two 48493
representatives from each participating state, one representative 48494
from each state shall hold a bachelor of science degree in either 48495
engineering or transportation science, and shall be appointed by 48496
the governor of the participating state and the other shall be the 48497
chairman of the state's railroad authority, but in the event said 48498
state does not have a railroad authority, the second member shall 48499
be the director of the participating state's transportation 48500
agency. The members shall select designees who shall serve in the 48501
absence of the members. The advisory council shall meet within 48502
thirty days after ratification of this agreement by at least two 48503
participating states and establish rules for the conduct of the 48504
advisory council's business. 48505

The advisory council shall coordinate all aspects of the high 48506
speed intercity rail passenger feasibility study relative to 48507
interstate connections and shall do all other things necessary and 48508
proper for the completion of the feasibility study. 48509

Article IV 48510

Effective Date 48511

This compact shall become effective upon the adoption of the compact into law by two or more of the participating states. Thereafter, it shall enter into force and effect as to any other participating state upon the enactment thereof by such state.

This compact shall continue in force with respect to a participating state and remain binding upon such state until six months after such state has given notice to each other participating state of the repeal thereof. Such withdrawal shall not be construed to relieve any participating state from any obligation incurred prior to the end of the state's participation in the compact as provided herein.

Article V

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Sec. ~~4981.36~~ 5507.36. The "Midwest Interstate Passenger Rail Compact" is hereby ratified, enacted into law, and entered into by the state of Ohio with all other states legally joining therein in the form substantially as follows:

"MIDWEST INTERSTATE PASSENGER RAIL COMPACT

| | |
|---|--|
| The contracting states solemnly agree: | 48543 |
| Article I | 48544 |
| Statement of Purpose | 48545 |
| The purposes of this compact are, through joint or cooperative action: | 48546 48547 |
| A) To promote development and implementation of improvements to intercity passenger rail service in the Midwest; | 48548 48549 |
| B) To coordinate interaction among Midwestern state elected officials and their designees on passenger rail issues; | 48550 48551 |
| C) To promote development and implementation of long-range plans for high speed rail passenger service in the Midwest and among other regions of the United States; | 48552 48553 48554 |
| D) To work with the public and private sectors at the federal, state and local levels to ensure coordination among the various entities having an interest in passenger rail service and to promote Midwestern interests regarding passenger rail; and | 48555 48556 48557 48558 |
| E) To support efforts of transportation agencies involved in developing and implementing passenger rail service in the Midwest. | 48559 48560 |
| Article II | 48561 |
| Establishment of Commission | 48562 |
| To further the purposes of the compact, a Commission is created to carry out the duties specified in this compact. | 48563 48564 |
| Article III | 48565 |
| Commission Membership | 48566 |
| The manner of appointment of Commission members, terms of office consistent with the terms of this compact, provisions for removal and suspension, and manner of appointment to fill vacancies shall be determined by each party state pursuant to its laws, but each commissioner shall be a resident of the state of appointment. Commission members shall serve without compensation | 48567 48568 48569 48570 48571 48572 |

from the Commission. 48573

The Commission shall consist of four resident members of each 48574
state as follows: The governor or the governor's designee who 48575
shall serve during the tenure of office of the governor, or until 48576
a successor is named; one member of the private sector who shall 48577
be appointed by the governor and shall serve during the tenure of 48578
office of the governor, or until a successor is named; and two 48579
legislators, one from each legislative chamber (or two legislators 48580
from any unicameral legislature), who shall serve two-year terms, 48581
or until successors are appointed, and who shall be appointed by 48582
the appropriate appointing authority in each legislative chamber. 48583
All vacancies shall be filled in accordance with the laws of the 48584
appointing states. Any commissioner appointed to fill a vacancy 48585
shall serve until the end of the incomplete term. Each member 48586
state shall have equal voting privileges, as determined by the 48587
Commission bylaws. 48588

Article IV 48589

Powers and Duties of the Commission 48590

The duties of the Commission are to: 48591

1) Advocate for the funding and authorization necessary to 48592
make passenger rail improvements a reality for the region; 48593

2) Identify and seek to develop ways that states can form 48594
partnerships, including with rail industry and labor, to implement 48595
improved passenger rail in the region; 48596

3) Seek development of a long-term, interstate plan for high 48597
speed rail passenger service implementation; 48598

4) Cooperate with other agencies, regions and entities to 48599
ensure that the Midwest is adequately represented and integrated 48600
into national plans for passenger rail development; 48601

5) Adopt bylaws governing the activities and procedures of 48602
the Commission and addressing, among other subjects: the powers 48603

and duties of officers; the voting rights of Commission members, 48604
voting procedures, Commission business, and any other purposes 48605
necessary to fulfill the duties of the Commission; 48606

6) Expend such funds as required to carry out the powers and 48607
duties of the Commission; and 48608

7) Report on the activities of the Commission to the 48609
legislatures and governor of the member states on an annual basis. 48610

In addition to its exercise of these duties, the Commission 48611
is empowered to: 48612

1) Provide multistate advocacy necessary to implement 48613
passenger rail systems or plans, as approved by the Commission; 48614

2) Work with local elected officials, economic development 48615
planning organizations, and similar entities to raise the 48616
visibility of passenger rail service benefits and needs; 48617

3) Educate other state officials, federal agencies, other 48618
elected officials and the public on the advantages of passenger 48619
rail as an integral part of an intermodal transportation system in 48620
the region; 48621

4) Work with federal agency officials and Members of Congress 48622
to ensure the funding and authorization necessary to develop a 48623
long-term, interstate plan for high speed rail passenger service 48624
implementation. 48625

5) Make recommendations to members states; 48626

6) If requested by each state participating in a particular 48627
project and under the terms of a formal agreement approved by the 48628
participating states and the Commission, implement or provide 48629
oversight for specific rail projects; 48630

7) Establish an office and hire staff as necessary; 48631

8) Contract for or provide services; 48632

| | |
|--|-------|
| 9) Assess dues, in accordance with the terms of this compact; | 48633 |
| 10) Conduct research; and | 48634 |
| 11) Establish committees. | 48635 |
| Article V | 48636 |
| Officers | 48637 |
| The Commission shall annually elect from among its members a | 48638 |
| chair, a vice-chair who shall not be a resident of the state | 48639 |
| represented by the chair, and others as approved in the Commission | 48640 |
| bylaws. The officers shall perform such functions and exercise | 48641 |
| such powers as are specified in the Commission bylaws. | 48642 |
| Article VI | 48643 |
| Meetings and Commission Administration | 48644 |
| The Commission shall meet at least once in each calendar | 48645 |
| year, and at such other times as may be determined by the | 48646 |
| Commission. Commission business shall be conducted in accordance | 48647 |
| with the procedures and voting rights specified in the bylaws. | 48648 |
| Article VII | 48649 |
| Finance | 48650 |
| Except as otherwise provided for, the monies necessary to | 48651 |
| finance the general operations of the Commission in carrying forth | 48652 |
| its duties, responsibilities and powers as stated herein shall be | 48653 |
| appropriated to the Commission by the compacting states, when | 48654 |
| authorized by the respective legislatures, by equal apportionment | 48655 |
| among the compacting states. Nothing in this compact shall be | 48656 |
| construed to commit a member state to participate in financing a | 48657 |
| rail project except as provided by law of a member state. | 48658 |
| The Commission may accept, for any of its purposes and | 48659 |
| functions, donations, gifts, grants, and appropriations of money, | 48660 |
| equipment, supplies, materials and services from the federal | 48661 |
| government, from any party state or from any department, agency, | 48662 |
| or municipality thereof, or from any institution, person, firm, or | 48663 |

corporation. All expenses incurred by the Commission in executing 48664
the duties imposed upon it by this compact shall be paid by the 48665
Commission out of the funds available to it. The Commission shall 48666
not issue any debt instrument. The Commission shall submit to the 48667
officer designated by the laws of each party state, periodically 48668
as required by the laws of each party state, a budget of its 48669
actual past and estimated future expenditures. 48670

Article VIII 48671

Enactment, Effective Date and Amendments 48672

The states of Illinois, Indiana, Iowa, Kansas, Michigan, 48673
Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota 48674
and Wisconsin are eligible to join this compact. Upon approval of 48675
the Commission, according to its bylaws, other states may also be 48676
declared eligible to join the compact. As to any eligible party 48677
state, this compact shall become effective when its legislature 48678
shall have enacted the same into law; provided that it shall not 48679
become initially effective until enacted into law by any three (3) 48680
party states incorporating the provisions of this compact into the 48681
laws of such states. Amendments to the compact shall become 48682
effective upon their enactment by the legislatures of all 48683
compacting states. 48684

Article IX 48685

Withdrawal, Default and Termination 48686

Withdrawal from this compact shall be by enactment of a 48687
statute repealing the same and shall take effect one year after 48688
the effective date of such statute. A withdrawing state shall be 48689
liable for any obligations which it may have incurred prior to the 48690
effective date of withdrawal. 48691

If any compacting state shall at any time default in the 48692
performance of any of its obligations, assumed or imposed, in 48693
accordance with the provisions of this compact, all rights, 48694
privileges and benefits conferred by this compact or agreements 48695

hereunder shall be suspended from the effective date of such 48696
default as fixed by the Commission, and the Commission shall 48697
stipulate the conditions and maximum time for compliance under 48698
which the defaulting state may resume its regular status. Unless 48699
such default shall be remedied under the stipulations and within 48700
the time period set forth by the Commission, this compact may be 48701
terminated with respect to such defaulting state by affirmative 48702
vote of a majority of the other Commission members. Any such 48703
defaulting state may be reinstated, upon vote of the Commission, 48704
by performing all acts and obligations as stipulated by the 48705
Commission. 48706

Article X 48707

Construction and Severability 48708

The provisions of this compact entered into hereunder shall 48709
be severable and if any phrase, clause, sentence or provision of 48710
this compact is declared to be contrary to the constitution of any 48711
compacting state or of the United States or the applicability 48712
thereof to any government, agency, person or circumstance is held 48713
invalid, the validity of the remainder of this compact and the 48714
applicability thereof to any government, agency, person or 48715
circumstance shall not be affected hereby. If this compact entered 48716
into hereunder shall be held contrary to the constitution of any 48717
compacting state, the compact shall remain in full force and 48718
effect as to the remaining states and in full force and effect as 48719
to the state affected as to all severable matters. The provisions 48720
of this compact entered into pursuant hereto shall be liberally 48721
construed to effectuate the purposes thereof." 48722

Sec. ~~4981.361~~ 5507.361. In pursuance of Articles II and III 48723
of the Midwest Interstate Passenger Rail Compact, as set forth in 48724
section ~~4981.36~~ 5507.36 of the Revised Code, there shall be four 48725
members of the commission from this state. 48726

The governor shall appoint two members as set forth in 48727
Article III of the compact. The terms of office for the governor's 48728
appointments shall be in accordance with Article III of the 48729
compact. 48730

The speaker of the house of representatives and the president 48731
of the senate each shall appoint one member from their respective 48732
houses of the general assembly to serve as a member of the 48733
commission, but the two appointees shall not be members of the 48734
same political party. Terms of office for legislative appointees 48735
shall be in accordance with Article III of the compact. 48736

Any member shall continue in office subsequent to the 48737
expiration of the member's term until a successor is appointed. 48738
Vacancies in the commission shall be filled in the same manner as 48739
original selections are made. Any member of the commission may be 48740
reappointed. 48741

Except for the purposes of Chapters 102., 2744., and 2921. of 48742
the Revised Code, serving as a member of the commission does not 48743
constitute holding a public office or position of employment under 48744
the laws of this state and does not constitute grounds for removal 48745
of public officers or employees from their offices or positions of 48746
employment. 48747

The governor, speaker, or president may remove a member for 48748
whom the governor, speaker, or president was the appointing 48749
authority, for misfeasance, malfeasance, or willful neglect of 48750
duty. 48751

Members of the commission shall serve without compensation, 48752
but shall be reimbursed for the reasonable expenses incurred by 48753
them in the discharge of their duties as members of the 48754
commission. 48755

Sec. 5519.01. If the director of transportation is unable to 48756

purchase property for any purpose related to highways, roads, ~~or~~ 48757
~~bridges, or rail~~ authorized by Chapters 5501., 5503., 5507., 48758
5511., 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5525., 48759
5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code, 48760
~~or, if the Ohio rail development commission is unable to purchase~~ 48761
~~property for any purpose necessary for the implementation of rail~~ 48762
~~service under Chapter 4981. of the Revised Code,~~ the director 48763
shall issue, ~~or the commission shall enter on the records of the~~ 48764
~~commission,~~ a finding that it is necessary, for the public 48765
convenience and welfare, to appropriate such property as the 48766
director ~~or commission~~ considers needed for such purposes. The 48767
finding shall contain a definite, accurate, and detailed 48768
description of the property, and the name and place of residence, 48769
if known or with reasonable diligence ascertainable, of the owner 48770
of the property appropriated. ~~The commission shall submit to the~~ 48771
~~director a copy of its record finding that the appropriation of~~ 48772
~~property is necessary. The commission shall not proceed with the~~ 48773
~~appropriation unless it is first approved by the director.~~ 48774

The director ~~or commission~~, in such finding, shall fix what 48775
the director ~~or commission~~ considers to be the value of such 48776
property appropriated, together with damages to the residue, and 48777
deposit the value thereof, together with the damages, with the 48778
probate court or the court of common pleas of the county within 48779
which the property, or a part thereof, is situated. The power to 48780
appropriate property for any purpose authorized by such chapters 48781
shall be exercised in the manner provided in sections 163.01 to 48782
163.22 of the Revised Code. 48783

Any instrument by which real property is acquired pursuant to 48784
this section shall identify the agency of the state that has the 48785
use and benefit of the real property as specified in section 48786
5301.012 of the Revised Code. 48787

Sec. 5703.054. (A) As used in this section: 48788

(1) "Tax return" means any tax notice, tax report, tax return, or other tax information document required to be filed with the tax commissioner under Chapter 3734., 3769., 4301., 4303., or 4305. or Title LVII of the Revised Code. 48789
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(2) "Tax payment" means any tax payment or remittance required to be made to the tax commissioner or treasurer of state under Chapter 3734., 3769., 4301., 4303., or 4305. or Title LVII of the Revised Code. 48793
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(B) The tax commissioner shall prescribe the form that the signature and declaration, if any, shall take on any document required to be filed with the commissioner and on any document required under Chapter 3734., 3769., 4303., or 4305. or Title LVII of the Revised Code to be filed with the treasurer of state. The commissioner may authorize an electronic or other alternative form of filing of any document required to be filed with the commissioner or the treasurer of state under Chapter 3734., 3769., 4303., or 4305. or Title LVII of the Revised Code. 48797
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(C)(1) Subject to division (D) of this section, the tax commissioner may require that any tax return must be filed electronically in a format specified by the commissioner. 48806
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(2) Subject to division (D) of this section, the commissioner may require that any tax payment or remittance must be made electronically in a format specified by the commissioner. 48809
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(3) The commissioner may require electronic filing or electronic payment or remittance for all taxpayers or for only certain classes or groups of taxpayers. Nothing in this section requires that the commissioner concurrently exercise the authority granted under divisions (C)(1) and (2) of this section. 48812
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(4) No person shall have any right to appeal the 48817

commissioner's decision under this section to require that all 48818
taxpayers or only certain classes or groups of taxpayers file 48819
electronically or pay or remit electronically. No person shall 48820
have any right to appeal the commissioner's selection under this 48821
section of the electronic format for such filing or payment or 48822
remittance. Nothing in this division limits a person's ability to 48823
appeal any penalty imposed under this section. 48824

(D) Divisions (C)(1) and (2) of this section apply only if 48825
either division (D)(1) or (2) of this section applies. 48826

(1) At least two months prior to the due date of the tax 48827
return or tax payment or remittance, the tax commissioner, by mail 48828
or other similar means, shall notify the taxpayer at the 48829
taxpayer's last known address that the tax return and all 48830
subsequent tax returns must be filed electronically in the format 48831
specified by the commissioner or that the tax payment or 48832
remittance and all subsequent tax payments or remittances must be 48833
made electronically in the format specified by the commissioner; 48834
or 48835

(2) At least four months prior to the due date of the tax 48836
return or tax payment a rule is in effect that the tax return and 48837
all subsequent tax returns must be filed electronically in the 48838
format specified by the commissioner and that the tax payment or 48839
remittance and all subsequent tax payments or remittances must be 48840
made electronically in the format specified by the commissioner. 48841

(E)(1) If, in accordance with this section, a taxpayer is 48842
required to file electronically a tax return but submits or 48843
attempts to submit a paper purporting to be the tax return, the 48844
tax commissioner may impose and assess, in addition to all other 48845
penalties and interest penalties provided by law, a penalty of up 48846
to five hundred dollars for each such paper tax return submitted, 48847
or attempted to be submitted, to the commissioner. 48848

(2) If, in accordance with this section, a taxpayer is 48849
required to pay or remit electronically but pays or remits in 48850
another manner, then the commissioner may impose and assess, in 48851
addition to all other penalties and interest penalties provided by 48852
law, a penalty of up to five hundred dollars for each such tax 48853
payment or remittance not made electronically. 48854

(F)(1) The tax commissioner may extend, for a period not to 48855
exceed twenty days, the due date for any tax return that is 48856
required to be filed electronically. Such extension shall apply to 48857
all taxpayers required to file electronically, and the extension 48858
is in addition to any other extension provided by law. 48859

(2)(a) The commissioner may extend, for a period not to 48860
exceed twenty days, the due date for any payment or remittance 48861
that is required to be remitted electronically. Such extension 48862
shall apply only to taxpayers required to pay or remit 48863
electronically under this section, and the extension is in 48864
addition to any other extension provided by law. 48865

(b) For purposes of computing any interest, interest penalty, 48866
penalty for failure to pay, or penalty for failure to pay timely, 48867
the extended due date granted under division (F)(2)(a) of this 48868
section shall be deemed to be the actual due date. 48869

(G) If a tax payment or remittance is required to be made 48870
electronically pursuant to this section, the tax payment or 48871
remittance is considered to be made when the payment or remittance 48872
is received by the treasurer of state or credited to an account 48873
designated by the treasurer of state for the receipt of tax 48874
payments or remittances. 48875

(H) A tax return filed electronically pursuant to this 48876
section is considered to be filed when transmitted as prescribed 48877
by the tax commissioner. 48878

Sec. 5703.19. (A) As used in this section, "records" includes 48879
books, memoranda, accounts, computer spreadsheets and databases, 48880
computer disks, electronically or digitally stored information, 48881
and any other medium used to store information. 48882

(B) To carry out the purposes of the laws that the tax 48883
commissioner is required to administer, the commissioner or any 48884
person employed by the commissioner for that purpose, upon demand, 48885
may inspect ~~books, accounts,~~ all or any part of the records, and 48886
~~memoranda~~ of any person ~~or public utility~~ subject to those laws, 48887
and may examine under oath any officer, agent, or employee of that 48888
person ~~or public utility~~. Any Taxpayers shall provide any record 48889
requested by the commissioner or any person employed by the 48890
commissioner. Records maintained electronically or digitally shall 48891
be provided to the commissioner on computer disk, computer tape, 48892
through electronic data transfer, or in such other form as 48893
prescribed or approved by the commissioner. Upon reasonable 48894
request, any person other than the commissioner who makes a demand 48895
pursuant to this section shall produce the person's authority to 48896
make the inspection. 48897

~~(B)~~(C) If a person ~~or public utility~~ receives at least ten 48898
days' written notice of a demand made under division ~~(A)~~(B) of 48899
this section and refuses to comply with that demand, a penalty of 48900
up to five hundred dollars shall may be imposed upon the person ~~or~~ 48901
~~public utility~~ for each day the person ~~or public utility~~ refuses 48902
to comply with the demand. ~~Penalties~~ The penalty imposed under 48903
this division may be assessed and collected in the same manner as 48904
~~assessments made under Chapter 3769., 4305., 5727., 5728., 5733.,~~ 48905
~~5735., 5739., 5743., 5745., 5747., 5749., or 5753., or sections~~ 48906
~~3734.90 to 3734.9014, of the Revised Code~~ the tax or fee to which 48907
the demand relates or may be billed separately by the 48908
commissioner. If the demand relates to more than one tax or fee, 48909

the commissioner may impose only one penalty for each day the 48910
person refuses to comply. 48911

(D) A taxpayer subject to a penalty under division (C) of 48912
this section shall, within sixty days after receiving notice of 48913
the penalty, pay the penalty or file with the tax commissioner, 48914
either personally or by certified mail, a written request for 48915
reconsideration signed by the taxpayer or the taxpayer's 48916
authorized agent having knowledge of the facts. 48917

Unless the taxpayer waives a hearing, the commissioner shall 48918
assign a time and place for a hearing on the request for 48919
reconsideration and shall notify the taxpayer of the time and 48920
place of the hearing by personal service or certified mail. The 48921
commissioner shall prepare a final determination affirming, 48922
modifying, or canceling the penalty and shall serve a copy of the 48923
final determination on the taxpayer by personal service or 48924
certified mail, and the commissioner's decision in the matter 48925
shall be final, subject to appeal as provided in section 5717.02 48926
of the Revised Code. 48927

Any penalty or portion of a penalty affirmed after 48928
reconsideration and appeal shall be due and payable within sixty 48929
days after issuance of the final determination or, if one or more 48930
appeals are taken in accordance with Chapter 5717. of the Revised 48931
Code, the exhaustion of all appeals. The penalty shall include 48932
interest at the rate per annum prescribed by section 5703.47 of 48933
the Revised Code from the day on which the request for 48934
reconsideration was filed until the day the penalty is paid. The 48935
commissioner shall deposit the taxpayer's remittance in the 48936
general revenue fund. 48937

Sec. 5703.491. (A) As used in this section, "Ohio business 48938
gateway" means the online computer network system, initially 48939
created by the department of administrative services under section 48940

125.30 of the Revised Code, that allows private businesses to 48941
electronically file business reply forms with state agencies. 48942

(B) The centralized tax filing and payment fund is hereby 48943
created in the state treasury. The department of taxation shall 48944
administer the fund. The department shall use money allocated to 48945
the fund for modifications to the Ohio business gateway or any 48946
successor electronic filing and payment system designed to 48947
simplify filing of municipal and state tax returns and payment of 48948
amounts shown to be due on such returns. 48949

Sec. 5703.56. (A) As used in this section: 48950

(1) "Sham transaction" means a transaction or series of 48951
transactions without economic substance because there is no 48952
business purpose or expectation of profit other than obtaining tax 48953
benefits. 48954

(2) "Tax" includes any tax or fee administered by the tax 48955
commissioner. 48956

(3) "Taxpayer" includes any entity subject to a tax. 48957

(4) "Controlled group" means two or more persons related in 48958
such a way that one person directly or indirectly owns or controls 48959
the business operation of another member of the group. In the case 48960
of persons with stock or other equity, one person owns or controls 48961
another if it directly or indirectly owns more than fifty per cent 48962
of the other person's common stock with voting rights or other 48963
equity with voting rights. 48964

(B) The tax commissioner may disregard any sham transaction 48965
in ascertaining any taxpayer's tax liability. Except as otherwise 48966
provided in the Revised Code, with respect to transactions between 48967
members of a controlled group, the taxpayer shall bear the burden 48968
of establishing by a preponderance of the evidence that a 48969
transaction or series of transactions between the taxpayer and one 48970

or more members of the controlled group was not a sham 48971
transaction. Except as otherwise provided in the Revised Code, for 48972
all other taxpayers, the tax commissioner shall bear the burden of 48973
establishing by a preponderance of the evidence that a transaction 48974
or series of transactions was a sham transaction. 48975

(C) In administering any tax, the tax commissioner may apply 48976
the doctrines of "economic reality," "substance over form," and 48977
"step transaction." 48978

(D) If the commissioner disregards a sham transaction under 48979
division (B) of this section, the applicable limitation period for 48980
assessing the tax, together with applicable penalties, charges, 48981
and interest, shall be extended for a period equal to the 48982
applicable limitation period. Nothing in this division shall be 48983
construed as extending an applicable limitation period for 48984
claiming any refund of a tax. 48985

(E) The tax commissioner may, in accordance with Chapter 119. 48986
of the Revised Code, adopt rules that are necessary to administer 48987
this section, including rules establishing criteria for 48988
identifying sham transactions. 48989

Sec. 5703.58. (A) As used in this section, "felony" has the 48990
same meaning as in section 109.511 of the Revised Code. 48991

(B) For the purposes of enforcing all laws relating to taxes 48992
and fees that the tax commissioner is responsible for 48993
administering, the tax commissioner, by journal entry, may 48994
delegate any investigation powers of the commissioner to an 48995
employee of the department of taxation who has been certified by 48996
the executive director of the Ohio peace officer training 48997
commission. Each journal entry shall be a matter of public record 48998
and shall be kept in an administrative portion of the journal 48999
maintained under division (L) of section 5703.05 of the Revised 49000
Code. When that journal entry is completed, the employee to whom 49001

it pertains, while engaged within the scope of the employee's 49002
duties in enforcing the laws that the commissioner is responsible 49003
for administering, has the power of a police officer to carry 49004
concealed weapons, make arrests, and obtain warrants for 49005
violations of those laws. The commissioner, at any time, may 49006
suspend or revoke the commissioner's delegation by journal entry. 49007

(C) The tax commissioner shall not delegate any investigation 49008
powers to an employee of the department of taxation under division 49009
(B) of this section if the employee has been convicted of or has 49010
pleaded guilty to a felony. 49011

(D)(1) The tax commissioner shall revoke the delegation of 49012
investigation powers to an employee to whom the delegation was 49013
made under division (B) of this section if that employee does 49014
either of the following: 49015

(a) Pleads guilty to a felony; 49016

(b) Pleads guilty to a misdemeanor pursuant to a negotiated 49017
plea agreement, as provided in division (D) of section 2929.29 of 49018
the Revised Code, in which the employee agrees under section 49019
109.77 of the Revised Code to surrender the certificate awarded to 49020
that employee. 49021

(2) The tax commissioner shall suspend the delegation of 49022
investigation powers to an employee to whom the delegation was 49023
made under division (B) of this section if that employee is 49024
convicted, after trial, of a felony. If the employee files an 49025
appeal from that conviction and the conviction is upheld by the 49026
highest court to which the appeal is taken, or if the employee 49027
does not file a timely appeal, the commissioner shall revoke the 49028
delegation of investigation powers to that employee. If the 49029
employee files an appeal that results in that employee's acquittal 49030
of the felony or conviction of a misdemeanor, or in the dismissal 49031
of the felony charge against that employee, the commissioner shall 49032

reinstate the delegation of investigation powers to that employee. 49033
The revocation, suspension, or reinstatement of the delegation of 49034
investigation powers to an employee under division (D) of this 49035
section shall be made by journal entry pursuant to division (B) of 49036
this section. An employee to whom the delegation of investigation 49037
powers is reinstated under division (D)(2) of this section shall 49038
not receive any back pay for the exercise of those investigation 49039
powers, unless that employee's conviction of the felony was 49040
reversed on appeal, or the felony charge was dismissed, because 49041
the court found insufficient evidence to convict the employee of 49042
the felony. 49043

(3) The revocation or suspension of the delegation of 49044
investigation powers to an employee under division (D) of this 49045
section shall be in accordance with Chapter 119. of the Revised 49046
Code. 49047

(E) Divisions (C) and (D) of this section do not apply to an 49048
offense that was committed prior to January 1, 1997. 49049

(F) Nothing in this section limits the tax commissioner's 49050
ability to have other employees of the department of taxation 49051
conduct investigations as authorized by sections 5703.17 and 49052
5703.19 of the Revised Code. 49053

(G) The department of taxation shall cooperate with the 49054
attorney general, local law enforcement officials, and appropriate 49055
agencies of the federal government and other states in the 49056
investigation and prosecution of violations of all laws relating 49057
to taxes and fees administered by the tax commissioner. 49058

Sec. 5703.80. There is hereby created in the state treasury 49059
the property tax administration fund. All money to the credit of 49060
the fund shall be used to defray the costs incurred by the 49061
department of taxation in administering the taxation of property 49062
and the equalization of real property valuation. 49063

Each fiscal year between the first and fifteenth days of July, the tax commissioner shall compute the following amounts for the property in each taxing district in each county, and certify to the director of budget and management the sum of those amounts for all taxing districts in all counties: 49064
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(A) Three-tenths of one per cent of the total amount by which taxes charged against real property on the general tax list of real and public utility property were reduced under section 319.302 of the Revised Code for the preceding tax year; 49069
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(B) Fifteen-hundredths of one per cent of the total amount of taxes charged and payable against public utility personal property on the general tax list of real and public utility property for the preceding tax year; 49073
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(C) Seventy-five hundredths of one per cent of the total amount of taxes charged and payable against tangible personal property on the general tax list of personal property of the preceding tax year and for which returns were filed with the tax commissioner under section 5711.13 of the Revised Code. 49077
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After receiving the tax commissioner's certification, the director of budget and management shall transfer from the general revenue fund to the property tax administration fund one-fourth of the amount certified on or before each of the following days: the first days of August, November, February, and May. 49082
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On or before the thirtieth day of June of the fiscal year, the tax commissioner shall certify to the director of budget and management the sum of the amounts by which the amounts computed for a taxing district under divisions (A), (B), and (C) of this section exceeded the distributions to the taxing district under division (F) of section 321.24 of the Revised Code, and the director shall transfer that sum from the property tax administration fund to the general revenue fund. 49087
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Sec. 5705.19. This section does not apply to school districts 49095
or county school financing districts. 49096

The taxing authority of any subdivision at any time and in 49097
any year, by vote of two-thirds of all the members of the taxing 49098
authority, may declare by resolution and certify the resolution to 49099
the board of elections not less than seventy-five days before the 49100
election upon which it will be voted that the amount of taxes that 49101
may be raised within the ten-mill limitation will be insufficient 49102
to provide for the necessary requirements of the subdivision and 49103
that it is necessary to levy a tax in excess of that limitation 49104
for any of the following purposes: 49105

(A) For current expenses of the subdivision, except that the 49106
total levy for current expenses of a detention facility district 49107
or district organized under section 2151.65 of the Revised Code 49108
shall not exceed two mills and that the total levy for current 49109
expenses of a combined district organized under sections 2152.41 49110
and 2151.65 of the Revised Code shall not exceed four mills; 49111

(B) For the payment of debt charges on certain described 49112
bonds, notes, or certificates of indebtedness of the subdivision 49113
issued subsequent to January 1, 1925; 49114

(C) For the debt charges on all bonds, notes, and 49115
certificates of indebtedness issued and authorized to be issued 49116
prior to January 1, 1925; 49117

(D) For a public library of, or supported by, the subdivision 49118
under whatever law organized or authorized to be supported; 49119

(E) For a municipal university, not to exceed two mills over 49120
the limitation of one mill prescribed in section 3349.13 of the 49121
Revised Code; 49122

(F) For the construction or acquisition of any specific 49123
permanent improvement or class of improvements that the taxing 49124

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| authority of the subdivision may include in a single bond issue; | 49125 |
| (G) For the general construction, reconstruction, | 49126 |
| resurfacing, and repair of streets, roads, and bridges in | 49127 |
| municipal corporations, counties, or townships; | 49128 |
| (H) For parks and recreational purposes; | 49129 |
| (I) For the purpose of providing and maintaining fire | 49130 |
| apparatus, appliances, buildings, or sites therefor, or sources of | 49131 |
| water supply and materials therefor, or the establishment and | 49132 |
| maintenance of lines of fire alarm telegraph, or the payment of | 49133 |
| permanent, part-time, or volunteer firefighters or firefighting | 49134 |
| companies to operate the same, including the payment of the | 49135 |
| firefighter employers' contribution required under section 742.34 | 49136 |
| of the Revised Code, or the purchase of ambulance equipment, or | 49137 |
| the provision of ambulance, paramedic, or other emergency medical | 49138 |
| services operated by a fire department or firefighting company; | 49139 |
| (J) For the purpose of providing and maintaining motor | 49140 |
| vehicles, communications, and other equipment used directly in the | 49141 |
| operation of a police department, or the payment of salaries of | 49142 |
| permanent police personnel, including the payment of the police | 49143 |
| officer employers' contribution required under section 742.33 of | 49144 |
| the Revised Code, or the payment of the costs incurred by | 49145 |
| townships as a result of contracts made with other political | 49146 |
| subdivisions in order to obtain police protection, or the | 49147 |
| provision of ambulance or emergency medical services operated by a | 49148 |
| police department; | 49149 |
| (K) For the maintenance and operation of a county home or | 49150 |
| detention facility; | 49151 |
| (L) For community mental retardation and developmental | 49152 |
| disabilities programs and services pursuant to Chapter 5126. of | 49153 |
| the Revised Code, except that the procedure for such levies shall | 49154 |
| be as provided in section 5705.222 of the Revised Code; | 49155 |

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| (M) For regional planning; | 49156 |
| (N) For a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2152.41 or 2151.65 of the Revised Code or both of those sections; | 49157 49158 49159 49160 49161 |
| (O) For providing for flood defense, providing and maintaining a flood wall or pumps, and other purposes to prevent floods; | 49162 49163 49164 |
| (P) For maintaining and operating sewage disposal plants and facilities; | 49165 49166 |
| (Q) For the purpose of purchasing, acquiring, constructing, enlarging, improving, equipping, repairing, maintaining, or operating, or any combination of the foregoing, a county transit system pursuant to sections 306.01 to 306.13 of the Revised Code, or of making any payment to a board of county commissioners operating a transit system or a county transit board pursuant to section 306.06 of the Revised Code; | 49167 49168 49169 49170 49171 49172 49173 |
| (R) For the subdivision's share of the cost of acquiring or constructing any schools, forestry camps, detention facilities, or other facilities, or any combination thereof, under section 2152.41 or 2151.65 of the Revised Code or both of those sections; | 49174 49175 49176 49177 |
| (S) For the prevention, control, and abatement of air pollution; | 49178 49179 |
| (T) For maintaining and operating cemeteries; | 49180 |
| (U) For providing ambulance service, emergency medical service, or both; | 49181 49182 |
| (V) For providing for the collection and disposal of garbage or refuse, including yard waste; | 49183 49184 |
| (W) For the payment of the police officer employers' | 49185 |

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| contribution or the firefighter employers' contribution required | 49186 |
| under sections 742.33 and 742.34 of the Revised Code; | 49187 |
| (X) For the construction and maintenance of a drainage | 49188 |
| improvement pursuant to section 6131.52 of the Revised Code; | 49189 |
| (Y) For providing or maintaining senior citizens services or | 49190 |
| facilities as authorized by section 307.694, 307.85, 505.70, or | 49191 |
| 505.706 or division (EE) of section 717.01 of the Revised Code; | 49192 |
| (Z) For the provision and maintenance of zoological park | 49193 |
| services and facilities as authorized under section 307.76 of the | 49194 |
| Revised Code; | 49195 |
| (AA) For the maintenance and operation of a free public | 49196 |
| museum of art, science, or history; | 49197 |
| (BB) For the establishment and operation of a 9-1-1 system, | 49198 |
| as defined in section 4931.40 of the Revised Code; | 49199 |
| (CC) For the purpose of acquiring, rehabilitating, or | 49200 |
| developing rail property or rail service. As used in this | 49201 |
| division, "rail property" and "rail service" have the same | 49202 |
| meanings as in section 4981.01 <u>5507.01</u> of the Revised Code. This | 49203 |
| division applies only to a county, township, or municipal | 49204 |
| corporation. | 49205 |
| (DD) For the purpose of acquiring property for, constructing, | 49206 |
| operating, and maintaining community centers as provided for in | 49207 |
| section 755.16 of the Revised Code; | 49208 |
| (EE) For the creation and operation of an office or joint | 49209 |
| office of economic development, for any economic development | 49210 |
| purpose of the office, and to otherwise provide for the | 49211 |
| establishment and operation of a program of economic development | 49212 |
| pursuant to sections 307.07 and 307.64 of the Revised Code; | 49213 |
| (FF) For the purpose of acquiring, establishing, | 49214 |
| constructing, improving, equipping, maintaining, or operating, or | 49215 |

any combination of the foregoing, a township airport, landing 49216
field, or other air navigation facility pursuant to section 505.15 49217
of the Revised Code; 49218

(GG) For the payment of costs incurred by a township as a 49219
result of a contract made with a county pursuant to section 49220
505.263 of the Revised Code in order to pay all or any part of the 49221
cost of constructing, maintaining, repairing, or operating a water 49222
supply improvement; 49223

(HH) For a board of township trustees to acquire, other than 49224
by appropriation, an ownership interest in land, water, or 49225
wetlands, or to restore or maintain land, water, or wetlands in 49226
which the board has an ownership interest, not for purposes of 49227
recreation, but for the purposes of protecting and preserving the 49228
natural, scenic, open, or wooded condition of the land, water, or 49229
wetlands against modification or encroachment resulting from 49230
occupation, development, or other use, which may be styled as 49231
protecting or preserving "greenspace" in the resolution, notice of 49232
election, or ballot form; 49233

(II) For the support by a county of a crime victim assistance 49234
program that is provided and maintained by a county agency or a 49235
private, nonprofit corporation or association under section 307.62 49236
of the Revised Code; 49237

(JJ) For any or all of the purposes set forth in divisions 49238
(I) and (J) of this section. This division applies only to a 49239
township. 49240

(KK) For a countywide public safety communications system 49241
under section 307.63 of the Revised Code. This division applies 49242
only to counties. 49243

(LL) For the support by a county of criminal justice services 49244
under section 307.45 of the Revised Code; 49245

(MM) For the purpose of maintaining and operating a jail or 49246

other detention facility as defined in section 2921.01 of the Revised Code; 49247
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(NN) For purchasing, maintaining, or improving, or any combination of the foregoing, real estate on which to hold agricultural fairs. This division applies only to a county. 49249
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(OO) For constructing, rehabilitating, repairing, or maintaining sidewalks, walkways, trails, bicycle pathways, or similar improvements, or acquiring ownership interests in land necessary for the foregoing improvements; 49252
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(PP) For both of the purposes set forth in divisions (G) and (OO) of this section. 49256
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(QQ) For both of the purposes set forth in divisions (H) and (HH) of this section. This division applies only to a township. 49258
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(RR) For the legislative authority of a municipal corporation, board of county commissioners of a county, or board of township trustees of a township to acquire agricultural easements, as defined in section 5301.67 of the Revised Code, and to supervise and enforce the easements. 49260
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(SS) For both of the purposes set forth in divisions (BB) and (KK) of this section. This division applies only to a county. 49265
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The resolution shall be confined to the purpose or purposes described in one division of this section, to which the revenue derived therefrom shall be applied. The existence in any other division of this section of authority to levy a tax for any part or all of the same purpose or purposes does not preclude the use of such revenues for any part of the purpose or purposes of the division under which the resolution is adopted. 49267
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The resolution shall specify the amount of the increase in rate that it is necessary to levy, the purpose of that increase in rate, and the number of years during which the increase in rate 49274
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shall be in effect, which may or may not include a levy upon the 49277
duplicate of the current year. The number of years may be any 49278
number not exceeding five, except as follows: 49279

(1) When the additional rate is for the payment of debt 49280
charges, the increased rate shall be for the life of the 49281
indebtedness. 49282

(2) When the additional rate is for any of the following, the 49283
increased rate shall be for a continuing period of time: 49284

(a) For the current expenses for a detention facility 49285
district, a district organized under section 2151.65 of the 49286
Revised Code, or a combined district organized under sections 49287
2152.41 and 2151.65 of the Revised Code; 49288

(b) For providing a county's share of the cost of maintaining 49289
and operating schools, district detention facilities, forestry 49290
camps, or other facilities, or any combination thereof, 49291
established under section 2152.41 or 2151.65 of the Revised Code 49292
or under both of those sections. 49293

(3) When the additional rate is for either of the following, 49294
the increased rate may be for a continuing period of time: 49295

(a) For the purposes set forth in division (I), (J), (U), or 49296
(KK) of this section; 49297

(b) For the maintenance and operation of a joint recreation 49298
district. 49299

(4) When the increase is for the purpose or purposes set 49300
forth in division (D), (G), (H), (CC), or (PP) of this section, 49301
the tax levy may be for any specified number of years or for a 49302
continuing period of time, as set forth in the resolution. 49303

(5) When the additional rate is for the purpose described in 49304
division (Z) of this section, the increased rate shall be for any 49305
number of years not exceeding ten. 49306

A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may be reduced pursuant to section 5705.261 or 5705.31 of the Revised Code. A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may also be terminated or permanently reduced by the taxing authority if it adopts a resolution stating that the continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount.

A resolution of a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under both sections 2152.41 and 2151.65 of the Revised Code may include both current expenses and other purposes, provided that the resolution shall apportion the annual rate of levy between the current expenses and the other purpose or purposes. The apportionment need not be the same for each year of the levy, but the respective portions of the rate actually levied each year for the current expenses and the other purpose or purposes shall be limited by the apportionment.

Whenever a board of county commissioners, acting either as the taxing authority of its county or as the taxing authority of a sewer district or subdistrict created under Chapter 6117. of the Revised Code, by resolution declares it necessary to levy a tax in excess of the ten-mill limitation for the purpose of constructing, improving, or extending sewage disposal plants or sewage systems, the tax may be in effect for any number of years not exceeding twenty, and the proceeds of the tax, notwithstanding the general provisions of this section, may be used to pay debt charges on any obligations issued and outstanding on behalf of the subdivision for the purposes enumerated in this paragraph, provided that any such obligations have been specifically described in the resolution.

The resolution shall go into immediate effect upon its passage, and no publication of the resolution is necessary other than that provided for in the notice of election.

When the electors of a subdivision have approved a tax levy under this section, the taxing authority of the subdivision may anticipate a fraction of the proceeds of the levy and issue anticipation notes in accordance with section 5705.191 or 5705.193 of the Revised Code.

Sec. 5707.03. Annual taxes are hereby levied on the kinds of intangible property, enumerated in this section, on the intangible property tax list in the office of the treasurer of state at the following rates:

(A) On investments, five per cent of income yield or of income as provided by section 5711.10 of the Revised Code for the 1983, 1984, and 1985 return years and no tax for subsequent return years;

(B) On unproductive investments, two mills on the dollar for the 1983, 1984, and 1985 return years and no tax for subsequent return years;

(C) On deposits, one and three-eighths mills on the dollar for the 1982 and 1983 return years and no tax for subsequent return years;

(D) On shares of, and capital employed by, dealers in intangibles, eight mills on the dollar through the 2003 return year and no tax for subsequent return years;

(E) On money, credits, and all other taxable intangibles, three mills on the dollar for the 1983, 1984, and 1985 return years and no tax for subsequent return years.

The object and distribution of such taxes shall be as provided in section 5725.24 of the Revised Code.

Sec. 5709.01. (A) All real property in this state is subject 49369
to taxation, except only such as is expressly exempted therefrom. 49370

(B) Except as provided by division (C) of this section or 49371
otherwise expressly exempted from taxation: 49372

(1) All personal property located and used in business in 49373
this state, and all domestic animals kept in this state and not 49374
used in agriculture are subject to taxation, regardless of the 49375
residence of the owners thereof. 49376

(2) All ships, vessels, and boats, and all shares and 49377
interests therein, defined in section 5701.03 of the Revised Code 49378
as personal property and belonging to persons residing in this 49379
state, and aircraft belonging to persons residing in this state 49380
and not used in business wholly in another state, other than 49381
aircraft licensed in accordance with sections 4561.17 to 4561.21 49382
of the Revised Code, are subject to taxation. 49383

(C) The following property of the kinds mentioned in division 49384
(B) of this section shall be exempt from taxation: 49385

(1) Unmanufactured tobacco to the extent of the value, or 49386
amounts, of any unpaid nonrecourse loans thereon granted by the 49387
United States government or any agency thereof. 49388

(2) Spirituous liquor, as defined in division (B)(5) of 49389
section 4301.01 of the Revised Code, that is stored in warehouses 49390
in this state pursuant to an agreement with the division of liquor 49391
control. 49392

(3) Except as otherwise provided in section 5711.27 or 49393
5727.01 of the Revised Code, all other such property if the 49394
aggregate taxable value thereof required to be listed by the 49395
taxpayer under Chapter 5711. of the Revised Code does not exceed 49396
ten thousand dollars. 49397

(a) If the taxable value of such property exceeds ten 49398

thousand dollars only such property having an aggregate taxable value of ten thousand dollars shall be exempt. 49399
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(b) If such property is located in more than one taxing district as defined in section 5711.01 of the Revised Code, the exemption of ten thousand dollars shall be applied as follows: 49401
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(i) The taxable value of such property in the district having the greatest amount of such value shall be reduced until the exemption has been fully utilized or the value has been reduced to zero, whichever occurs first; 49404
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(ii) If the exemption has not been fully utilized under division (C)(3)(b)(i) of this section, the value in the district having the second greatest value shall be reduced until the exemption has been fully utilized or the value has been reduced to zero, whichever occurs first; 49408
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(iii) If the exemption has not been fully utilized under division (C)(3)(b)(ii) of this section, further reductions shall be made, in repeated steps which include property in districts having declining values, until the exemption has been fully utilized. 49413
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(D) All property mentioned as taxable in this section shall be entered on the general tax list and duplicate of taxable property. 49418
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Sec. 5709.20. As used in sections 5709.20 to 5709.27 of the Revised Code: 49421
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(A) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, vapor, or odorous substances, or any combination thereof. 49423
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(B) "Air pollution control facility" means any property designed, constructed, or installed for the primary purpose of eliminating or reducing the emission of, or ground level 49426
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concentration of, air contaminants ~~which~~ generated at an 49429
industrial or commercial plant or site that renders air harmful or 49430
inimical to the public health or to property within this state. 49431

(C) "Energy conversion" means the conversion of fuel or power 49432
usage and consumption from natural gas to an alternate fuel or 49433
power source other than propane, butane, naphtha, or fuel oil; or 49434
the conversion of fuel or power usage and consumption from fuel 49435
oil to an alternate fuel or power source other than natural gas, 49436
propane, butane, or naphtha. 49437

(D) "Energy conversion facility" means any additional 49438
property or equipment designed, constructed, or installed after 49439
December 31, 1974, for use at an industrial or commercial plant or 49440
site for the primary purpose of energy conversion. 49441

(E) "Exempt facility" means any of the facilities defined in 49442
division (B), (D), (F), (I), (K), or (L) of this section for which 49443
an exempt facility certificate is issued pursuant to section 49444
5709.21 of the Revised Code. 49445

(F) "Noise pollution control facility" means any property 49446
designed, constructed, or installed ~~in or on~~ for use at an 49447
industrial or commercial plant or site for the primary purpose of 49448
eliminating or reducing, at that plant or site, the emission of 49449
sound which is harmful or inimical to persons or property, or 49450
materially reduces the quality of the environment, as shall be 49451
determined by the director of environmental protection within such 49452
standards for noise pollution control facilities and standards for 49453
environmental noise necessary to protect public health and welfare 49454
as may be promulgated by the United States environmental 49455
protection agency. In the absence of such United States 49456
environmental protection agency standards, the determination shall 49457
be made in accordance with generally accepted current standards of 49458
good engineering practice in environmental noise control. 49459

Facilities (G) "Solid waste" means such unwanted residual solid or semi-solid material as results from industrial operations, including those of public utility companies, and commercial, distribution, research, agricultural, and community operations, including garbage, combustible or noncombustible, street dirt, and debris. 49460
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(H) "Solid waste energy conversion" means the conversion of solid waste into energy and the utilization of such energy for some useful purpose. 49466
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(I) "Solid waste energy conversion facility" means any property or equipment designed, constructed, or installed after December 31, 1974, for use at an industrial or a commercial plant or site for the primary purpose of solid waste energy conversion. 49469
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(J) "Thermal efficiency improvement" means the recovery and use of waste heat or waste steam produced incidental to electric power generation, industrial process heat generation, lighting, refrigeration, or space heating. 49473
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(K) "Thermal efficiency improvement facility" means any property or equipment designed, constructed, or installed after December 31, 1974, for use at an industrial or a commercial plant or site for the primary purpose of thermal efficiency improvement. 49477
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(L) "Industrial water pollution control facility" means any property designed, constructed, or installed for the primary purpose of collecting or conducting industrial waste to a point of disposal or treatment; reducing, controlling, or eliminating water pollution caused by industrial waste; or reducing, controlling, or eliminating the discharge into a disposal system of industrial waste or what would be industrial waste if discharged into the waters of this state. This division applies only to property related to a facility placed into operation or initially capable of operation after December 31, 1965, and installed pursuant to 49481
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the approval of the environmental protection agency or any other governmental agency having authority to approve the installation of industrial water pollution control facilities. The definitions in section 6111.01 of the Revised Code, as applicable, apply to the terms used in this division. 49491
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(M) Property designed, constructed, installed, used, or placed in operation ~~solely~~ primarily for the safety, health, protection, or benefit, or any combination thereof, of personnel, ~~or by~~ of a business ~~solely for its~~, or primarily for a business's own benefit, ~~are not pollution control facilities~~ is not an "exempt facility." 49496
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Sec. 5709.201. (A) Except as provided in division (C)(4) of section 5709.22 and division (F) of section 5709.25 of the Revised Code, a certificate issued under section 5709.21, 5709.31, 5709.46, or 6111.03 of the Revised Code that was valid and in effect on the effective date of . B. of the 125th general assembly shall continue in effect subject to the law as it existed before that effective date. 49502
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(B) Any applications pending on the effective date of that act for which a certificate had not been issued on or before that effective date under section 6111.03 of the Revised Code shall be transferred to the tax commissioner for further administering. Sections 5709.20 to 5709.27 of the Revised Code apply to such pending applications, excluding the requirement of section 5709.212 of the Revised Code that applicants must pay the one thousand dollar fee. 49509
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Sec. 5709.21. (A) As used in this section: 49517

(1) "Exclusive property" means property that is installed, used, and necessary for the operation of an exempt facility, and that is not auxiliary property. 49518
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(2) "Auxiliary property" means property installed, used, and necessary for the operation of an exempt facility that is also used in other operations of the business other than an exempt facility purpose described in section 5709.20 of the Revised Code.

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(3) "Auxiliary property exempt cost" means the cost of auxiliary property calculated using one of the following procedures:

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(a) If the auxiliary property is used for an exempt facility purpose for discrete periods of time, the exempt cost shall be determined by the ratio of time the auxiliary property is in use in such exempt capacity to the total time it is in use. If it is possible to determine the exempt cost under division (A)(3)(a) of this section, the procedures set forth in divisions (A)(3)(b) and (c) of this section do not apply.

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(b) If the auxiliary property replaces existing property and is necessary to allow for the proper operation of the exempt facility, the exempt cost of the auxiliary property shall be determined using the cost of the auxiliary property less the original acquisition cost of the property being replaced. If the result is less than zero, the exempt cost shall be zero.

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(c) If the cost of replacement auxiliary property is less than the cost of existing auxiliary property, or if the auxiliary property is not replacing existing property and is necessary to allow for the proper operation of the exempt facility, the exempt cost of the auxiliary property shall be determined using the cost of the auxiliary property less the cost that would have been incurred if the auxiliary property was not necessary for an exempt facility purpose as described in section 5709.20 of the Revised Code. If the result is less than zero, the exempt cost shall be zero.

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(d) Any cost related to an expansion of the commercial or

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industrial site that is not related to the operation of the exempt facility shall not be included as an auxiliary exempt cost under division (A)(3) of this section. 49552
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(B) Application for an air or noise pollution control exempt facility certificate shall be filed with the tax commissioner in such manner and in such form as may be prescribed by regulations issued by the tax commissioner and. The application shall contain plans and specifications of the structure or structures property, including all materials incorporated and or to be incorporated therein and their associated costs, and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of air or noise pollution control exempt facility and its associated cost. If the commissioner, after obtaining the opinion of the director of environmental protection, finds that the proposed facility property was designed primarily for the control of air or noise pollution as defined in section 5709.20 of the Revised Code, as an exempt facility and is suitable and reasonably adequate for such purpose and is intended for such purpose, he the commissioner shall enter a finding and issue a certificate to that effect. Said certificate shall permit tax exemption pursuant to section 5709.25 of the Revised Code only for that portion of such pollution control facility or that part used exclusively for air or noise pollution control. The effective date of said the certificate shall be the date of the making of the application was made for such certificate or the date of the construction of the facility, whichever is earlier; provided, that if such application relates to facilities placed in operation or capable of operation prior to October 2, 1969, the effective date of the certificate shall be the date of the application. 49555
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Nothing in this section shall be construed to extend the time period to file, to keep the time period to file open, or supersede the requirement of filing a tax refund or other tax reduction 49581
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request in the manner and within the time prescribed by law. 49584

(C)(1) Except as provided in division (C)(2) of this section, 49585
the certificate shall permit tax exemption pursuant to section 49586
5709.25 of the Revised Code only for that portion of such exempt 49587
facility that is exclusive property used for a purpose enumerated 49588
in section 5709.20 of the Revised Code. 49589

(2) Auxiliary property shall be permitted a partial tax 49590
exemption under section 5709.25 of the Revised Code, but only to 49591
the extent allowed pursuant to division (A)(3) of this section. 49592

(D) The tax commissioner may allow an applicant to file one 49593
application that applies to more than one exempt facility that are 49594
the same or substantially similar, so long as such facilities are 49595
located within the same county. 49596

Sec. 5709.211. (A) Before issuing an exempt facility 49597
certificate pursuant to section 5709.21 of the Revised Code, the 49598
tax commissioner shall provide a copy of a properly completed 49599
application to, and obtain the opinion of, the director of 49600
environmental protection in the case of an exempt facility 49601
described in division (B), (F), or (L) of section 5709.20 of the 49602
Revised Code, or provide a copy of the application to, and obtain 49603
the opinion of, the director of development in the case of an 49604
application for an exempt facility described in division (D), (I), 49605
or (K) of section 5709.20 of the Revised Code. The opinion shall 49606
provide the commissioner with a recommendation of whether the 49607
property is primarily designed, constructed, installed, and used 49608
as an exempt facility. The applicant shall provide additional 49609
information upon request by the tax commissioner, the director of 49610
environmental protection, or the director of development, and 49611
allow them to inspect the property listed in the application for 49612
the purposes of sections 5709.20 to 5709.27 of the Revised Code. 49613
The tax commissioner shall provide to the applicant a copy of the 49614

opinion issued by either the director of environmental protection 49615
or the director of the department of development. 49616

(B) The opinions of the director of the environmental 49617
protection agency and the director of development are not final 49618
actions or orders subject to appeal. 49619

Sec. 5709.212. (A) With every application for an exempt 49620
facility certificate filed pursuant to section 5709.21 of the 49621
Revised Code, the applicant shall pay a fee in the amount of one 49622
thousand dollars. One-half of the fee received with applications 49623
for exempt facility certificates shall be credited to the exempt 49624
facility administrative fund, which is hereby created in the state 49625
treasury, for appropriation to the department of taxation for use 49626
in administering sections 5709.20 to 5709.27 of the Revised Code. 49627
If the director of environmental protection is required to provide 49628
the opinion for an application, one-half of the fee shall be 49629
credited to the clean air fund created in section 3704.035 of the 49630
Revised Code for use in administering section 5709.211 of the 49631
Revised Code, unless the application is for an industrial water 49632
pollution control facility. If the application is for an 49633
industrial water pollution control facility, one-half of the fee 49634
shall be credited to the surface water protection fund created in 49635
section 6111.038 of the Revised Code for use in administering 49636
section 5709.211 of the Revised Code. If the director of 49637
development is required to provide the opinion for an application, 49638
one-half of the fee for each exempt facility application shall be 49639
credited to the exempt facility inspection fund, which is hereby 49640
created in the state treasury, for appropriation to the department 49641
of development for use in administering section 5709.211 of the 49642
Revised Code. 49643

An applicant is not entitled to any tax exemption under 49644
section 5709.25 of the Revised Code until the fee required by this 49645

section is paid. The fee required by this section is not 49646
refundable, and is due with the application for an exempt facility 49647
certificate even if an exempt facility certificate ultimately is 49648
not issued or is withdrawn. Any application submitted without 49649
payment of the fee shall be deemed incomplete until the fee is 49650
paid. 49651

(B) The application fee imposed under division (A) of this 49652
section for a jointly owned facility shall be one thousand dollars 49653
for each facility that is the subject of the application. 49654

~~Sec. 5709.22. Before issuing any certificate the tax~~ 49655
~~commissioner shall give notice in writing by mail to the auditor~~ 49656
~~of the county in which such facilities are located, and shall~~ 49657
~~afford to the applicant and to the auditor an opportunity for a~~ 49658
~~hearing. On like notice to the applicant and opportunity for a~~ 49659
~~hearing, the commissioner shall on his (A) After receiving an~~ 49660
opinion from the director of environmental protection or the 49661
director of development, the tax commissioner shall promptly 49662
ascertain if an application filed under section 5709.21 of the 49663
Revised Code shall be allowed or disallowed in whole or in part. 49664
The commissioner shall give written notice of the proposed finding 49665
to the applicant and the county auditor of the county in which the 49666
facility described in the application is located. Within sixty 49667
days after sending written notice of the proposed finding, the 49668
applicant or the county auditor may file a request for 49669
reconsideration, in writing, to the commissioner and may request 49670
that the commissioner conduct a hearing on the application. If no 49671
request for reconsideration is filed, the commissioner's proposed 49672
findings shall be final and, if applicable, the commissioner shall 49673
issue an exempt facility certificate, which shall not be subject 49674
to appeal pursuant to section 5717.02 of the Revised Code. 49675

(B) If a reconsideration of the tax commissioner's proposed 49676

finding is requested by the applicant or the county auditor, the 49677
commissioner shall notify the applicant and the auditor of the 49678
time and place of the hearing, which the commissioner may continue 49679
from time to time as the commissioner finds necessary. The 49680
commissioner also shall notify the environmental protection agency 49681
or department of development, as applicable, of the hearing. The 49682
environmental protection agency or the department of development 49683
shall participate in the hearing if requested in writing by the 49684
commissioner, the applicant, or the county auditor. After 49685
conducting the hearing, the commissioner shall issue a final 49686
determination, with a copy of it served on the applicant and 49687
applicable county auditors in the manner prescribed by section 49688
5703.37 of the Revised Code. The final determination is subject to 49689
appeal pursuant to section 5717.02 of the Revised Code. Once all 49690
appeals are exhausted, the commissioner shall issue, if 49691
applicable, the exempt facility certificate based on the outcome 49692
of the appeal. 49693

(C) The tax commissioner, on the commissioner's own 49694
initiative or on complaint by the county auditor of ~~the~~ any county 49695
in which ~~any~~ property to which ~~such air or noise pollution control~~ 49696
the exempt facility certificate relates is located, shall revoke 49697
~~such air or noise pollution control certificate whenever any of~~ 49698
~~the following appears~~ the certificate, or modify it by restricting 49699
its operation, if it appears to the commissioner that any of the 49700
following has occurred: 49701

~~(A)~~(1) The certificate was obtained by fraud or 49702
misrepresentation; 49703

~~(B)~~(2) The holder of the certificate has failed substantially 49704
to proceed with the construction, reconstruction, installation, or 49705
acquisition of ~~air or noise pollution control facilities~~ an exempt 49706
facility; 49707

~~(C)~~(3) The ~~structure or equipment or both~~ property to which 49708

the certificate relates has ceased to be used for the primary 49709
purpose of pollution control and is being used for a different 49710
purpose. 49711

~~Provided, that where the circumstances so require, the 49712
commissioner in lieu of revoking such certificate may modify the 49713
same by restricting its operations as an exempt facility;~~ 49714

(4) The tax commissioner issued the certificate in error. As 49715
used in this section, "error" means a clerical or mathematical 49716
mistake, or when the tax commissioner determines that the issuance 49717
of the certificate may have been improper as the result of a final 49718
adjudication by the board of tax appeals, or by a court with 49719
jurisdiction on appeal from that board, that is adverse to the 49720
original exempt status of the facility, regardless of whether the 49721
holder of the certificate was a party to such adjudication. 49722

~~On the mailing of notice of the action of the commissioner 49723
revoking or modifying an air or noise pollution control 49724
certificate as provided in section 5709.23 of the Revised Code, 49725
such (D) Upon service of notice certificate to the holder of an 49726
exempt facility certificate, in the manner provided in section 49727
5703.37 of the Revised Code, of the tax commissioner's revocation 49728
or modification of the certificate under division (C) of this 49729
section, the certificate shall cease to be in force or shall 49730
remain in force only as modified, as the case may require. The 49731
notice is subject to appeal under section 5717.02 of the Revised 49732
Code. Once all appeals are exhausted, the commissioner shall issue 49733
a modified certificate, if applicable, and the holder of the 49734
certificate shall be allowed to claim a refund within one hundred 49735
eighty days, notwithstanding any other time limitation provided by 49736
law of the taxes paid as a result of the certificate being revoked 49737
or modified. 49738~~

Sec. 5709.23. (A) As soon as is practicable after receiving 49739

an application for an exempt facility certificate, the tax 49740
commissioner shall provide a copy of the application and any 49741
accompanying documentation to the county auditor of the county in 49742
which the facility is located. The copy shall be accompanied by a 49743
statement showing an estimate of what the assessed value of the 49744
facility would be, based on the appropriate assessment percentage, 49745
if the facility were to be taxable, and an estimate of the taxes 49746
that would be chargeable against the facility computed on the 49747
basis of the rate of taxation in the taxing district in the year 49748
in which the application is received. Within sixty days after 49749
receiving such a statement, the county auditor shall issue a 49750
notice to the taxing authority of each taxing unit in which the 49751
facility is or is to be located. The notice shall state that an 49752
application for an exempt facility certificate has been filed for 49753
the facility; the estimated assessed value of the facility shown 49754
on the statement; the annual amount of taxes that would be charged 49755
and payable on that value at the current rate of taxation in 49756
effect in the taxing unit; and that, if approved, the application 49757
entitles the facility to exemption from taxation and the taxing 49758
unit may be required to refund any taxes on the facility accruing 49759
after the certificate becomes effective. The tax commissioner 49760
shall issue an amended statement if, after the original statement 49761
is issued, the estimate of such assessed value increases or 49762
decreases by more than ten per cent of the estimated value shown 49763
on the most recently issued statement or amended statement, and 49764
the county auditor shall issue an amended notice reflecting such 49765
change. 49766

(B) Upon request by the county auditor of the county in which 49767
the exempt facility described in the application is located, the 49768
tax commissioner shall provide the county auditor with any 49769
documents submitted with the opinion of the director of 49770
environmental protection or director of development, including a 49771
copy of opinion. 49772

(C) Any documents, statements, and notices provided for under this section are solely for the purpose of notifying taxing authorities of the existence of an exempt facility application and the potential for a refund of taxes paid on an exempt facility before a tax exemption certificate is issued. Such documents, statements and notices do not constitute an assessment that is subject to a petition for reassessment nor are such documents, statements, and notices appealable under section 5717.02 of the Revised Code by any person. 49773
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(D) The documents, statements and notices provided by the tax commissioner under this section are subject to all applicable confidentiality provisions of law. 49782
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Sec. 5709.24. The tax commissioner may adopt rules to administer sections 5709.20 to 5709.27 of the Revised Code. 49785
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Sec. 5709.25. (A) Whenever an ~~air or noise pollution control~~ exempt facility certificate is issued ~~on a pollution control~~ ~~facility~~, the transfer of tangible personal property to the holder of the certificate, whether such transfer takes place before or after the issuance of the certificate, shall not be considered a "sale" of such tangible personal property for the purpose of the sales tax, or a "use" for the purpose of the use tax, if the tangible personal property is to be or was a material or part to be incorporated into an ~~air or noise pollution control~~ exempt facility ~~as defined in section 5709.20 of the Revised Code.~~ 49787
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(B) For the period subsequent to the effective date of an ~~air or noise pollution control~~ exempt facility certificate and continuing for so long as the certificate is in force, no ~~pollution control~~ exempt facility or certified portion thereof shall be considered to be either of the following: 49797
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(1) An improvement on the land on which the ~~same~~ exempt 49802

facility is located for the purpose of real property taxation; 49803

(2) As "used in business" for the purpose of personal 49804
property taxation; 49805

~~(3) As an asset of any corporation in determining the value 49806
of its issued and outstanding shares or the value of the property 49807
owned and used by it in this state for the purpose of the 49808
franchise tax. 49809~~

(C)(1) The tax commissioner, upon receiving a properly 49810
completed application for an exempt facility certificate, may 49811
allow the applicant to claim the exemption provided by this 49812
section before the commissioner issues the certificate. The 49813
applicant is entitled to the exemption unless the commissioner 49814
notifies the applicant otherwise by serving notice upon the 49815
applicant in the manner prescribed by section 5703.37 of the 49816
Revised Code. 49817

(2) A taxpayer whose tangible personal property is subject to 49818
taxation under Chapter 5727. of the Revised Code shall notify the 49819
commissioner in writing of any property the applicant does not 49820
want the commissioner to exclude as exempt property. The notice 49821
shall be provided before the date the commissioner issues the 49822
preliminary assessment under section 5727.23 of the Revised Code. 49823

(D)(1) Notwithstanding any other time limitations imposed by 49824
law, the commissioner may assess any additional tax or may assess 49825
any additional taxable property, including any applicable 49826
interest, on the denied portion of the applicant's claim for an 49827
exempt facility that the applicant claimed prior to the exempt 49828
facility certificate being issued or the application being denied. 49829
Any time after two years from the filing of the application, the 49830
applicant may demand in writing that the commissioner, within 49831
ninety days after the demand is received, issue findings with 49832
regard to the application as provided in section 5709.22 of the 49833

Revised Code even if the commissioner has not received an opinion 49834
of exemption pursuant to section 5709.211 of the Revised Code. No 49835
assessment shall be made pursuant to this division after one 49836
hundred eighty days from the date the commissioner mails the 49837
exempt facility certificate or notice of the denial of the exempt 49838
facility certificate pursuant to section 5709.22 of the Revised 49839
Code. Nothing in this section shall prohibit an assessment that 49840
otherwise may be timely made by law. 49841

(2) Assessments issued pursuant to division (D)(1) of this 49842
section shall be issued as amended preliminary assessment 49843
certificates under section 5711.31 of the Revised Code for 49844
personal property tax, as amended preliminary assessment 49845
certificates under section 5727.23 of the Revised Code for public 49846
utility tax, and as assessments under section 5733.11 of the 49847
Revised Code for corporation franchise tax, section 5739.13 of the 49848
Revised Code for sales tax, and section 5741.11 of the Revised 49849
Code for use tax, and are subject to the same appeal requirements 49850
as defined in these sections. 49851

(3) Nothing in division (D) of this section allows the tax 49852
commissioner, after the expiration of the time limitation, to 49853
issue an assessment referenced in division (D)(2) of this section 49854
that increases any tax beyond the amount claimed by the applicant 49855
as an exempt facility. 49856

(4) If an assessment is issued for only the denied portion of 49857
the application for an exempt facility, the only issue the 49858
applicant is permitted to raise on appeal of the assessment 49859
referenced in division (D)(2) of this section is that of the 49860
taxable property or transaction constituting the denied portion of 49861
the applicant's claim for an exempt facility. 49862

(E) Except as otherwise provided in this division, no 49863
exemption for additional property shall be claimed under this 49864
section after an exempt facility certificate has been issued for 49865

that facility unless the applicant files a new application under 49866
section 5709.21 of the Revised Code. The tax commissioner shall 49867
waive the requirement to file a new application under section 49868
5709.21 of the Revised Code if the cost of the additional 49869
property, net of retirements for similar property, does not exceed 49870
five hundred thousand dollars during any calendar year. The fee 49871
imposed under section 5709.212 of the Revised Code for 49872
applications filed as a result of this division shall be five 49873
hundred dollars. 49874

(F) If, as the result of a revaluation due to sale or 49875
bankruptcy or any other reason, the book value of property that is 49876
the subject of an exempt facility certificate is changed from the 49877
book value at the time of the original issuance of the 49878
certificate, the amount of exemption available to the owner is 49879
limited to the percentage resulting from the ratio of the 49880
historical cost of the property that is the subject of the exempt 49881
facility certificate over the historic cost of all tangible 49882
personal property and real property of the owner that is located 49883
at the same location as that of the property subject to the exempt 49884
facility certificate. If the result of using this ratio is greater 49885
than the original cost, then acceptable reasons for allowing such 49886
greater cost must be established with supporting documentation in 49887
order to qualify for the exemption above the original cost. 49888

Sec. 5709.26. When an air or noise pollution control exempt 49889
facility certificate is revoked because obtained by fraud or 49890
misrepresentation or modified for the reason stated in division 49891
(C)(1) of section 5709.22 of the Revised Code, all taxes which 49892
that would have been payable had no certificate been issued shall 49893
be assessed with maximum penalties and interest prescribed by law 49894
applicable thereto dating to when the exemption was first allowed. 49895
If the certificate is revoked or modified under division (C)(2), 49896
(3), or (4) of section 5709.22 of the Revised Code, all taxes that 49897

would have been payable had no certificate been issued for those 49898
tax years that are open by operation of law are subject to 49899
assessment. 49900

Sec. 5709.27. In the event of the sale, lease, or other 49901
transfer of an ~~air or noise pollution control~~ exempt facility, not 49902
involving a different location or use, the holder of an ~~air or~~ 49903
~~noise pollution control~~ the exempt facility certificate ~~for such~~ 49904
~~facility may~~ shall transfer the certificate by written instrument 49905
to the person who, except for the transfer of the certificate, 49906
would be obligated to pay taxes on ~~such~~ the facility. The 49907
transferee shall become the holder of the certificate and shall 49908
have all the rights to exemption from taxes ~~which were~~ granted to 49909
the former holder or holders, effective as of the date of transfer 49910
of the facility or the date of transfer of the certificate, 49911
whichever is earlier. The transferee shall promptly give written 49912
notice of the effective date of the transfer, together with a copy 49913
of the instrument of transfer, to the tax commissioner and the 49914
county auditor of the county in which the facility is located. 49915
Upon request, the commissioner may provide the transferee with any 49916
information the commissioner possesses related to the issuance of 49917
the exempt facility certificate. 49918

Sec. 5709.62. (A) In any municipal corporation that is 49919
defined by the United States office of management and budget as a 49920
central city of a metropolitan statistical area, the legislative 49921
authority of the municipal corporation may designate one or more 49922
areas within its municipal corporation as proposed enterprise 49923
zones. Upon designating an area, the legislative authority shall 49924
petition the director of development for certification of the area 49925
as having the characteristics set forth in division (A)(1) of 49926
section 5709.61 of the Revised Code as amended by Substitute 49927
Senate Bill No. 19 of the 120th general assembly. Except as 49928

otherwise provided in division (E) of this section, on and after 49929
July 1, 1994, legislative authorities shall not enter into 49930
agreements under this section unless the legislative authority has 49931
petitioned the director and the director has certified the zone 49932
under this section as amended by that act; however, all agreements 49933
entered into under this section as it existed prior to July 1, 49934
1994, and the incentives granted under those agreements shall 49935
remain in effect for the period agreed to under those agreements. 49936
Within sixty days after receiving such a petition, the director 49937
shall determine whether the area has the characteristics set forth 49938
in division (A)(1) of section 5709.61 of the Revised Code, and 49939
shall forward the findings to the legislative authority of the 49940
municipal corporation. If the director certifies the area as 49941
having those characteristics, and thereby certifies it as a zone, 49942
the legislative authority may enter into an agreement with an 49943
enterprise under division (C) of this section. 49944

(B) Any enterprise that wishes to enter into an agreement 49945
with a municipal corporation under division (C) of this section 49946
shall submit a proposal to the legislative authority of the 49947
municipal corporation on a form prescribed by the director of 49948
development, together with the application fee established under 49949
section 5709.68 of the Revised Code. The form shall require the 49950
following information: 49951

(1) An estimate of the number of new employees whom the 49952
enterprise intends to hire, or of the number of employees whom the 49953
enterprise intends to retain, within the zone at a facility that 49954
is a project site, and an estimate of the amount of payroll of the 49955
enterprise attributable to these employees; 49956

(2) An estimate of the amount to be invested by the 49957
enterprise to establish, expand, renovate, or occupy a facility, 49958
including investment in new buildings, additions or improvements 49959
to existing buildings, machinery, equipment, furniture, fixtures, 49960

and inventory; 49961

(3) A listing of the enterprise's current investment, if any, 49962
in a facility as of the date of the proposal's submission. 49963

The enterprise shall review and update the listings required 49964
under this division to reflect material changes, and any agreement 49965
entered into under division (C) of this section shall set forth 49966
final estimates and listings as of the time the agreement is 49967
entered into. The legislative authority may, on a separate form 49968
and at any time, require any additional information necessary to 49969
determine whether an enterprise is in compliance with an agreement 49970
and to collect the information required to be reported under 49971
section 5709.68 of the Revised Code. 49972

(C) Upon receipt and investigation of a proposal under 49973
division (B) of this section, if the legislative authority finds 49974
that the enterprise submitting the proposal is qualified by 49975
financial responsibility and business experience to create and 49976
preserve employment opportunities in the zone and improve the 49977
economic climate of the municipal corporation, the legislative 49978
authority, on or before ~~June 30, 2004~~ October 15, 2009, may do one 49979
of the following: 49980

(1) Enter into an agreement with the enterprise under which 49981
the enterprise agrees to establish, expand, renovate, or occupy a 49982
facility and hire new employees, or preserve employment 49983
opportunities for existing employees, in return for one or more of 49984
the following incentives: 49985

(a) Exemption for a specified number of years, not to exceed 49986
ten, of a specified portion, up to seventy-five per cent, of the 49987
assessed value of tangible personal property first used in 49988
business at the project site as a result of the agreement. An 49989
exemption granted pursuant to this division applies to inventory 49990
required to be listed pursuant to sections 5711.15 and 5711.16 of 49991

the Revised Code, except that, in the instance of an expansion or 49992
other situations in which an enterprise was in business at the 49993
facility prior to the establishment of the zone, the inventory 49994
that is exempt is that amount or value of inventory in excess of 49995
the amount or value of inventory required to be listed in the 49996
personal property tax return of the enterprise in the return for 49997
the tax year in which the agreement is entered into. 49998

(b) Exemption for a specified number of years, not to exceed 49999
ten, of a specified portion, up to seventy-five per cent, of the 50000
increase in the assessed valuation of real property constituting 50001
the project site subsequent to formal approval of the agreement by 50002
the legislative authority; 50003

(c) Provision for a specified number of years, not to exceed 50004
ten, of any optional services or assistance that the municipal 50005
corporation is authorized to provide with regard to the project 50006
site. 50007

(2) Enter into an agreement under which the enterprise agrees 50008
to remediate an environmentally contaminated facility, to spend an 50009
amount equal to at least two hundred fifty per cent of the true 50010
value in money of the real property of the facility prior to 50011
remediation as determined for the purposes of property taxation to 50012
establish, expand, renovate, or occupy the remediated facility, 50013
and to hire new employees or preserve employment opportunities for 50014
existing employees at the remediated facility, in return for one 50015
or more of the following incentives: 50016

(a) Exemption for a specified number of years, not to exceed 50017
ten, of a specified portion, not to exceed fifty per cent, of the 50018
assessed valuation of the real property of the facility prior to 50019
remediation; 50020

(b) Exemption for a specified number of years, not to exceed 50021
ten, of a specified portion, not to exceed one hundred per cent, 50022

of the increase in the assessed valuation of the real property of 50023
the facility during or after remediation; 50024

(c) The incentive under division (C)(1)(a) of this section, 50025
except that the percentage of the assessed value of such property 50026
exempted from taxation shall not exceed one hundred per cent; 50027

(d) The incentive under division (C)(1)(c) of this section. 50028

(3) Enter into an agreement with an enterprise that plans to 50029
purchase and operate a large manufacturing facility that has 50030
ceased operation or announced its intention to cease operation, in 50031
return for exemption for a specified number of years, not to 50032
exceed ten, of a specified portion, up to one hundred per cent, of 50033
the assessed value of tangible personal property used in business 50034
at the project site as a result of the agreement, or of the 50035
assessed valuation of real property constituting the project site, 50036
or both. 50037

(D)(1) Notwithstanding divisions (C)(1)(a) and (b) of this 50038
section, the portion of the assessed value of tangible personal 50039
property or of the increase in the assessed valuation of real 50040
property exempted from taxation under those divisions may exceed 50041
seventy-five per cent in any year for which that portion is 50042
exempted if the average percentage exempted for all years in which 50043
the agreement is in effect does not exceed sixty per cent, or if 50044
the board of education of the city, local, or exempted village 50045
school district within the territory of which the property is or 50046
will be located approves a percentage in excess of seventy-five 50047
per cent. For the purpose of obtaining such approval, the 50048
legislative authority shall deliver to the board of education a 50049
notice not later than forty-five days prior to approving the 50050
agreement, excluding Saturdays, Sundays, and legal holidays as 50051
defined in section 1.14 of the Revised Code. The notice shall 50052
state the percentage to be exempted, an estimate of the true value 50053
of the property to be exempted, and the number of years the 50054

property is to be exempted. The board of education, by resolution 50055
adopted by a majority of the board, shall approve or disapprove 50056
the agreement and certify a copy of the resolution to the 50057
legislative authority not later than fourteen days prior to the 50058
date stipulated by the legislative authority as the date upon 50059
which approval of the agreement is to be formally considered by 50060
the legislative authority. The board of education may include in 50061
the resolution conditions under which the board would approve the 50062
agreement, including the execution of an agreement to compensate 50063
the school district under division (B) of section 5709.82 of the 50064
Revised Code. The legislative authority may approve the agreement 50065
at any time after the board of education certifies its resolution 50066
approving the agreement to the legislative authority, or, if the 50067
board approves the agreement conditionally, at any time after the 50068
conditions are agreed to by the board and the legislative 50069
authority. 50070

If a board of education has adopted a resolution waiving its 50071
right to approve agreements and the resolution remains in effect, 50072
approval of an agreement by the board is not required under this 50073
division. If a board of education has adopted a resolution 50074
allowing a legislative authority to deliver the notice required 50075
under this division fewer than forty-five business days prior to 50076
the legislative authority's approval of the agreement, the 50077
legislative authority shall deliver the notice to the board not 50078
later than the number of days prior to such approval as prescribed 50079
by the board in its resolution. If a board of education adopts a 50080
resolution waiving its right to approve agreements or shortening 50081
the notification period, the board shall certify a copy of the 50082
resolution to the legislative authority. If the board of education 50083
rescinds such a resolution, it shall certify notice of the 50084
rescission to the legislative authority. 50085

(2) The legislative authority shall comply with section 50086

5709.83 of the Revised Code unless the board of education has 50087
adopted a resolution under that section waiving its right to 50088
receive such notice. 50089

(E) This division applies to zones certified by the director 50090
of development under this section prior to July 22, 1994. 50091

On or before ~~June 30, 2004~~ October 15, 2009, the legislative 50092
authority that designated a zone to which this division applies 50093
may enter into an agreement with an enterprise if the legislative 50094
authority makes the finding required under that division and 50095
determines that the enterprise satisfies one of the criteria 50096
described in divisions (E)(1) to (5) of this section: 50097

(1) The enterprise currently has no operations in this state 50098
and, subject to approval of the agreement, intends to establish 50099
operations in the zone; 50100

(2) The enterprise currently has operations in this state 50101
and, subject to approval of the agreement, intends to establish 50102
operations at a new location in the zone that would not result in 50103
a reduction in the number of employee positions at any of the 50104
enterprise's other locations in this state; 50105

(3) The enterprise, subject to approval of the agreement, 50106
intends to relocate operations, currently located in another 50107
state, to the zone; 50108

(4) The enterprise, subject to approval of the agreement, 50109
intends to expand operations at an existing site in the zone that 50110
the enterprise currently operates; 50111

(5) The enterprise, subject to approval of the agreement, 50112
intends to relocate operations, currently located in this state, 50113
to the zone, and the director of development has issued a waiver 50114
for the enterprise under division (B) of section 5709.633 of the 50115
Revised Code. 50116

The agreement shall require the enterprise to agree to 50117
establish, expand, renovate, or occupy a facility in the zone and 50118
hire new employees, or preserve employment opportunities for 50119
existing employees, in return for one or more of the incentives 50120
described in division (C) of this section. 50121

(F) All agreements entered into under this section shall be 50122
in the form prescribed under section 5709.631 of the Revised Code. 50123
After an agreement is entered into under this division, if the 50124
legislative authority revokes its designation of a zone, or if the 50125
director of development revokes the zone's certification, any 50126
entitlements granted under the agreement shall continue for the 50127
number of years specified in the agreement. 50128

(G) Except as otherwise provided in this division, an 50129
agreement entered into under this section shall require that the 50130
enterprise pay an annual fee equal to the greater of one per cent 50131
of the dollar value of incentives offered under the agreement or 50132
five hundred dollars; provided, however, that if the value of the 50133
incentives exceeds two hundred fifty thousand dollars, the fee 50134
shall not exceed two thousand five hundred dollars. The fee shall 50135
be payable to the legislative authority once per year for each 50136
year the agreement is effective on the days and in the form 50137
specified in the agreement. Fees paid shall be deposited in a 50138
special fund created for such purpose by the legislative authority 50139
and shall be used by the legislative authority exclusively for the 50140
purpose of complying with section 5709.68 of the Revised Code and 50141
by the tax incentive review council created under section 5709.85 50142
of the Revised Code exclusively for the purposes of performing the 50143
duties prescribed under that section. The legislative authority 50144
may waive or reduce the amount of the fee charged against an 50145
enterprise, but such a waiver or reduction does not affect the 50146
obligations of the legislative authority or the tax incentive 50147
review council to comply with section 5709.68 or 5709.85 of the 50148

Revised Code. 50149

(H) When an agreement is entered into pursuant to this 50150
section, the legislative authority authorizing the agreement shall 50151
forward a copy of the agreement to the director of development and 50152
to the tax commissioner within fifteen days after the agreement is 50153
entered into. If any agreement includes terms not provided for in 50154
section 5709.631 of the Revised Code affecting the revenue of a 50155
city, local, or exempted village school district or causing 50156
revenue to be foregone by the district, including any compensation 50157
to be paid to the school district pursuant to section 5709.82 of 50158
the Revised Code, those terms also shall be forwarded in writing 50159
to the director of development along with the copy of the 50160
agreement forwarded under this division. 50161

(I) After an agreement is entered into, the enterprise shall 50162
file with each personal property tax return required to be filed, 50163
or annual report required to be filed under section 5727.08 of the 50164
Revised Code, while the agreement is in effect, an informational 50165
return, on a form prescribed by the tax commissioner for that 50166
purpose, setting forth separately the property, and related costs 50167
and values, exempted from taxation under the agreement. 50168

(J) Enterprises may agree to give preference to residents of 50169
the zone within which the agreement applies relative to residents 50170
of this state who do not reside in the zone when hiring new 50171
employees under the agreement. 50172

(K) An agreement entered into under this section may include 50173
a provision requiring the enterprise to create one or more 50174
temporary internship positions for students enrolled in a course 50175
of study at a school or other educational institution in the 50176
vicinity, and to create a scholarship or provide another form of 50177
educational financial assistance for students holding such a 50178
position in exchange for the student's commitment to work for the 50179
enterprise at the completion of the internship. 50180

Sec. 5709.63. (A) With the consent of the legislative 50181
authority of each affected municipal corporation or of a board of 50182
township trustees, a board of county commissioners may, in the 50183
manner set forth in section 5709.62 of the Revised Code, designate 50184
one or more areas in one or more municipal corporations or in 50185
unincorporated areas of the county as proposed enterprise zones. A 50186
board of county commissioners may designate no more than one area 50187
within a township, or within adjacent townships, as a proposed 50188
enterprise zone. The board shall petition the director of 50189
development for certification of the area as having the 50190
characteristics set forth in division (A)(1) or (2) of section 50191
5709.61 of the Revised Code as amended by Substitute Senate Bill 50192
No. 19 of the 120th general assembly. Except as otherwise provided 50193
in division (D) of this section, on and after July 1, 1994, boards 50194
of county commissioners shall not enter into agreements under this 50195
section unless the board has petitioned the director and the 50196
director has certified the zone under this section as amended by 50197
that act; however, all agreements entered into under this section 50198
as it existed prior to July 1, 1994, and the incentives granted 50199
under those agreements shall remain in effect for the period 50200
agreed to under those agreements. The director shall make the 50201
determination in the manner provided under section 5709.62 of the 50202
Revised Code. Any enterprise wishing to enter into an agreement 50203
with the board under division (B) or (D) of this section shall 50204
submit a proposal to the board on the form and accompanied by the 50205
application fee prescribed under division (B) of section 5709.62 50206
of the Revised Code. The enterprise shall review and update the 50207
estimates and listings required by the form in the manner required 50208
under that division. The board may, on a separate form and at any 50209
time, require any additional information necessary to determine 50210
whether an enterprise is in compliance with an agreement and to 50211
collect the information required to be reported under section 50212

5709.68 of the Revised Code. 50213

(B) If the board of county commissioners finds that an 50214
enterprise submitting a proposal is qualified by financial 50215
responsibility and business experience to create and preserve 50216
employment opportunities in the zone and to improve the economic 50217
climate of the municipal corporation or municipal corporations or 50218
the unincorporated areas in which the zone is located and to which 50219
the proposal applies, the board, on or before ~~June 30, 2004~~ 50220
October 15, 2009, and with the consent of the legislative 50221
authority of each affected municipal corporation or of the board 50222
of township trustees may do either of the following: 50223

(1) Enter into an agreement with the enterprise under which 50224
the enterprise agrees to establish, expand, renovate, or occupy a 50225
facility in the zone and hire new employees, or preserve 50226
employment opportunities for existing employees, in return for the 50227
following incentives: 50228

(a) When the facility is located in a municipal corporation, 50229
the board may enter into an agreement for one or more of the 50230
incentives provided in division (C) of section 5709.62 of the 50231
Revised Code, subject to division (D) of that section; 50232

(b) When the facility is located in an unincorporated area, 50233
the board may enter into an agreement for one or more of the 50234
following incentives: 50235

(i) Exemption for a specified number of years, not to exceed 50236
ten, of a specified portion, up to sixty per cent, of the assessed 50237
value of tangible personal property first used in business at a 50238
project site as a result of the agreement. An exemption granted 50239
pursuant to this division applies to inventory required to be 50240
listed pursuant to sections 5711.15 and 5711.16 of the Revised 50241
Code, except, in the instance of an expansion or other situations 50242
in which an enterprise was in business at the facility prior to 50243

the establishment of the zone, the inventory that is exempt is 50244
that amount or value of inventory in excess of the amount or value 50245
of inventory required to be listed in the personal property tax 50246
return of the enterprise in the return for the tax year in which 50247
the agreement is entered into. 50248

(ii) Exemption for a specified number of years, not to exceed 50249
ten, of a specified portion, up to sixty per cent, of the increase 50250
in the assessed valuation of real property constituting the 50251
project site subsequent to formal approval of the agreement by the 50252
board; 50253

(iii) Provision for a specified number of years, not to 50254
exceed ten, of any optional services or assistance the board is 50255
authorized to provide with regard to the project site; 50256

(iv) The incentive described in division (C)(2) of section 50257
5709.62 of the Revised Code. 50258

(2) Enter into an agreement with an enterprise that plans to 50259
purchase and operate a large manufacturing facility that has 50260
ceased operation or has announced its intention to cease 50261
operation, in return for exemption for a specified number of 50262
years, not to exceed ten, of a specified portion, up to one 50263
hundred per cent, of tangible personal property used in business 50264
at the project site as a result of the agreement, or of real 50265
property constituting the project site, or both. 50266

(C)(1) Notwithstanding divisions (B)(1)(b)(i) and (ii) of 50267
this section, the portion of the assessed value of tangible 50268
personal property or of the increase in the assessed valuation of 50269
real property exempted from taxation under those divisions may 50270
exceed sixty per cent in any year for which that portion is 50271
exempted if the average percentage exempted for all years in which 50272
the agreement is in effect does not exceed fifty per cent, or if 50273
the board of education of the city, local, or exempted village 50274

school district within the territory of which the property is or 50275
will be located approves a percentage in excess of sixty per cent. 50276
For the purpose of obtaining such approval, the board of 50277
commissioners shall deliver to the board of education a notice not 50278
later than forty-five days prior to approving the agreement, 50279
excluding Saturdays, Sundays, and legal holidays as defined in 50280
section 1.14 of the Revised Code. The notice shall state the 50281
percentage to be exempted, an estimate of the true value of the 50282
property to be exempted, and the number of years the property is 50283
to be exempted. The board of education, by resolution adopted by a 50284
majority of the board, shall approve or disapprove the agreement 50285
and certify a copy of the resolution to the board of commissioners 50286
not later than fourteen days prior to the date stipulated by the 50287
board of commissioners as the date upon which approval of the 50288
agreement is to be formally considered by the board of 50289
commissioners. The board of education may include in the 50290
resolution conditions under which the board would approve the 50291
agreement, including the execution of an agreement to compensate 50292
the school district under division (B) of section 5709.82 of the 50293
Revised Code. The board of county commissioners may approve the 50294
agreement at any time after the board of education certifies its 50295
resolution approving the agreement to the board of county 50296
commissioners, or, if the board of education approves the 50297
agreement conditionally, at any time after the conditions are 50298
agreed to by the board of education and the board of county 50299
commissioners. 50300

If a board of education has adopted a resolution waiving its 50301
right to approve agreements and the resolution remains in effect, 50302
approval of an agreement by the board of education is not required 50303
under division (C) of this section. If a board of education has 50304
adopted a resolution allowing a board of county commissioners to 50305
deliver the notice required under this division fewer than 50306
forty-five business days prior to approval of the agreement by the 50307

board of county commissioners, the board of county commissioners 50308
shall deliver the notice to the board of education not later than 50309
the number of days prior to such approval as prescribed by the 50310
board of education in its resolution. If a board of education 50311
adopts a resolution waiving its right to approve agreements or 50312
shortening the notification period, the board of education shall 50313
certify a copy of the resolution to the board of county 50314
commissioners. If the board of education rescinds such a 50315
resolution, it shall certify notice of the rescission to the board 50316
of county commissioners. 50317

(2) The board of county commissioners shall comply with 50318
section 5709.83 of the Revised Code unless the board of education 50319
has adopted a resolution under that section waiving its right to 50320
receive such notice. 50321

(D) This division applies to zones certified by the director 50322
of development under this section prior to July 22, 1994. 50323

On or before ~~June 30, 2004~~ October 15, 2009, and with the 50324
consent of the legislative authority of each affected municipal 50325
corporation or board of township trustees of each affected 50326
township, the board of commissioners that designated a zone to 50327
which this division applies may enter into an agreement with an 50328
enterprise if the board makes the finding required under that 50329
division and determines that the enterprise satisfies one of the 50330
criteria described in divisions (D)(1) to (5) of this section: 50331

(1) The enterprise currently has no operations in this state 50332
and, subject to approval of the agreement, intends to establish 50333
operations in the zone; 50334

(2) The enterprise currently has operations in this state 50335
and, subject to approval of the agreement, intends to establish 50336
operations at a new location in the zone that would not result in 50337
a reduction in the number of employee positions at any of the 50338

enterprise's other locations in this state; 50339

(3) The enterprise, subject to approval of the agreement, 50340
intends to relocate operations, currently located in another 50341
state, to the zone; 50342

(4) The enterprise, subject to approval of the agreement, 50343
intends to expand operations at an existing site in the zone that 50344
the enterprise currently operates; 50345

(5) The enterprise, subject to approval of the agreement, 50346
intends to relocate operations, currently located in this state, 50347
to the zone, and the director of development has issued a waiver 50348
for the enterprise under division (B) of section 5709.633 of the 50349
Revised Code. 50350

The agreement shall require the enterprise to agree to 50351
establish, expand, renovate, or occupy a facility in the zone and 50352
hire new employees, or preserve employment opportunities for 50353
existing employees, in return for one or more of the incentives 50354
described in division (B) of this section. 50355

(E) All agreements entered into under this section shall be 50356
in the form prescribed under section 5709.631 of the Revised Code. 50357
After an agreement under this section is entered into, if the 50358
board of county commissioners revokes its designation of the zone, 50359
or if the director of development revokes the zone's 50360
certification, any entitlements granted under the agreement shall 50361
continue for the number of years specified in the agreement. 50362

(F) Except as otherwise provided in this paragraph, an 50363
agreement entered into under this section shall require that the 50364
enterprise pay an annual fee equal to the greater of one per cent 50365
of the dollar value of incentives offered under the agreement or 50366
five hundred dollars; provided, however, that if the value of the 50367
incentives exceeds two hundred fifty thousand dollars, the fee 50368
shall not exceed two thousand five hundred dollars. The fee shall 50369

be payable to the board of commissioners once per year for each 50370
year the agreement is effective on the days and in the form 50371
specified in the agreement. Fees paid shall be deposited in a 50372
special fund created for such purpose by the board and shall be 50373
used by the board exclusively for the purpose of complying with 50374
section 5709.68 of the Revised Code and by the tax incentive 50375
review council created under section 5709.85 of the Revised Code 50376
exclusively for the purposes of performing the duties prescribed 50377
under that section. The board may waive or reduce the amount of 50378
the fee charged against an enterprise, but such waiver or 50379
reduction does not affect the obligations of the board or the tax 50380
incentive review council to comply with section 5709.68 or 5709.85 50381
of the Revised Code, respectively. 50382

(G) With the approval of the legislative authority of a 50383
municipal corporation or the board of township trustees of a 50384
township in which a zone is designated under division (A) of this 50385
section, the board of county commissioners may delegate to that 50386
legislative authority or board any powers and duties of the board 50387
to negotiate and administer agreements with regard to that zone 50388
under this section. 50389

(H) When an agreement is entered into pursuant to this 50390
section, the legislative authority authorizing the agreement shall 50391
forward a copy of the agreement to the director of development and 50392
to the tax commissioner within fifteen days after the agreement is 50393
entered into. If any agreement includes terms not provided for in 50394
section 5709.631 of the Revised Code affecting the revenue of a 50395
city, local, or exempted village school district or causing 50396
revenue to be foregone by the district, including any compensation 50397
to be paid to the school district pursuant to section 5709.82 of 50398
the Revised Code, those terms also shall be forwarded in writing 50399
to the director of development along with the copy of the 50400
agreement forwarded under this division. 50401

(I) After an agreement is entered into, the enterprise shall 50402
file with each personal property tax return required to be filed, 50403
or annual report that is required to be filed under section 50404
5727.08 of the Revised Code, while the agreement is in effect, an 50405
informational return, on a form prescribed by the tax commissioner 50406
for that purpose, setting forth separately the property, and 50407
related costs and values, exempted from taxation under the 50408
agreement. 50409

(J) Enterprises may agree to give preference to residents of 50410
the zone within which the agreement applies relative to residents 50411
of this state who do not reside in the zone when hiring new 50412
employees under the agreement. 50413

(K) An agreement entered into under this section may include 50414
a provision requiring the enterprise to create one or more 50415
temporary internship positions for students enrolled in a course 50416
of study at a school or other educational institution in the 50417
vicinity, and to create a scholarship or provide another form of 50418
educational financial assistance for students holding such a 50419
position in exchange for the student's commitment to work for the 50420
enterprise at the completion of the internship. 50421

Sec. 5709.632. (A)(1) The legislative authority of a 50422
municipal corporation defined by the United States office of 50423
management and budget as a central city of a metropolitan 50424
statistical area may, in the manner set forth in section 5709.62 50425
of the Revised Code, designate one or more areas in the municipal 50426
corporation as a proposed enterprise zone. 50427

(2) With the consent of the legislative authority of each 50428
affected municipal corporation or of a board of township trustees, 50429
a board of county commissioners may, in the manner set forth in 50430
section 5709.62 of the Revised Code, designate one or more areas 50431
in one or more municipal corporations or in unincorporated areas 50432

of the county as proposed urban jobs and enterprise zones, except 50433
that a board of county commissioners may designate no more than 50434
one area within a township, or within adjacent townships, as a 50435
proposed urban jobs and enterprise zone. 50436

(3) The legislative authority or board of county 50437
commissioners may petition the director of development for 50438
certification of the area as having the characteristics set forth 50439
in division (A)(3) of section 5709.61 of the Revised Code. Within 50440
sixty days after receiving such a petition, the director shall 50441
determine whether the area has the characteristics set forth in 50442
that division and forward the findings to the legislative 50443
authority or board of county commissioners. If the director 50444
certifies the area as having those characteristics and thereby 50445
certifies it as a zone, the legislative authority or board may 50446
enter into agreements with enterprises under division (B) of this 50447
section. Any enterprise wishing to enter into an agreement with a 50448
legislative authority or board of commissioners under this section 50449
and satisfying one of the criteria described in divisions (B)(1) 50450
to (5) of this section shall submit a proposal to the legislative 50451
authority or board on the form prescribed under division (B) of 50452
section 5709.62 of the Revised Code and shall review and update 50453
the estimates and listings required by the form in the manner 50454
required under that division. The legislative authority or board 50455
may, on a separate form and at any time, require any additional 50456
information necessary to determine whether an enterprise is in 50457
compliance with an agreement and to collect the information 50458
required to be reported under section 5709.68 of the Revised Code. 50459

(B) Prior to entering into an agreement with an enterprise, 50460
the legislative authority or board of county commissioners shall 50461
determine whether the enterprise submitting the proposal is 50462
qualified by financial responsibility and business experience to 50463
create and preserve employment opportunities in the zone and to 50464

improve the economic climate of the municipal corporation or 50465
municipal corporations or the unincorporated areas in which the 50466
zone is located and to which the proposal applies, and whether the 50467
enterprise satisfies one of the following criteria: 50468

(1) The enterprise currently has no operations in this state 50469
and, subject to approval of the agreement, intends to establish 50470
operations in the zone; 50471

(2) The enterprise currently has operations in this state 50472
and, subject to approval of the agreement, intends to establish 50473
operations at a new location in the zone that would not result in 50474
a reduction in the number of employee positions at any of the 50475
enterprise's other locations in this state; 50476

(3) The enterprise, subject to approval of the agreement, 50477
intends to relocate operations, currently located in another 50478
state, to the zone; 50479

(4) The enterprise, subject to approval of the agreement, 50480
intends to expand operations at an existing site in the zone that 50481
the enterprise currently operates; 50482

(5) The enterprise, subject to approval of the agreement, 50483
intends to relocate operations, currently located in this state, 50484
to the zone, and the director of development has issued a waiver 50485
for the enterprise under division (B) of section 5709.633 of the 50486
Revised Code. 50487

(C) If the legislative authority or board determines that the 50488
enterprise is so qualified and satisfies one of the criteria 50489
described in divisions (B)(1) to (5) of this section, the 50490
legislative authority or board may, after complying with section 50491
5709.83 of the Revised Code and on or before ~~June 30, 2004~~ October 50492
15, 2009, and, in the case of a board of commissioners, with the 50493
consent of the legislative authority of each affected municipal 50494
corporation or of the board of township trustees, enter into an 50495

agreement with the enterprise under which the enterprise agrees to 50496
establish, expand, renovate, or occupy a facility in the zone and 50497
hire new employees, or preserve employment opportunities for 50498
existing employees, in return for the following incentives: 50499

(1) When the facility is located in a municipal corporation, 50500
a legislative authority or board of commissioners may enter into 50501
an agreement for one or more of the incentives provided in 50502
division (C) of section 5709.62 of the Revised Code, subject to 50503
division (D) of that section; 50504

(2) When the facility is located in an unincorporated area, a 50505
board of commissioners may enter into an agreement for one or more 50506
of the incentives provided in divisions (B)(1)(b), (B)(2), and 50507
(B)(3) of section 5709.63 of the Revised Code, subject to division 50508
(C) of that section. 50509

(D) All agreements entered into under this section shall be 50510
in the form prescribed under section 5709.631 of the Revised Code. 50511
After an agreement under this section is entered into, if the 50512
legislative authority or board of county commissioners revokes its 50513
designation of the zone, or if the director of development revokes 50514
the zone's certification, any entitlements granted under the 50515
agreement shall continue for the number of years specified in the 50516
agreement. 50517

(E) Except as otherwise provided in this division, an 50518
agreement entered into under this section shall require that the 50519
enterprise pay an annual fee equal to the greater of one per cent 50520
of the dollar value of incentives offered under the agreement or 50521
five hundred dollars; provided, however, that if the value of the 50522
incentives exceeds two hundred fifty thousand dollars, the fee 50523
shall not exceed two thousand five hundred dollars. The fee shall 50524
be payable to the legislative authority or board of commissioners 50525
once per year for each year the agreement is effective on the days 50526
and in the form specified in the agreement. Fees paid shall be 50527

deposited in a special fund created for such purpose by the 50528
legislative authority or board and shall be used by the 50529
legislative authority or board exclusively for the purpose of 50530
complying with section 5709.68 of the Revised Code and by the tax 50531
incentive review council created under section 5709.85 of the 50532
Revised Code exclusively for the purposes of performing the duties 50533
prescribed under that section. The legislative authority or board 50534
may waive or reduce the amount of the fee charged against an 50535
enterprise, but such waiver or reduction does not affect the 50536
obligations of the legislative authority or board or the tax 50537
incentive review council to comply with section 5709.68 or 5709.85 50538
of the Revised Code, respectively. 50539

(F) With the approval of the legislative authority of a 50540
municipal corporation or the board of township trustees of a 50541
township in which a zone is designated under division (A)(2) of 50542
this section, the board of county commissioners may delegate to 50543
that legislative authority or board any powers and duties of the 50544
board to negotiate and administer agreements with regard to that 50545
zone under this section. 50546

(G) When an agreement is entered into pursuant to this 50547
section, the legislative authority or board of commissioners 50548
authorizing the agreement shall forward a copy of the agreement to 50549
the director of development and to the tax commissioner within 50550
fifteen days after the agreement is entered into. If any agreement 50551
includes terms not provided for in section 5709.631 of the Revised 50552
Code affecting the revenue of a city, local, or exempted village 50553
school district or causing revenue to be foregone by the district, 50554
including any compensation to be paid to the school district 50555
pursuant to section 5709.82 of the Revised Code, those terms also 50556
shall be forwarded in writing to the director of development along 50557
with the copy of the agreement forwarded under this division. 50558

(H) After an agreement is entered into, the enterprise shall 50559

file with each personal property tax return required to be filed 50560
while the agreement is in effect, an informational return, on a 50561
form prescribed by the tax commissioner for that purpose, setting 50562
forth separately the property, and related costs and values, 50563
exempted from taxation under the agreement. 50564

(I) An agreement entered into under this section may include 50565
a provision requiring the enterprise to create one or more 50566
temporary internship positions for students enrolled in a course 50567
of study at a school or other educational institution in the 50568
vicinity, and to create a scholarship or provide another form of 50569
educational financial assistance for students holding such a 50570
position in exchange for the student's commitment to work for the 50571
enterprise at the completion of the internship. 50572

Sec. 5709.64. (A) If an enterprise has been granted an 50573
incentive for the current calendar year under an agreement entered 50574
pursuant to section 5709.62, 5709.63, or 5709.632 of the Revised 50575
Code, it may apply, on or before the thirtieth day of April of 50576
that year, to the director of development, on a form prescribed by 50577
the director, for a tax incentive qualification certificate. The 50578
enterprise qualifies for an initial certificate if, on or before 50579
the last day of the calendar year immediately preceding that in 50580
which application is made, it satisfies all of the following 50581
requirements: 50582

(1) The enterprise has established, expanded, renovated, or 50583
occupied a facility pursuant to the agreement under section 50584
5709.62, 5709.63, or 5709.632 of the Revised Code. 50585

(2) The enterprise has hired new employees to fill nonretail 50586
positions at the facility, at least twenty-five per cent of whom 50587
at the time they were employed were at least one of the following: 50588

(a) Unemployed persons who had resided at least six months in 50589
the county in which the enterprise's project site is located; 50590

(b) JPTA eligible employees who had resided at least six months in the county in which the enterprise's project site is located; 50591
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(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; 50594
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(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; 50602
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(e) Residents for at least one year of a zone located in the county in which the enterprise's project site is located. 50606
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The director of development shall, by rule, establish criteria for determining what constitutes a nonretail position at a facility. 50608
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(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 50611
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enterprise in the municipal corporation during each period of the 50622
calendar year immediately preceding the calendar year in which 50623
application is made must exceed only the maximum number of 50624
positions attributable to the enterprise in each corresponding 50625
period of the calendar year immediately preceding the first year 50626
the enterprise satisfies the requirements of divisions (A)(1) and 50627
(2) of this section. The director of development shall, by rule, 50628
prescribe methods for determining whether an enterprise is engaged 50629
in a seasonal business and for determining the length of the 50630
corresponding periods to be compared. 50631

(4) The enterprise has not closed or reduced employment at 50632
any place of business in the state for the primary purpose of 50633
establishing, expanding, renovating, or occupying a facility. The 50634
legislative authority of any municipal corporation or the board of 50635
county commissioners of any county that concludes that an 50636
enterprise has closed or reduced employment at a place of business 50637
in that municipal corporation or county for the primary purpose of 50638
establishing, expanding, renovating, or occupying a facility in a 50639
zone may appeal to the director to determine whether the 50640
enterprise has done so. Upon receiving such an appeal, the 50641
director shall investigate the allegations and make such a 50642
determination before issuing an initial or renewal tax incentive 50643
qualification certificate under this section. 50644

Within sixty days after receiving an application under this 50645
division, the director shall review, investigate, and verify the 50646
application and determine whether the enterprise qualifies for a 50647
certificate. The application shall include an affidavit executed 50648
by the applicant verifying that the enterprise satisfies the 50649
requirements of division (A)(2) of this section, and shall contain 50650
such information and documents as the director requires, by rule, 50651
to ascertain whether the enterprise qualifies for a certificate. 50652
If the director finds the enterprise qualified, the director shall 50653

issue a tax incentive qualification certificate, which shall bear 50654
as its date of issuance the thirtieth day of June of the year of 50655
application, and shall state that the applicant is entitled to 50656
receive, for the taxable year that includes the certificate's date 50657
of issuance, the tax incentives provided under section 5709.65 of 50658
the Revised Code with regard to the facility to which the 50659
certificate applies. If an enterprise is issued an initial 50660
certificate, it may apply, on or before the thirtieth day of April 50661
of each succeeding calendar year for which it has been granted an 50662
incentive under an agreement entered pursuant to section 5709.62, 50663
5709.63, or 5709.632 of the Revised Code, for a renewal 50664
certificate. Subsequent to its initial certification, the 50665
enterprise qualifies for up to three successive renewal 50666
certificates if, on or before the last day of the calendar year 50667
immediately preceding that in which the application is made, it 50668
satisfies all the requirements of divisions (A)(1) to (4) of this 50669
section, and neither the zone's designation nor the zone's 50670
certification has been revoked prior to the fifteenth day of June 50671
of the year in which the application is made. The application 50672
shall include an affidavit executed by the applicant verifying 50673
that the enterprise satisfies the requirements of division (A)(2) 50674
of this section. An enterprise with ten or more supervisory 50675
personnel at the facility to which a certificate applies qualifies 50676
for any subsequent renewal certificates only if it meets all of 50677
the foregoing requirements and, in addition, at least ten per cent 50678
of those supervisory personnel are employees who, when first hired 50679
by the enterprise, satisfied at least one of the criteria 50680
specified in divisions (A)(2)(a) to (e) of this section. If the 50681
enterprise qualifies, a renewal certificate shall be issued 50682
bearing as its date of issuance the thirtieth day of June of the 50683
year of application. The director shall send copies of the initial 50684
certificate, and each renewal certificate, by certified mail, to 50685
the enterprise, the tax commissioner, the board of county 50686

commissioners, and the chief executive of the municipal 50687
corporation in which the facility to which the certificate applies 50688
is located. 50689

(B) If the director determines that an enterprise is not 50690
qualified for an initial or renewal tax incentive qualification 50691
certificate, the director shall send notice of this determination, 50692
specifying the reasons for it, by certified mail, to the 50693
applicant, the tax commissioner, the board of county 50694
commissioners, and the chief executive of the municipal 50695
corporation in which the facility to which the certificate would 50696
have applied is located. Within thirty days after receiving such a 50697
notice, an enterprise may request, in writing, a hearing before 50698
the director for the purpose of reviewing the application and the 50699
reasons for the determination. Within sixty days after receiving a 50700
request for a hearing, the director shall afford one and, within 50701
thirty days after the hearing, shall issue a redetermination of 50702
the enterprise's qualification for a certificate. If the 50703
enterprise is found to be qualified, the director shall proceed in 50704
the manner provided under division (A) of this section. If the 50705
enterprise is found to be unqualified, the director shall send 50706
notice of this finding, by certified mail, to the applicant, the 50707
tax commissioner, the board of county commissioners, and the chief 50708
executive of the municipal corporation in which the facility to 50709
which the certificate would have applied is located. The 50710
director's redetermination that an enterprise is unqualified may 50711
be appealed to the board of tax appeals in the manner provided 50712
under section 5717.02 of the Revised Code. 50713

Sec. 5709.67. (A) Except as otherwise provided in sections 50714
5709.61 to 5709.69 of the Revised Code, the director of 50715
development shall administer those sections and shall adopt such 50716
rules as are necessary to ensure that no zone is certified or 50717
remains certified unless it meets any applicable requirements of 50718

division (A) of section 5709.61 of the Revised Code, ~~and to~~ 50719
~~determine the number of positions attributable to an enterprise~~ 50720
~~for the purposes of division (A)(3) of section 5709.64 of the~~ 50721
~~Revised Code.~~ The director shall assign to each zone currently 50722
certified a unique designation by which the zone shall be 50723
identified for purposes of administering sections 5709.61 to 50724
5709.69 of the Revised Code. The tax commissioner shall administer 50725
all other tax incentives provided under sections 5709.61 to 50726
5709.69 of the Revised Code and shall adopt such rules as are 50727
necessary to carry out that duty. No tax incentive qualification 50728
certificate or employee tax credit certificate shall be issued or 50729
remain in effect unless the enterprise applying for or holding the 50730
certificate complies with all such rules. The director of job and 50731
family services shall administer the incentive provided under 50732
division (B)(1) of former section 5709.66 of the Revised Code and 50733
shall adopt such rules as are necessary to carry out that duty. No 50734
extension of benefits certificate shall be issued or remain in 50735
effect unless the enterprise applying for or holding the 50736
certificate complies with all such rules. 50737

(B) Not later than the first day of August each year, the 50738
director of development shall report to the general assembly on 50739
all of the following for the preceding calendar year: 50740

(1) The cost to the state of the tax and other incentives 50741
provided under sections 5709.61 to 5709.69 of the Revised Code; 50742

(2) The number of tax incentive qualification certificates, 50743
employee tax credit certificates, and extension of benefits 50744
certificates issued; 50745

(3) The names of the municipal corporations and counties that 50746
have entered agreements under sections 5709.62, 5709.63, and 50747
5709.632 of the Revised Code; 50748

(4) The number of new employees hired as a result of the tax 50749

and other incentives provided under sections 5709.61 to 5709.69 of 50750
the Revised Code; 50751

(5) Information on agreement terms concerning school district 50752
revenue that are not provided for in section 5709.631 of the 50753
Revised Code and that are forwarded to the director under division 50754
(H) of section 5709.62, division (H) of section 5709.63, or 50755
division (G) of section 5709.632 of the Revised Code. 50756

The report shall include a finding by the director as to 50757
whether the incentives provided under sections 5709.61 to 5709.69 50758
of the Revised Code have resulted in the creation of more 50759
positions in the state than would have been created without the 50760
incentives. The director shall send a copy of the report to each 50761
member of the general assembly and to the director of the 50762
legislative service commission. 50763

(C) All forms used in connection with the administration of 50764
sections 5709.61 to 5709.69 of the Revised Code, except forms 50765
administered directly by the tax commissioner, by the director of 50766
job and family services, or by a county or municipal corporation, 50767
are subject to review and approval by the state forms management 50768
control center under sections 125.91 to 125.98 of the Revised 50769
Code. 50770

Sec. 5709.84. (A) As used in this section: 50771

(1) "Local railroad operations" means the provision of 50772
railroad service by a qualified railroad company within the 50773
territorial jurisdiction of a county, township, or municipal 50774
corporation, which railroad service replaces railroad service that 50775
was discontinued in the territorial jurisdiction of the county, 50776
township, or municipal corporation on or after January 1, 1980. 50777

(2) "Qualified railroad company" means a railroad company as 50778
defined in division (D)~~(9)~~(8) of section 5727.01 of the Revised 50779

Code that is formed by a person or governmental entity to provide 50780
local railroad operations. 50781

(B) The legislative authority of a county, township, or 50782
municipal corporation, by resolution or ordinance, may declare any 50783
of the following as being used for a public purpose: 50784

(1) Real and tangible personal property owned by the county, 50785
township, or municipal corporation that is leased or otherwise 50786
made available to a qualified railroad company for use in local 50787
railroad operations; 50788

(2) Real and tangible personal property owned by any other 50789
public or any private entity that is leased or otherwise made 50790
available to a qualified railroad company for use in local 50791
railroad operations; 50792

(3) Real and tangible personal property owned by a qualified 50793
railroad company that is used in local railroad operations. 50794

Real and tangible personal property declared as being used 50795
for a public purpose under division (B)(1), (2), or (3) of this 50796
section is exempt from taxation for a period, not to exceed ten 50797
years, specified in the resolution or ordinance declaring the 50798
property as being used for a public purpose and commencing on the 50799
effective date of the resolution or ordinance. The exemption 50800
applies to the property only in the proportion it is used in local 50801
railroad operations within the territorial jurisdiction of the 50802
county, township, or municipal corporation that declared it as 50803
being used for a public purpose. 50804

The legislative authority shall not take formal action to 50805
adopt a resolution or an ordinance that grants a tax exemption 50806
under this section until section 5709.83 of the Revised Code has 50807
been complied with. Upon adopting the resolution or ordinance, the 50808
legislative authority shall transmit a certified copy to the tax 50809
commissioner, the county auditor, and the county treasurer. 50810

(C) At any time during the period of an exemption, the legislative authority, without prior announcement and at such times as it considers appropriate or necessary, may inspect the real and tangible personal property so exempted and the financial records and business activities of the qualified railroad company receiving the exemption to verify that the property so exempted is in use for local railroad operations. A qualified railroad company receiving an exemption shall cooperate with the legislative authority in an inspection, and shall provide any information relevant to the exemption that is requested by the legislative authority.

If the legislative authority determines that exempted property is not in use for local railroad operations, or if a qualified railroad company interferes with an inspection or fails to answer a request for information, the legislative authority, by resolution or ordinance, may suspend its declaration under division (B) of this section until it verifies that the qualified railroad company is using the property for local railroad operations, or may revoke the declaration. The legislative authority shall transmit a certified copy of a resolution or ordinance suspending or revoking its declaration to the tax commissioner, the county auditor, and the county treasurer. The county auditor and county treasurer shall place the property on the tax list and duplicate for the tax year in which the resolution or ordinance of suspension or revocation was adopted. The qualified railroad company may appeal the suspension or revocation to the court of common pleas in the county in which the exemption is granted.

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

taxable value in excess of ten thousand dollars shall make a 50842
return, ~~annually~~, to the county auditor of each county in which 50843
any taxable property, ~~which~~ the taxpayer must return, is required 50844
by this chapter to be listed ~~and~~. The taxpayer shall truly and 50845
correctly list ~~therein~~ on the return all taxable property so 50846
required to be listed, including property exempt under division 50847
(C)(3) of section 5709.01 of the Revised Code. Such returns shall 50848
be made on the blanks prescribed by the tax commissioner, which 50849
the county auditor shall supply at ~~his~~ the auditor's office along 50850
with blanks of the kind required for the county supplemental 50851
return required by section 5711.131 of the Revised Code ~~for the~~ 50852
~~use of taxpayers~~. The county auditor shall mail or distribute such 50853
blanks prior to the fifteenth day of February to all persons known 50854
to ~~him~~ the auditor to be taxpayers and to all persons to whom the 50855
commissioner may direct blanks of either type to be mailed or 50856
distributed, ~~and he~~. The county auditor may place listing and 50857
county supplemental blanks at convenient places in ~~his~~ the county. 50858
The failure of a taxpayer to receive or procure blanks shall not 50859
excuse ~~him~~ the taxpayer from making any return or county 50860
supplemental return. The individual required to make the return 50861
shall furnish all statements and documents, give all information 50862
required, answer all questions asked on the required blanks, and 50863
subscribe to the truth and correctness of all matters contained 50864
therein. 50865

Sec. 5711.13. A Beginning in tax year 2004, each taxpayer 50866
having taxable property with an aggregate taxable value in excess 50867
of ten thousand dollars and required to be listed in more than one 50868
county shall make a combined return to the tax commissioner 50869
listing all its taxable property in this state, in conformity with 50870
sections 5711.01 to 5711.36 of the Revised Code, including 50871
property exempt under division (C)(3) of section 5709.01 of the 50872
Revised Code, but ~~it~~ the taxpayer shall not assign ~~its~~ property of 50873

the kinds mentioned in section 5709.02 of the Revised Code to any 50874
particular taxing district or county. The tax commissioner shall 50875
assess the personal property of such taxpayer in the several 50876
taxing districts in which it is required ~~by~~ to be assessed under 50877
sections 5711.01 to 5711.36 of the Revised Code, ~~to be assessed,~~ 50878
and shall issue assessment certificates therefor to the proper 50879
county auditors at the time and in the manner required by section 50880
5711.25 of the Revised Code. All other property of such taxpayer 50881
required to be so listed shall be entered on the intangible 50882
property tax list in the office of the treasurer of state, and 50883
~~taxed~~ shall be subject to taxation under section 5707.03 of the 50884
Revised Code. The commissioner shall assess all other property of 50885
each such taxpayer and, on or before the second Monday of August 50886
annually, shall certify the total value or amount of each kind 50887
thereof to the treasurer of state, who shall enter the value or 50888
amount on the intangible property tax list in ~~his~~ the treasurer of 50889
state's office in the manner provided in sections 5725.01 to 50890
5725.26 of the Revised Code. Sections 5711.01 to 5711.36 of the 50891
Revised Code shall apply to and govern such taxpayer, its proper 50892
officers and representatives, the commissioner, and the county 50893
auditor as to all proceedings in the assessment of the property of 50894
such taxpayer. 50895

Sec. 5711.22. (A) Deposits not taxed at the source shall be 50896
listed and assessed at their amount in dollars on the day they are 50897
required to be listed. Moneys shall be listed and assessed at the 50898
amount thereof in dollars on hand on the day that they are 50899
required to be listed. In listing investments, the amount of the 50900
income yield of each for the calendar year next preceding the date 50901
of listing shall, except as otherwise provided in this chapter, be 50902
stated in dollars and cents and the assessment thereof shall be at 50903
the amount of such income yield; but any property defined as 50904
investments in either division (A) or (B) of section 5701.06 of 50905

the Revised Code that has not been outstanding for the full 50906
calendar year next preceding the date of listing, except shares of 50907
stock of like kind as other shares of the same corporation 50908
outstanding for the full calendar year next preceding the date of 50909
listing, or which has yielded no income during such calendar year 50910
shall be listed and assessed as unproductive investments, at their 50911
true value in money on the day that such investments are required 50912
to be listed. 50913

Credits and other taxable intangibles shall be listed and 50914
assessed at their true value in money on the day as of which the 50915
same are required to be listed. 50916

Shares of stock of a bank holding company, as defined in 50917
Title 12 U.S.C.A., section 1841, that are required to be listed 50918
for taxation under this division and upon which dividends were 50919
paid during the year of their issuance, which dividends are 50920
subject to taxation under the provisions of Chapter 5747. of the 50921
Revised Code, shall be exempt from the intangibles tax for the 50922
year immediately succeeding their issuance. If such shares bear 50923
dividends the first calendar year after their issuance, which 50924
dividends are subject to taxation under the provisions of Chapter 50925
5747. of the Revised Code, it shall be deemed that the 50926
nondelinquent intangible property tax pursuant to division (A) of 50927
section 5707.04 of the Revised Code was paid on those dividends 50928
paid that first calendar year after the issuance of the shares. 50929

(B)(1) Boilers, machinery, equipment, and personal property 50930
the true value of which is determined under division (B) of 50931
section 5711.21 of the Revised Code shall be listed and assessed 50932
at an amount equal to the sum of the products determined under 50933
divisions (B)(1)(a), (b), and (c) of this section. 50934

(a) Multiply the portion of the true value determined under 50935
division (B)(1) of section 5711.21 of the Revised Code by the 50936
assessment rate in division (F) of this section; 50937

(b) Multiply the portion of the true value determined under 50938
division (B)(2) of section 5711.21 of the Revised Code by the 50939
assessment rate in section 5727.111 of the Revised Code that is 50940
applicable to the production equipment of an electric company; 50941

(c) Multiply the portion of the true value determined under 50942
division (B)(3) of section 5711.21 of the Revised Code by the 50943
assessment rate in section 5727.111 of the Revised Code that is 50944
applicable to the property of an electric company that is not 50945
production equipment. 50946

(2) Personal property leased to a public utility or 50947
interexchange telecommunications company as defined in section 50948
5727.01 of the Revised Code and used directly in the rendition of 50949
a public utility service as defined in division (P) of section 50950
5739.01 of the Revised Code shall be listed and assessed at the 50951
same percentage of true value in money that such property is 50952
required to be assessed by section 5727.111 of the Revised Code if 50953
owned by the public utility or interexchange telecommunications 50954
company. 50955

(C)(1) Merchandise or an agricultural product shipped from 50956
outside this state and held in this state in a warehouse or a 50957
place of storage without further manufacturing or processing and 50958
for storage only and for shipment outside this state, but that is 50959
taxable because it does not qualify as "not used in business in 50960
this state" under division (B)(1) or (2) of section 5701.08 of the 50961
Revised Code, shall be listed and assessed at a rate of 50962
twenty-five one-hundredths of its true value in money until 50963
reduced in accordance with the following schedule: 50964

(a) For any year, subtract five one-hundredths from the rate 50965
at which such property was required to be listed and assessed in 50966
the preceding year, if the total statewide collection of all real 50967
and tangible personal property taxes for the second preceding year 50968

exceeded the total statewide collection of all real and tangible 50969
personal property taxes for the third preceding year by more than 50970
the greater of four per cent or the rate of increase from the 50971
third to the second preceding years in the average consumer price 50972
index (all urban consumers, all items) prepared by the bureau of 50973
labor statistics of the United States department of labor; 50974

(b) If no reduction in the assessment rate is made for a 50975
year, the rate is the same as for the preceding year. 50976

(2) Each year until the year the assessment rate equals zero, 50977
the tax commissioner shall determine the assessment rate required 50978
under this division and shall notify all county auditors of that 50979
rate. 50980

(3) Notwithstanding provisions to the contrary in division 50981
(B) of section 5701.08 of the Revised Code, during and after the 50982
year for which the assessment rate as calculated under this 50983
division equals zero, any merchandise or agricultural product 50984
shipped from outside this state and held in this state in any 50985
warehouse or place of storage, whether public or private, without 50986
further manufacturing or processing and for storage only and for 50987
shipment outside this state to any person for any purpose is not 50988
used in business in this state for property tax purposes. 50989

(D)(1) Merchandise or an agricultural product owned by a 50990
qualified out-of-state person shipped from outside this state and 50991
held in this state in a public warehouse without further 50992
manufacturing or processing and for temporary storage only and for 50993
shipment inside this state, but that is taxable because it does 50994
not qualify as "not used in business in this state" under division 50995
(B)(1) or (2) of section 5701.08 of the Revised Code, shall be 50996
listed and assessed at a rate of twenty-five one-hundredths of its 50997
true value in money until reduced in accordance with the following 50998
schedule: 50999

(a) For any year, subtract five one-hundredths from the rate 51000
at which such property was required to be listed and assessed in 51001
the preceding year, if the total statewide collection of all real 51002
and tangible personal property taxes for the second preceding year 51003
exceeded the total statewide collection of all real and tangible 51004
personal property taxes for the third preceding year by more than 51005
the greater of four per cent or the rate of increase from the 51006
third to the second preceding years in the average consumer price 51007
index (all urban consumers, all items) prepared by the bureau of 51008
labor statistics of the United States department of labor; 51009

(b) If no reduction in the assessment rate is made for a 51010
year, the rate is the same as for the preceding year. 51011

(2) Each year until the year the assessment rate equals zero, 51012
the tax commissioner shall determine the assessment rate required 51013
under this division and shall notify all county auditors of that 51014
rate. 51015

(3) Notwithstanding provisions to the contrary in division 51016
(B) of section 5701.08 of the Revised Code, during and after the 51017
year for which the assessment rate as calculated under this 51018
division equals zero, any merchandise or agricultural product 51019
described in division (D)(1) of this section is not used in 51020
business in this state for property tax purposes. 51021

(4) As used in division (D) of this section: 51022

(a) "Qualified out-of-state person" means a person that does 51023
not own, lease, or use property, other than merchandise or an 51024
agricultural product described in this division, in this state, 51025
and does not have employees, agents, or representatives in this 51026
state; 51027

(b) "Public warehouse" means a warehouse in this state that 51028
is not subject to the control of or under the supervision of the 51029
owner of the merchandise or agricultural product stored in it, or 51030

staffed by the owner's employees, and from which the property is 51031
to be shipped inside this state. 51032

(E) Personal property valued pursuant to section 5711.15 of 51033
the Revised Code and personal property required to be listed on 51034
the average basis by division (A) of section 5711.16 of the 51035
Revised Code, except property described in division (C) or (D) of 51036
this section, business fixtures, and furniture not held for sale 51037
in the course of business, shall be listed and assessed at the 51038
rate of twenty-five per cent of its true value in money until 51039
reduced to zero in accordance with the following schedule: 51040

(1) Beginning in tax year 2002 and for each of tax years 51041
2003, and 2004, ~~2005, and 2006,~~ subtract one percentage point from 51042
the rate at which the property was required to be listed and 51043
assessed in the preceding year, if the total statewide collection 51044
of tangible personal property taxes for the second preceding year 51045
exceeded the total statewide collection of tangible personal 51046
property taxes for the third preceding year. If no reduction in 51047
the assessment rate is made for a year, the rate is the same as 51048
for the preceding year. ~~For purposes of this division, total~~ 51049
~~statewide collection of tangible personal property taxes excludes~~ 51050
~~taxes collected from public utilities and interexchange~~ 51051
~~telecommunications companies on property that is determined to be~~ 51052
~~taxable pursuant to section 5727.06 of the Revised Code.~~ 51053

(2) In tax year ~~2007,~~ ~~the assessment rate shall be the lesser~~ 51054
~~of twenty four per cent or one percentage point less than the rate~~ 51055
~~at which property was required to be listed and assessed the~~ 51056
~~preceding year. Each 2005 and each tax year thereafter, the~~ 51057
assessment rate shall be reduced by ~~one~~ the lesser of two 51058
percentage ~~point until it equals zero per cent not later than tax~~ 51059
~~year 2031 points or the assessment rate for the preceding year if~~ 51060
the total statewide collection of tangible personal property taxes 51061
for the second preceding year exceeded the total statewide 51062

collection of tangible personal property taxes for the third 51063
preceding year. If no reduction in the assessment rate is made for 51064
a year, the rate is the same as for the preceding year. During and 51065
after the tax year that the assessment rate equals zero, the 51066
property described in division (E) of this section shall not be 51067
listed for taxation. 51068

Each year until the year the assessment rate equals zero, the 51069
tax commissioner shall determine the assessment rate required 51070
under this division and shall notify all county auditors of that 51071
rate. 51072

For purposes of division (E) of this section, "total 51073
statewide collection of tangible personal property taxes" excludes 51074
taxes collected from public utilities and interexchange 51075
telecommunications companies on property that is determined to be 51076
taxable pursuant to section 5727.06 of the Revised Code. 51077

(F) Unless otherwise provided by law, all other personal 51078
property used in business that has not been legally regarded as an 51079
improvement on land and considered in arriving at the value of the 51080
real property assessed for taxation shall be listed and assessed 51081
at the rate of twenty-five per cent of its true value in money. 51082

Sec. 5711.27. No taxpayer shall fail to make a return within 51083
the time prescribed by law, or as extended pursuant to section 51084
5711.04 of the Revised Code, nor fail to list in a return or 51085
disclose on an accompanying balance sheet or in other information 51086
filed with the return any item of taxable property ~~which he~~ the 51087
taxpayer is required ~~by~~ to list in the return under sections 51088
5711.01 to 5711.36 of the Revised Code, ~~to list therein.~~ 51089

~~If any taxpayer does so fail the following shall apply:~~ 51090

~~(A) In the case of a taxpayer who fails to make a timely~~ 51091
~~return, the assessor shall add to the taxpayer's assessment as a~~ 51092

~~penalty, one half of the taxpayer's taxable value that is exempt 51093
from taxation under division (C)(3) of section 5709.01 of the 51094
Revised Code. If the taxpayer's taxable value that is exempt from 51095
taxation under division (C)(3) of section 5709.01 of the Revised 51096
Code is located in more than one taxing district, the penalty 51097
assessment shall be applied among taxing districts as if only five 51098
thousand dollars, or one half of the taxpayer's taxable valuation, 51099
whichever is less, had been exempt from taxation under such 51100
division. 51101~~

~~(B) In the case of a taxpayer who fails to make a timely 51102
return, or fails to list or disclose any item he the taxpayer is 51103
required to return, the assessor shall add to the assessment of 51104
each class or item of taxable property ~~which~~ the taxpayer failed 51105
to return, list, or disclose ~~and to any amount added under~~ 51106
~~division (A) of this section,~~ a penalty of up to fifty per cent 51107
thereof of the assessment; but if such taxpayer makes, within 51108
sixty days after the expiration of the time prescribed by such 51109
sections, a return or an amended or supplementary return and lists 51110
therein or discloses on an accompanying balance sheet or in other 51111
information filed with the return all items of taxable property 51112
~~which he the taxpayer~~ is required by such sections to list, and in 51113
all cases in which the taxpayer's only default is ~~his~~ the failure 51114
to pay the amounts specified in section 5719.02 of the Revised 51115
Code within the time therein specified, such penalty shall be five 51116
per cent of the assessment, and, if the assessment certificate has 51117
been issued, an amended assessment certificate shall be issued and 51118
substituted therefor. 51119~~

~~Either or both of the penalties~~ The penalty provided in this 51120
section may be abated in whole or in part by the assessor when it 51121
is shown that such failure is due to reasonable cause. The penalty 51122
assessment shall be entered on the proper tax list and duplicate, 51123
and taxes shall be levied thereon the same as on the assessment 51124

itself. 51125

~~If any taxpayer does so fail with respect to a return 51126
required to be filed for tax year 1982 or any prior year, the 51127
assessor shall add to the assessment of each class or item of 51128
taxable property which the taxpayer failed to return, list or 51129
disclose in addition to the penalties provided by law, an 51130
additional charge at the rate of one half of one per cent per 51131
month from the date such property should have been returned or 51132
disclosed until the same is assessed, provided that said 51133
additional charge shall not be added to an assessment for any 51134
period of time in excess of ten years previous to the date of the 51135
assessment. 51136~~

A fiduciary against whom a penalty assessment is made shall 51137
be personally liable for the amount of taxes levied in respect to 51138
such penalty assessment and any additional charge, and in case of 51139
fraud or intent to evade taxes, such fiduciary shall have no right 51140
of reimbursement against the property held by ~~him~~ the fiduciary as 51141
such fiduciary nor against the person for whose benefit the same 51142
is held. 51143

Sec. 5711.33. (A)(1) When a county treasurer receives a 51144
certificate from a county auditor pursuant to division (A) of 51145
section 5711.32 of the Revised Code charging the treasurer with 51146
the collection of an amount of taxes due as the result of a 51147
deficiency assessment, the treasurer shall immediately prepare and 51148
mail a tax bill to the taxpayer owing such tax. The tax bill shall 51149
contain the name of the taxpayer; the taxable value, tax rate, and 51150
taxes charged for each year being assessed; the total amount of 51151
taxes due; the final date payment may be made without additional 51152
penalty; and any other information the treasurer considers 51153
pertinent or necessary. Taxes due and payable as a result of a 51154
deficiency assessment, less any amount specifically excepted from 51155

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 51188
prescribed, the treasurer shall waive the collection of and the 51189
auditor shall remit one-half of the penalty. The treasurer shall 51190
not thereafter accept less than the full amount of taxes and 51191
penalty except as otherwise authorized by law. Such penalty shall 51192
be distributed in the same manner and at the same time as the tax 51193
upon which it has accrued. The whole amount collected shall be 51194
included in the next succeeding settlement of appropriate taxes. 51195

(C) When the taxes charged, as mentioned in division (A) of 51196
this section, remain unpaid after the final date for payment 51197
prescribed by such division, such charges shall be deemed to be 51198
delinquent taxes. The county auditor shall cause such charges, 51199
including the penalty that has accrued pursuant to this section, 51200
to be added to the delinquent tax duplicate in accordance with 51201
section 5719.04 of the Revised Code. 51202

(D) The county auditor, upon consultation with the county 51203
treasurer, shall remit a penalty imposed under division (B) of 51204
this section or division (C) of section 5719.03 of the Revised 51205
Code for the late payment of taxes when: 51206

(1) The taxpayer could not make timely payment of the tax 51207
because of the negligence or error of the county auditor or county 51208
treasurer in the performance of a statutory duty relating to the 51209
levy or collection of such tax. 51210

(2) In cases other than those described in division (D)(1) of 51211
this section, the taxpayer failed to receive a tax bill or a 51212
correct tax bill, and the taxpayer made a good faith effort to 51213
obtain such bill within thirty days after the last day for payment 51214
of the tax. 51215

(3) The tax was not timely paid because of the death or 51216
serious injury of the taxpayer, or the taxpayer's confinement in a 51217
hospital within sixty days preceding the last day for payment of 51218

the tax if, in any case, the tax was subsequently paid within 51219
sixty days after the last day for payment of such tax. 51220

(4) The taxpayer demonstrates ~~to the satisfaction of the~~ 51221
~~auditor~~ that the full payment was properly deposited in the mail 51222
in sufficient time for the envelope to be postmarked by the United 51223
States postal service on or before the last day for payment of 51224
such tax. A private meter postmark on an envelope is not a valid 51225
postmark for purposes of establishing the date of payment of such 51226
tax. 51227

(5) In cases other than those described in divisions (D)(1) 51228
to (4) of this section, the taxpayer's failure to make timely 51229
payment of the tax is due to reasonable cause and not willful 51230
neglect. 51231

(E) The taxpayer, upon application within sixty days after 51232
the mailing of the county auditor's decision, may request the tax 51233
commissioner to review the denial of the remission of a penalty by 51234
the county auditor. The application may be filed in person or by 51235
certified mail. If the application is filed by certified mail, the 51236
date of the United States postmark placed on the sender's receipt 51237
by the postal service shall be treated as the date of filing. The 51238
commissioner shall consider the application, determine whether the 51239
penalty should be remitted, and certify the determination to the 51240
taxpayer and to the county treasurer and county auditor, who shall 51241
correct the tax list and duplicate accordingly. The commissioner 51242
~~shall~~ may issue orders and instructions for the uniform 51243
implementation of this section by all county auditors and county 51244
treasurers, and such orders and instructions shall be followed by 51245
such officers. 51246

Sec. 5713.07. The county auditor, at the time of making the 51247
assessment of real property subject to taxation, shall enter in a 51248
separate list pertinent descriptions of all burying grounds, 51249

public schoolhouses, houses used exclusively for public worship, 51250
institutions of purely public charity, real property used 51251
exclusively for a home for the aged, as defined in section 5701.13 51252
of the Revised Code, ~~and~~ public buildings and property used 51253
exclusively for any public purpose, and any other property, with 51254
the lot or tract of land on which such house, institution, ~~or~~ 51255
public building, or other property is situated, and which ~~are~~ 51256
exempt have been exempted from taxation by either the tax 51257
commissioner under section 5715.27 of the Revised Code or by the 51258
housing officer under section 3735.67 of the Revised Code. ~~He~~ The 51259
auditor shall value such houses, buildings, property, and lots and 51260
tracts of land at their taxable value in the same manner as ~~he~~ the 51261
auditor is required to value other real property, designating in 51262
each case the township, municipal corporation, and number of the 51263
school district, or the name or designation of the school, 51264
religious society, or institution to which each house, lot, or 51265
tract belongs. If such property is held and used for other public 51266
purposes, ~~he~~ the auditor shall state by whom or how it is held. 51267

Sec. 5713.08. (A) The county auditor shall make a list of all 51268
real and personal property in the auditor's county, including 51269
money, credits, and investments in bonds, stocks, or otherwise, 51270
which is exempted from taxation. Such list shall show the name of 51271
the owner, the value of the property exempted, and a statement in 51272
brief form of the ground on which such exemption has been granted. 51273
It shall be corrected annually by adding thereto the items of 51274
property which have been exempted during the year, and by striking 51275
therefrom the items which in the opinion of the auditor have lost 51276
their right of exemption and which have been reentered on the 51277
taxable list. No additions shall be made to such exempt lists and 51278
no additional items of property shall be exempted from taxation 51279
without the consent of the tax commissioner as is provided for in 51280
section 5715.27 of the Revised Code, ~~but when~~ or without the 51281

consent of the housing officer under section 3735.67 of the 51282
Revised Code. When any personal property or endowment fund of an 51283
institution has once been held by the commissioner to be properly 51284
exempt from taxation, it is not necessary to obtain the 51285
commissioner's consent to the exemption of additional property or 51286
investments of the same kind belonging to the same institution, 51287
but such property shall appear on the abstract filed annually with 51288
the commissioner. The commissioner may revise at any time the list 51289
in every county so that no property is improperly or illegally 51290
exempted from taxation. The auditor shall follow the orders of the 51291
commissioner given under this section. An abstract of such list 51292
shall be filed annually with the commissioner, on a form approved 51293
by the commissioner, and a copy thereof shall be kept on file in 51294
the office of each auditor for public inspection. 51295

The commissioner shall not consider an application for 51296
exemption of property unless the application has attached thereto 51297
a certificate executed by the county treasurer certifying one of 51298
the following: 51299

(1) That all taxes, assessments, interest, and penalties 51300
levied and assessed against the property sought to be exempted 51301
have been paid in full to the date upon which the application for 51302
exemption is filed, except for such taxes, interest, and penalties 51303
that may be remitted under division (B) of this section; 51304

(2) That the applicant has entered into a valid delinquent 51305
tax contract with the county treasurer pursuant to division (A) of 51306
section 323.31 of the Revised Code to pay all of the delinquent 51307
taxes, assessments, interest, and penalties charged against the 51308
property, except for such taxes, interest, and penalties that may 51309
be remitted under division (B) of this section. If the auditor 51310
receives notice under section 323.31 of the Revised Code that such 51311
a written delinquent tax contract has become void, the auditor 51312
shall strike such property from the list of exempted property and 51313

reenter such property on the taxable list. If property is removed 51314
from the exempt list because a written delinquent tax contract has 51315
become void, current taxes shall first be extended against that 51316
property on the general tax list and duplicate of real and public 51317
utility property for the tax year in which the auditor receives 51318
the notice required by division (A) of section 323.31 of the 51319
Revised Code that the delinquent tax contract has become void or, 51320
if that notice is not timely made, for the tax year in which falls 51321
the latest date by which the treasurer is required by such section 51322
to give such notice. A county auditor shall not remove from any 51323
tax list and duplicate the amount of any unpaid delinquent taxes, 51324
assessments, interest, or penalties owed on property that is 51325
placed on the exempt list pursuant to this division. 51326

(3) That a tax certificate has been issued under section 51327
5721.32 or 5721.33 of the Revised Code with respect to the 51328
property that is the subject of the application, and the tax 51329
certificate is outstanding. 51330

(B) Any taxes, interest, and penalties which have become a 51331
lien after the property was first used for the exempt purpose, but 51332
in no case prior to the date of acquisition of the title to the 51333
property by the applicant, may be remitted by the commissioner, 51334
except as is provided in division (A) of section 5713.081 of the 51335
Revised Code. 51336

(C) Real property acquired by the state in fee simple is 51337
exempt from taxation from the date of acquisition of title or date 51338
of possession, whichever is the earlier date, provided that all 51339
taxes, interest, and penalties as provided in the apportionment 51340
provisions of section 319.20 of the Revised Code have been paid to 51341
the date of acquisition of title or date of possession by the 51342
state, whichever is earlier. The proportionate amount of taxes 51343
that are a lien but not yet determined, assessed, and levied for 51344
the year in which the property is acquired, shall be remitted by 51345

the county auditor for the balance of the year from date of 51346
acquisition of title or date of possession, whichever is earlier. 51347
This section shall not be construed to authorize the exemption of 51348
such property from taxation or the remission of taxes, interest, 51349
and penalties thereon until all private use has terminated. 51350

Sec. 5713.081. (A) No application for real property tax 51351
exemption and tax remission shall be filed with, or considered by, 51352
the tax commissioner in which tax remission is requested for more 51353
than three tax years, and the commissioner shall not remit more 51354
than three years' ~~delinquent~~ taxes, penalties, and interest. 51355

(B) All taxes, penalties, and interest, that have been 51356
delinquent for more than three years, appearing on the general tax 51357
list and duplicate of real property which have been levied and 51358
assessed against parcels of real property owned by the state, any 51359
political subdivision, or any other entity whose ownership of real 51360
property would constitute public ownership, shall be collected by 51361
the county auditor of the county where the real property is 51362
located. Such ~~official~~ auditor shall deduct from each distribution 51363
made by ~~him~~ the auditor, the amount necessary to pay the tax 51364
delinquency from any revenues or funds to the credit of the state, 51365
any political subdivision, or any other entity whose ownership of 51366
real property would constitute public ownership thereof, passing 51367
under ~~his~~ the auditor's control, or which come into ~~his~~ the 51368
auditor's possession, and such deductions shall be made on a 51369
continuing basis until all delinquent taxes, penalties, and 51370
interest noted in this section have been paid. 51371

(C) As used in division (B) of this section, "political 51372
subdivision" includes townships, municipalities, counties, school 51373
districts, boards of education, all state and municipal 51374
universities, park boards, and any other entity whose ownership of 51375
real property would constitute public ownership. 51376

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. 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 51407
within that district. If so requested, the commissioner shall send 51408
to the board for the quarters ending on the last day of March, 51409
June, September, and December of each year, reports that contain 51410
sufficient information to enable the board to identify each 51411
property that is the subject of an exemption application, 51412
including, but not limited to, the name of the property owner or 51413
applicant, the address of the property, and the auditor's parcel 51414
number. The commissioner shall mail the reports on or about the 51415
fifteenth day of the month following the end of the quarter. 51416

(C) A board of education that has requested notification 51417
under division (B) of this section may, with respect to any 51418
application for exemption of property located in the district and 51419
included in the commissioner's most recent report provided under 51420
that division, file a statement with the commissioner and with the 51421
applicant indicating its intent to submit evidence and participate 51422
in any hearing on the application. The statements shall be filed 51423
prior to the first day of the third month following the end of the 51424
quarter in which that application was docketed by the 51425
commissioner. A statement filed in compliance with this division 51426
entitles the district to submit evidence and to participate in any 51427
hearing on the property and makes the district a party for 51428
purposes of sections 5717.02 to 5717.04 of the Revised Code in any 51429
appeal of the commissioner's decision to the board of tax appeals. 51430

(D) The commissioner shall not hold a hearing on or grant or 51431
deny an application for exemption of property in a school district 51432
whose board of education has requested notification under division 51433
(B) of this section until the end of the period within which the 51434
board may submit a statement with respect to that application 51435
under division (C) of this section. The commissioner may act upon 51436
an application at any time prior to that date upon receipt of a 51437
written waiver from each such board of education, or, in the case 51438

of exemptions authorized by section 725.02, 1728.10, ~~3735.67,~~ 51439
5709.41, 5709.62, or 5709.63 of the Revised Code, upon the request 51440
of the property owner. Failure of a board of education to receive 51441
the report required in division (B) of this section shall not void 51442
an action of the commissioner with respect to any application. The 51443
commissioner may extend the time for filing a statement under 51444
division (C) of this section. 51445

(E) A complaint may also be filed with the commissioner by 51446
any person, board, or officer authorized by section 5715.19 of the 51447
Revised Code to file complaints with the county board of revision 51448
against the continued exemption of any property granted exemption 51449
by the commissioner under this section. 51450

(F) An application for exemption and a complaint against 51451
exemption shall be filed prior to the thirty-first day of December 51452
of the tax year for which exemption is requested or for which the 51453
liability of ~~any~~ the property to taxation in that year is 51454
requested. The commissioner shall consider such application or 51455
complaint in accordance with procedures established by the 51456
commissioner, determine whether the property is subject to 51457
taxation or exempt therefrom, and certify the commissioner's 51458
findings to the auditor, who shall correct the tax list and 51459
duplicate accordingly. If a tax certificate has been sold under 51460
section 5721.32 or 5721.33 of the Revised Code with respect to 51461
property for which an exemption has been requested, the tax 51462
commissioner shall also certify the findings to the county 51463
treasurer of the county in which the property is located. 51464

(G) Applications and complaints, and documents of any kind 51465
related to applications and complaints, filed with the tax 51466
commissioner under this section, are public records within the 51467
meaning of section 149.43 of the Revised Code. 51468

(H) If the commissioner determines that the use of property 51469
or other facts relevant to the taxability of property that is the 51470

subject of an application for exemption or a complaint under this 51471
section has changed while the application or complaint was 51472
pending, the commissioner may make the determination under 51473
division (F) of this section separately for each tax year 51474
beginning with the year in which the application or complaint was 51475
filed or the year for which remission of ~~unpaid~~ taxes under 51476
division (B) of section 5713.08 of the Revised Code was requested, 51477
and including each subsequent tax year during which the 51478
application or complaint is pending before the commissioner. 51479

Sec. 5715.39. (A) The tax commissioner may remit real 51480
property taxes, manufactured home taxes, penalties, and interest 51481
found by the commissioner to have been illegally assessed. The 51482
commissioner also may remit any penalty charged against any real 51483
property or manufactured or mobile home that was the subject of an 51484
application for exemption from taxation under section 5715.27 of 51485
the Revised Code if the commissioner determines that the applicant 51486
requested such exemption in good faith. The commissioner shall 51487
include notice of the remission in the commissioner's 51488
certification to the county auditor required under that section. 51489

(B) The ~~commissioner, on application by a taxpayer county~~ 51490
auditor, upon consultation with the county treasurer, shall remit 51491
a penalty for late payment of any real property taxes or 51492
manufactured home taxes when: 51493

~~(A)~~(1) The taxpayer could not make timely payment of the tax 51494
because of the negligence or error of the county auditor or county 51495
treasurer in the performance of a statutory duty relating to the 51496
levy or collection of such tax. 51497

~~(B)~~(2) In cases other than those described in division 51498
~~(A)~~(B)(1) of this section, the taxpayer failed to receive a tax 51499
bill or a correct tax bill, and the taxpayer made a good faith 51500
effort to obtain such bill within thirty days after the last day 51501

for payment of the tax. 51502

~~(C)~~(3) The tax was not timely paid because of the death or 51503
serious injury of the taxpayer, or the taxpayer's confinement in a 51504
hospital within sixty days preceding the last day for payment of 51505
the tax if, in any case, the tax was subsequently paid within 51506
sixty days after the last day for payment of such tax. 51507

~~(D)~~(4) The taxpayer demonstrates ~~to the satisfaction of the~~ 51508
~~commissioner~~ that the full payment was properly deposited in the 51509
mail in sufficient time for the envelope to be postmarked by the 51510
United States postal service on or before the last day for payment 51511
of such tax. A private meter postmark on an envelope is not a 51512
valid postmark for purposes of establishing the date of payment of 51513
such tax. 51514

(5) In cases other than those described in division (B)(1) to 51515
(4) of this section, the taxpayer's failure to make timely payment 51516
of the tax is due to reasonable cause and not willful neglect. 51517

(C) The taxpayer, upon application within sixty days after 51518
the mailing of the county auditor's decision, may request the tax 51519
commissioner to review the denial of the remission of a penalty by 51520
the auditor. The application may be filed in person or by 51521
certified mail. If the application is filed by certified mail, the 51522
date of the United States postmark placed on the sender's receipt 51523
by the postal service shall be treated as the date of filing. The 51524
commissioner shall consider the application, determine whether the 51525
penalty should be remitted, and certify the determination to the 51526
taxpayer, to the county treasurer, and to the county auditor, who 51527
shall correct the tax list and duplicate accordingly. The 51528
commissioner may issue orders and instructions for the uniform 51529
implementation of this section by all county auditors and county 51530
treasurers, and such orders and instructions shall be followed by 51531
such officers. 51532

(D) 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.

(E) 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 final determinations by a tax administrator for a tax imposed on income by a municipal corporation may be taken by the taxpayer to the board of tax appeals. Such appeals shall be taken by the filing of a notice of appeal with the board and with the tax administrator. The notice of appeal shall be filed within sixty days after service of the tax administrator's final determination. 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 final determination sent by the administrator to the taxpayer 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. 51564

(C) Upon the filing of a notice of appeal, the tax administrator shall certify to the board a transcript of the record of the proceedings before the administrator, together with all evidence considered by the administrator 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. 51565
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Sec. 5717.02. Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by such decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue. Appeals from the redetermination by the director of development under division (B) of former section 5709.64 or division (A) of former section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner concerning an 51578
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application for a property tax exemption may be taken to the board 51596
of tax appeals by a school district that filed a statement 51597
concerning such application under division (C) of section 5715.27 51598
of the Revised Code. Appeals from a redetermination by the 51599
director of job and family services under section 5733.42 of the 51600
Revised Code may be taken by the person to which the notice of the 51601
redetermination is required by law to be given under that section. 51602

Such appeals shall be taken by the filing of a notice of 51603
appeal with the board, and with the tax commissioner if the tax 51604
commissioner's action is the subject of the appeal, with the 51605
director of development if that director's action is the subject 51606
of the appeal, or with the director of job and family services if 51607
that director's action is the subject of the appeal. The notice of 51608
appeal shall be filed within sixty days after service of the 51609
notice of the tax assessment, reassessment, valuation, 51610
determination, finding, computation, or order by the commissioner 51611
or redetermination by the director has been given as provided in 51612
section 5703.37, ~~5709.64, 5709.66~~, or 5733.42 or former sections 51613
5709.64 and 5709.66 of the Revised Code. The notice of such appeal 51614
may be filed in person or by certified mail, express mail, or 51615
authorized delivery service. If the notice of such appeal is filed 51616
by certified mail, express mail, or authorized delivery service as 51617
provided in section 5703.056 of the Revised Code, the date of the 51618
United States postmark placed on the sender's receipt by the 51619
postal service or the date of receipt recorded by the authorized 51620
delivery service shall be treated as the date of filing. The 51621
notice of appeal shall have attached thereto and incorporated 51622
therein by reference a true copy of the notice sent by the 51623
commissioner or director to the taxpayer, enterprise, or other 51624
person of the final determination or redetermination complained 51625
of, and shall also specify the errors therein complained of, but 51626
failure to attach a copy of such notice and incorporate it by 51627
reference in the notice of appeal does not invalidate the appeal. 51628

Upon the filing of a notice of appeal, the tax commissioner 51629
or the director, as appropriate, shall certify to the board a 51630
transcript of the record of the proceedings before the 51631
commissioner or director, together with all evidence considered by 51632
the commissioner or director in connection therewith. Such appeals 51633
or applications may be heard by the board at its office in 51634
Columbus or in the county where the appellant resides, or it may 51635
cause its examiners to conduct such hearings and to report to it 51636
their findings for affirmation or rejection. The board may order 51637
the appeal to be heard upon the record and the evidence certified 51638
to it by the commissioner or director, but upon the application of 51639
any interested party the board shall order the hearing of 51640
additional evidence, and it may make such investigation concerning 51641
the appeal as it considers proper. 51642

Sec. 5717.03. (A) A decision of the board of tax appeals on 51643
an appeal filed with it pursuant to section 5717.01, 5717.011, or 51644
5717.02 of the Revised Code shall be entered of record on the 51645
journal together with the date when the order is filed with the 51646
secretary for journalization. 51647

(B) In case of an appeal from a decision of a county board of 51648
revision, the board of tax appeals shall determine the taxable 51649
value of the property whose valuation or assessment by the county 51650
board of revision is complained of, or in the event the complaint 51651
and appeal is against a discriminatory valuation, shall determine 51652
a valuation which shall correct such discrimination, and shall 51653
determine the liability of the property for taxation, if that 51654
question is in issue, and ~~it~~ the board of tax appeals's decision 51655
and the date when it was filed with the secretary for 51656
journalization shall be certified by ~~it~~ the board by certified 51657
mail to all persons who were parties to the appeal before ~~it~~ the 51658
board, to the person in whose name the property is listed, or 51659

sought to be listed, if such person is not a party to the appeal, 51660
to the county auditor of the county in which the property involved 51661
in the appeal is located, and to the tax commissioner. 51662

In correcting a discriminatory valuation, the board of tax 51663
appeals shall increase or decrease the value of the property whose 51664
valuation or assessment by the county board of revision is 51665
complained of by a per cent or amount which will cause such 51666
property to be listed and valued for taxation by an equal and 51667
uniform rule. 51668

(C) In the case of an appeal from a review, redetermination, 51669
or correction of a tax assessment, valuation, determination, 51670
finding, computation, or order of the tax commissioner, the order 51671
of the board of tax appeals and the date of the entry thereof upon 51672
its journal shall be certified by ~~it~~ the board by certified mail 51673
to all persons who were parties to the appeal before ~~it~~ the board, 51674
the person in whose name the property is listed or sought to be 51675
listed, if the decision determines the valuation or liability of 51676
property for taxation and if such person is not a party to the 51677
appeal, the taxpayer or other person to whom notice of the tax 51678
assessment, valuation, determination, finding, computation, or 51679
order, or correction or redetermination thereof, by the tax 51680
commissioner was by law required to be given, the director of 51681
budget and management, if the revenues affected by such decision 51682
would accrue primarily to the state treasury, and the county 51683
auditors of the counties to the undivided general tax funds of 51684
which the revenues affected by such decision would primarily 51685
accrue. 51686

(D) In the case of an appeal from a final determination of a 51687
tax administrator, the order of the board of tax appeals and the 51688
date of the entry thereof upon the board's journal shall be 51689
certified by the board by certified mail to all persons who were 51690
parties to the appeal before the board. 51691

(E) In the case of all other appeals or applications filed 51692
with and determined by the board ~~its~~, the board's order and the 51693
date when ~~it~~ the order was filed by the secretary for 51694
journalization shall be certified by ~~it~~ the board by certified 51695
mail to the person who is a party to such appeal or application, 51696
to such persons as the law requires, and to such other persons as 51697
the board deems proper. 51698

(F) The orders of the board may affirm, reverse, vacate, 51699
modify, or remand the tax assessments, valuations, determinations, 51700
findings, computations, or orders complained of in the appeals 51701
determined by ~~it~~ the board, and ~~its~~ the board's decision shall 51702
become final and conclusive for the current year unless reversed, 51703
vacated, or modified as provided in section 5717.04 of the Revised 51704
Code. When an order of the board becomes final the tax 51705
commissioner and all officers to whom such decision has been 51706
certified shall make the changes in their tax lists or other 51707
records which the decision requires. 51708

(G) If the board finds that issues not raised on the appeal 51709
are important to a determination of a controversy, ~~it~~ the board 51710
may remand the cause for an administrative determination and the 51711
issuance of a new tax assessment, valuation, determination, 51712
finding, computation, or order, unless the parties stipulate to 51713
the determination of such other issues without remand. An order 51714
remanding the cause is a final order, which may be appealed to the 51715
court of appeals in Franklin county. 51716

Sec. 5719.07. Subject to the rules prescribed by the tax 51717
commissioner, a county treasurer charged with the collection of 51718
delinquent taxes may issue a certificate of release of the lien 51719
provided for in section 5719.04 of the Revised Code if the amount 51720
secured thereby has been paid or omitted from the delinquent tax 51721
list and duplicate pursuant to section 5719.06 of the Revised 51722

Code. The treasurer shall issue a certificate of partial discharge 51723
of any part of the real property subject to the lien ~~if he finds~~ 51724
after finding that the value of the part of the property remaining 51725
subject to the lien is at least double the amount of the 51726
delinquent taxes and all prior liens upon such real property. Such 51727
certificate shall be filed and recorded with the county recorder 51728
of the county in which the notice of lien has been filed, for 51729
which recording the recorder shall charge a base fee of two 51730
dollars for services and a housing trust fund fee of two dollars 51731
pursuant to section 317.36 of the Revised Code. 51732

Sec. 5725.01. As used in sections 5725.01 to 5725.26 of the 51733
Revised Code: 51734

(A) "Financial institution" means: 51735

(1) A national bank organized and existing as a national bank 51736
association pursuant to the "National Bank Act," 12 U.S.C. 21; 51737

(2) A federal savings association or federal savings bank 51738
that is chartered under 12 U.S.C. 1464; 51739

(3) A bank, banking association, trust company, savings and 51740
loan association, savings bank, or other banking institution that 51741
is incorporated or organized under the laws of any state; 51742

(4) Any corporation organized under 12 U.S.C. 611 to 631; 51743

(5) Any agency or branch of a foreign depository as defined 51744
in 12 U.S.C. 3101; 51745

(6) A company licensed as a small business investment company 51746
under the "Small Business Investment Act of 1958," 72 Stat. 689, 51747
15 U.S.C. 661, as amended; or 51748

(7) A company chartered under the "Farm Credit Act of 1933," 51749
48 Stat. 257, 12 U.S.C. 1131(d), as amended. 51750

Corporations or institutions organized under the "Federal 51751

Farm Loan Act" and amendments thereto, insurance companies, and 51752
credit unions shall not be considered financial institutions or 51753
dealers in intangibles within the meaning of such sections. 51754

(B) "Dealer in intangibles" includes every person ~~who keeps~~ 51755
~~an office or other place of business in this state and engages at~~ 51756
~~such office or other place~~ engaging in the business of lending 51757
money, or discounting, buying, or selling bills of exchange, 51758
drafts, acceptances, notes, mortgages, or other evidences of 51759
indebtedness, or of buying or selling bonds, stocks, or other 51760
investment securities, whether on the person's own account with a 51761
view to profit, or as agent or broker for others, with a view to 51762
profit or personal earnings. Dealer in intangibles excludes 51763
institutions used exclusively for charitable purposes, insurance 51764
companies, and financial institutions. Neither casual nor isolated 51765
transactions of any of the kinds enumerated in this division of 51766
this section, nor the investment of funds as personal 51767
accumulations or as business reserves or working capital 51768
constitute engaging in business within the meaning of this 51769
division of this section; but a person who, having engaged in the 51770
business of lending money, or discounting, buying, or selling 51771
bills of exchange, drafts, acceptances, notes, mortgages, or other 51772
evidences of indebtedness on the person's own account, remains in 51773
business for the purpose of realizing upon the assets of such 51774
business is deemed a dealer in intangibles, though not presently 51775
engaged in lending money or discounting or buying such securities. 51776

(C) "Insurance company" includes every corporation, 51777
association, and society engaged in the business of insurance of 51778
any character, or engaged in the business of entering into 51779
contracts substantially amounting to insurance of any character, 51780
or of indemnifying or guaranteeing against loss or damage, or 51781
acting as surety on bonds or undertakings. "Insurance company" 51782
also includes any health insuring corporation as defined in 51783

section 1751.01 of the Revised Code. 51784

(D) "Domestic insurance company" includes every insurance 51785
company organized and existing under the laws of this state, and 51786
every unincorporated association and society formed under the laws 51787
of this state for the purpose of engaging in said business, except 51788
a company, association, or society that is an insurance holding 51789
company affiliate controlled by a nonresident affiliate and has 51790
risks in this state formerly written by its foreign affiliates in 51791
a total amount exceeding the risks outstanding on the taxpayer's 51792
latest annual report that arise from business initially written by 51793
it in this state; and excludes every foreign insurance company. As 51794
used in this division, terms defined in section 3901.32 of the 51795
Revised Code have the same meanings given to them in that section. 51796

(E) "Foreign insurance company" includes every insurance 51797
company organized or existing under the laws of any other state, 51798
territory, country, or the United States and every insurance 51799
holding company affiliate excepted under division (D) of this 51800
section. 51801

Sec. 5725.14. (A) As used in this section and section 5725.15 51802
of the Revised Code: 51803

(1) "Billing address" of a customer means one of the 51804
following: 51805

(a) The customer's address as set forth in any notice, 51806
statement, bill, or similar acknowledgment shall be presumed to be 51807
the address where the customer is located with respect to the 51808
transaction for which the dealer issued the notice, statement, 51809
bill, or acknowledgment. 51810

(b) If the dealer issues any notice, statement, bill, or 51811
similar acknowledgment electronically to an address other than a 51812
street address or post office box address or if the dealer does 51813

not issue such a notice, statement, bill, or acknowledgment, the 51814
customer's street address as set forth in the records of the 51815
dealer at the time of the transaction shall be presumed to be the 51816
address where the customer is located. 51817

(2) "Commissions" includes but is not limited to brokerage 51818
commissions, asset management fees, and similar fees charged in 51819
the regular course of business to a customer for the maintenance 51820
and management of the customer's account. 51821

(3) "Gross receipts" means one of the following: 51822

(a) In the case of a dealer in intangibles principally 51823
engaged in the business of lending money or discounting loans, the 51824
aggregate amount of loans effected or discounted; 51825

(b) In the case of a dealer in intangibles principally 51826
engaged in the business of selling or buying stocks, bonds, or 51827
other similar securities either on the dealer's own account or as 51828
agent for another, the aggregate amount of all commissions 51829
charged. 51830

(B) Divisions (B)(1), (2), and (3) of this section apply only 51831
through the 2003 return year. 51832

(1) Each dealer in intangibles shall return to the tax 51833
commissioner between the first and second Mondays of March, 51834
annually, a report exhibiting in detail, and under appropriate 51835
heads, the dealer's resources and liabilities at the close of 51836
business on the thirty-first day of December next preceding. In 51837
the case of an unincorporated dealer in intangibles, such report 51838
shall also exhibit the amount or value as of the date of 51839
conversion of all property within the year preceding the date of 51840
listing, and on or after the first day of November converted into 51841
bonds or other securities not taxed to the extent such nontaxable 51842
bonds or securities may be shown in the dealer's resources on such 51843
date, without deduction for indebtedness created in the purchase 51844

of such nontaxable bonds or securities. 51845

If a dealer in intangibles maintains separate business 51846
offices, whether within this state only or within and without this 51847
state, the report shall also show the gross receipts from business 51848
done at each such office during the year ending on the 51849
thirty-first day of December next preceding. 51850

For the purposes of this section and section 5725.15 of the 51851
Revised Code, business is considered done at an office when it 51852
originates at such office, but the receipts from business 51853
originating at one office and consummated at another office shall 51854
be divided equitably between such offices. 51855

~~(C)~~(2) For the purposes of this section and section 5725.15 51856
of the Revised Code, in the case of a dealer in intangibles 51857
principally engaged in the business of selling or buying stocks, 51858
bonds, or other similar securities either on the dealer's own 51859
account or as agent for another, the dealer's capital, surplus, 51860
and undivided profits employed in this state shall bear the same 51861
ratio to the dealer's total capital, surplus, and undivided 51862
profits employed everywhere as the amount described in division 51863
~~(C)~~(1)~~(B)~~(2)(a) of this section bears to the amount described in 51864
division ~~(C)~~(2)~~(B)~~(2)(b) of this section: 51865

~~(1)~~(a) The sum of the commissions earned during the year 51866
covered by the report from transactions with respect to brokerage 51867
accounts owned by customers having billing addresses in this 51868
state; 51869

~~(2)~~(b) The sum of the commissions earned during that year 51870
from transactions with respect to brokerage accounts owned by all 51871
of the dealer's customers. 51872

~~(D)~~(3) An incorporated dealer in intangibles which owns or 51873
controls fifty-one per cent or more of the common stock of another 51874
incorporated dealer in intangibles may, under uniform regulations 51875

prescribed by the tax commissioner, make a consolidated return for 51876
the purpose of sections 5725.01 to 5725.26, ~~inclusive,~~ of the 51877
Revised Code. In such case the parent corporation making such 51878
return is not required to include in its resources any of the 51879
stocks, securities, or other obligations of its subsidiary 51880
dealers, nor permitted to include in its liabilities any of its 51881
own securities or other obligations belonging to its subsidiaries. 51882

Sec. 5725.25. (A) The real estate of a domestic insurance 51883
company shall be taxed in the place where it is located, the same 51884
as the real estate of other persons is taxed, but the tax provided 51885
for by sections 5725.01 to 5725.26 of the Revised Code, shall be 51886
in lieu of all other taxes on the other property and assets of 51887
such domestic insurance company, except as provided in division 51888
(B) of this section, and of all other taxes, charges, and excises 51889
on such domestic insurance companies, and all other taxes on the 51890
stockholders, members, or policyholders of such company by reason 51891
of their stock or other interest in such insurance company, except 51892
as to annuities or the right to receive the proceeds of a policy 51893
payable after its maturity in installments, or left with the 51894
company at interest. Sections 5725.01 to 5725.26 of the Revised 51895
Code do not assess any tax on any foreign insurance company or 51896
affect any tax on a foreign insurance company under any laws of 51897
this state. 51898

(B) Tangible personal property taxable under Chapter 5711. of 51899
the Revised Code shall be subject to taxation if it is owned by a 51900
domestic insurance company and leased or held for the purpose of 51901
leasing to a person other than an insurance company for use in 51902
business. 51903

(C) For reports required to be filed under section 5725.14 of 51904
the Revised Code in 2003 ~~and thereafter,~~ nothing in this section 51905
shall be construed to exempt the property of any dealer in 51906

intangibles under section 5725.13 of the Revised Code from the tax 51907
imposed under section 5707.03 of the Revised Code. 51908

Sec. 5725.26. The real estate of a financial institution ~~or~~ 51909
~~dealer in intangibles~~ shall be taxed in the place where it is 51910
located, the same as the real estate of persons is taxed, but the 51911
~~taxes tax~~ provided for in ~~Chapters 5725. and~~ Chapter 5733. of the 51912
Revised Code, shall be in lieu of all other taxes on the other 51913
property and assets of such institution ~~or dealer~~, except personal 51914
property taxable under Chapter 5711. of the Revised Code and 51915
leased, or held for the purpose of leasing, to others if the owner 51916
or lessor of the property acquired it for the sole purpose of 51917
leasing it to others. 51918

For reports required to be filed under section 5725.14 of the 51919
Revised Code in 2003 ~~and thereafter~~, nothing in this section shall 51920
be construed to exempt the property of any dealer in intangibles 51921
under section 5725.13 of the Revised Code from the tax imposed 51922
under section 5707.03 of the Revised Code. 51923

Sec. 5727.01. As used in this chapter: 51924

(A) "Public utility" means each person referred to as a 51925
telephone company, ~~telegraph company~~, electric company, natural 51926
gas company, pipe-line company, water-works company, water 51927
transportation company, heating company, rural electric company, 51928
railroad company, or combined company. 51929

(B) "Gross receipts" means the entire receipts for business 51930
done by any person from operations as a public utility, or 51931
incidental thereto, or in connection therewith, including any 51932
receipts received under Chapter 4928. of the Revised Code. The 51933
gross receipts for business done by an incorporated company 51934
engaged in operation as a public utility includes the entire 51935
receipts for business done by such company under the exercise of 51936

its corporate powers, whether from the operation as a public utility or from any other business.

(C) "Rural electric company" means any nonprofit corporation, organization, association, or cooperative engaged in the business of supplying electricity to its members or persons owning an interest therein in an area the major portion of which is rural.

(D) Any person:

~~(1) Is a telegraph company when engaged in the business of transmitting telegraphic messages to, from, through, or in this state;~~

~~(2) Is a telephone company when primarily engaged in the business of providing local exchange telephone service, excluding cellular radio service, in this state;~~

~~(3)~~(2) Is an electric company when engaged in the business of generating, transmitting, or distributing electricity within this state for use by others, but excludes a rural electric company;

~~(4)~~(3) Is a natural gas company when engaged in the business of supplying or distributing natural gas for lighting, power, or heating purposes to consumers within this state, excluding a person that is a governmental aggregator or retail natural gas supplier as defined in section 4929.01 of the Revised Code;

~~(5)~~(4) Is a pipe-line company when engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partially within this state;

~~(6)~~(5) Is a water-works company when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within this state;

~~(7)~~(6) Is a water transportation company when engaged in the transportation of passengers or property, by boat or other watercraft, over any waterway, whether natural or artificial, from

one point within this state to another point within this state, or 51967
between points within this state and points without this state; 51968

~~(8)~~(7) Is a heating company when engaged in the business of 51969
supplying water, steam, or air through pipes or tubing to 51970
consumers within this state for heating purposes; 51971

~~(9)~~(8) Is a railroad company when engaged in the business of 51972
owning or operating a railroad either wholly or partially within 51973
this state on rights-of-way acquired and held exclusively by such 51974
company, or otherwise, and includes a passenger, street, suburban, 51975
or interurban railroad company. 51976

As used in division (D)~~(2)~~(1) of this section, "local 51977
exchange telephone service" means making available or furnishing 51978
access and a dial tone to all persons within a local calling area 51979
for use in originating and receiving voice grade communications 51980
over a switched network operated by the provider of the service 51981
within the area and for gaining access to other telecommunication 51982
services. 51983

(E) "Taxable property" means the real property and tangible 51984
personal property required by section 5727.06 of the Revised Code 51985
to be assessed by the tax commissioner, ~~but. The exemption~~ 51986
provided in division (C)(3) of section 5709.01 of the Revised Code 51987
does not apply to such property. "Taxable property" does not 51988
include either of the following: 51989

(1) An item of tangible personal property that for the period 51990
subsequent to the effective date of an air, water, or noise 51991
pollution control certificate and continuing so long as the 51992
certificate is in force, has been certified as part of the 51993
pollution control facility with respect to which the certificate 51994
has been issued; 51995

(2) An item of tangible personal property that during the 51996
construction of a plant or facility and until the item is first 51997

capable of operation, whether actually used in operation or not, 51998
is incorporated in or being held exclusively for incorporation in 51999
that plant or facility. 52000

(F) "Taxing district" means a municipal corporation ~~of~~ or 52001
township, or part thereof, in which the aggregate rate of taxation 52002
is uniform. 52003

(G) "Telecommunications service" has the same meaning as in 52004
division (AA) of section 5739.01 of the Revised Code. 52005

(H) "Interexchange telecommunications company" means a person 52006
that is engaged in the business of transmitting telephonic 52007
messages to, from, through, or in this state, but that is not a 52008
telephone company. 52009

(I) "Sale and leaseback transaction" means a transaction in 52010
which a public utility or interexchange telecommunications company 52011
sells any tangible personal property to a person other than a 52012
public utility or interexchange telecommunications company and 52013
leases that property back from the buyer. 52014

(J) "Production equipment" means all taxable steam, nuclear, 52015
hydraulic, and other production plant equipment used to generate 52016
electricity. ~~For tax years prior to 2001, "production equipment"~~ 52017
~~includes taxable station equipment that is located at a production~~ 52018
~~plant.~~ 52019

(K) "Tax year" means the year for which property or gross 52020
receipts are subject to assessment under this chapter. This 52021
division does not limit the tax commissioner's ability to assess 52022
and value property or gross receipts outside the tax year. 52023

(L) "Combined company" means any person engaged in the 52024
activity of an electric company or rural electric company that is 52025
also engaged in the activity of a heating company or a natural gas 52026
company, or any combination thereof. 52027

Sec. 5727.06. (A) Except as otherwise provided by law, the 52028
following constitutes the taxable property of a public utility or 52029
interexchange telecommunications company that shall be assessed by 52030
the tax commissioner: 52031

(1) In the case of a railroad company, all real property and 52032
tangible personal property owned or operated by the railroad 52033
company in this state on the thirty-first day of December of the 52034
preceding year; 52035

(2) In the case of a water transportation company, all 52036
tangible personal property, except watercraft, owned or operated 52037
by the water transportation company in this state on the 52038
thirty-first day of December of the preceding year, and, 52039
notwithstanding division (B)(2) of section 5709.01 of the Revised 52040
Code, all watercraft owned or operated by the water transportation 52041
company in this state during the preceding calendar year, with 52042
only the watercraft, including non-watercraft property, that is 52043
located in this state on the thirty-first day of December of the 52044
preceding year being apportioned under division (D) of section 52045
5727.15 of the Revised Code; 52046

(3) In the case of all other public utilities and 52047
interexchange telecommunications companies, all tangible personal 52048
property that on the thirty-first day of December of the preceding 52049
year was both located in this state and: 52050

(a) Owned by the public utility or interexchange 52051
telecommunications company; or 52052

(b) Leased by the public utility or interexchange 52053
telecommunications company under a sale and leaseback transaction. 52054

(B) In the case of an interexchange telecommunications 52055
company, all taxable property shall be subject to the provisions 52056
of this chapter and shall be valued by the commissioner in 52057

accordance with division (A) of section 5727.11 of the Revised Code. A person described by this division shall file the report required by section 5727.08 of the Revised Code. Persons described in this division shall not be considered taxpayers, as defined in division (B) of section 5711.01 of the Revised Code, and shall not be required to file a return and list their taxable property under any provision of Chapter 5711. of the Revised Code.

(C) The lien of the state for taxes levied each year on the real and personal property of public utilities and interexchange telecommunications companies shall attach thereto on the thirty-first day of December of the preceding year.

(D) Property that is required by division (A)(3)(b) of this section to be assessed by the tax commissioner under this chapter shall not be listed by the owner of the property under Chapter 5711. of the Revised Code.

(E) The tax commissioner may adopt rules governing the listing of the taxable property of public utilities and interexchange telecommunications companies and the determination of true value.

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 52088
taxation in this state for tax year 1995 or thereafter, and 52089
~~eighty-eight per cent~~ the following for all other taxable 52090
property: 52091

(1) For tax years prior to 2005, eighty-eight per cent; 52092

(2) For tax year 2005, sixty-seven per cent; 52093

(3) For tax year 2006, forty-six per cent; 52094

(4) For tax year 2007 and thereafter, twenty-five per cent. 52095

~~(C)(1) Except as provided in division (C)(2) of this section,~~ 52096
~~eighty-eight per cent in the case of a natural gas company;~~ 52097

~~(2) For tax year 2001 and thereafter, twenty five~~ Twenty-five 52098
per cent in the case of a natural gas company, interexchange 52099
telecommunications company, and water transportation company. 52100

(D) Eighty-eight per cent in the case of a ~~pipe-line,~~ 52101
water-works, or heating company; 52102

(E)(1) Except as provided in division (E)(2) or (3) of this 52103
section, one hundred per cent in the case of the taxable 52104
production equipment of an electric company and eighty-eight per 52105
cent for all its other taxable property; 52106

(2) For tax year 2001 and thereafter, eighty-eight per cent 52107
in the case of the taxable transmission and distribution property 52108
of an electric company, and twenty-five per cent for all its other 52109
taxable property; 52110

(3) Property listed and assessed under divisions (B)(1) and 52111
(2) of section 5711.22 of the Revised Code and leased to an 52112
electric company shall continue to be assessed at one hundred per 52113
cent for production equipment and eighty-eight per cent for all 52114
such other taxable property until January 1, 2002. 52115

~~(F) Twenty five per cent in the case of an interexchange~~ 52116
~~telecommunications company;~~ 52117

~~(G) Twenty five per cent in~~ In the case of a water 52118
~~transportation pipe-line~~ company: 52119

(1) For tax years prior to 2005, eighty-eight per cent; 52120

(2) For tax year 2005, sixty-seven per cent; 52121

(3) For tax year 2006, forty-six per cent; 52122

(4) For tax year 2007 and thereafter, twenty-five per cent. 52123

Sec. 5727.15. When all the taxable property of a public 52124
utility is located in one taxing district, the tax commissioner 52125
shall apportion the total taxable value thereof to that taxing 52126
district. 52127

When taxable property of a public utility is located in more 52128
than one taxing district, the commissioner shall apportion the 52129
total taxable value thereof among the taxing districts as follows: 52130

(A)(1) In the case of ~~a telegraph,~~ an interexchange 52131
telecommunications, ~~or a~~ telephone company that owns miles of wire 52132
in this state, the value apportioned to each taxing district shall 52133
be the same percentage of the total value apportioned to all 52134
taxing districts as the miles of wire owned by the company within 52135
the taxing district are to the total miles of wire owned by the 52136
company within this state; 52137

(2) In the case of ~~a telegraph,~~ an interexchange 52138
telecommunications, ~~or a~~ telephone company that does not own miles 52139
of wire in this state, the value apportioned to each taxing 52140
district shall be the same percentage of the total value 52141
apportioned to all taxing districts as the cost of the taxable 52142
property physically located in the taxing district is of the total 52143
cost of all taxable property physically located in this state. 52144

(B) In the case of a railroad company: 52145

(1) The taxable value of real and personal property not used 52146

in railroad operations shall be apportioned according to its 52147
situs; 52148

(2) The taxable value of personal property used in railroad 52149
operations shall be apportioned to each taxing district in 52150
proportion to the miles of track and trackage rights, weighted to 52151
reflect the relative use of such personal property in each taxing 52152
district; 52153

(3) The taxable value of real property used in railroad 52154
operations shall be apportioned to each taxing district in 52155
proportion to its relative value in each taxing district. 52156

(C)(1) Prior to tax year 2001, in the case of an electric 52157
company: 52158

(a) Seventy per cent of the taxable value of all production 52159
equipment and of all station equipment that is not production 52160
equipment shall be apportioned to the taxing district in which 52161
such property is physically located; and 52162

(b) The remaining value of such property, together with the 52163
value of all other taxable personal property, shall be apportioned 52164
to each taxing district in the per cent that the cost of all 52165
transmission and distribution property physically located in the 52166
taxing district is of the total cost of all transmission and 52167
distribution property physically located in this state. 52168

(c) If an electric company's taxable value for the current 52169
year includes the value of any production equipment at a plant at 52170
which the initial cost of the plant's production equipment 52171
exceeded one billion dollars, then prior to making the 52172
apportionments required for that company by division (C)(1)(a) and 52173
(b) of this section, the tax commissioner shall do the following: 52174

(i) Subtract four hundred twenty million dollars from the 52175
total taxable value of the production equipment at that plant for 52176
the current tax year. 52177

(ii) Multiply the difference thus obtained by a fraction, the numerator of which is the portion of the taxable value of that plant's production equipment included in the company's total value for the current tax year, and the denominator of which is the total taxable value of such equipment included in the total taxable value of all electric companies for such year;

(iii) Apportion the product thus obtained to taxing districts in the manner prescribed in division (C)(1)(b) of this section.

(iv) Deduct the amounts so apportioned from the taxable value of the company's production equipment at the plant, prior to making the apportionments required by divisions (C)(1)(a) and (b) of this section.

For purposes of division (C)(1)(c) of this section, "initial cost" applies only to production equipment of plants placed in commercial operation on or after January 1, 1987, and means the cost of all production equipment at a plant for the first year the plant's equipment was subject to taxation.

(2) For tax year 2001 and thereafter, in the case of an electric company:

(a) The taxable value of all production equipment shall be apportioned to the taxing district in which such property is physically located; and

(b) The value of taxable personal property, other than production equipment, shall be apportioned to each taxing district in the proportion that the cost of such other taxable personal property physically located in each taxing district is of the total cost of such other taxable personal property physically located in this state.

(D) In the case of all other public utilities, the value of the taxable personal property ~~to be apportioned~~ shall be

apportioned to each taxing district in the proportion to that the 52208
cost of the taxable personal property physically located in each 52209
taxing district is of the entire value of such total cost of all 52210
taxable personal property within physically located in this state. 52211

Sec. 5727.24. (A) For the purpose of providing revenue to 52212
meet the needs of the state, on and after May 1, 2000, an excise 52213
tax is hereby levied on the gross receipts of a natural gas 52214
company and on the gross receipts of a combined company from 52215
operating as a natural gas company. The tax shall be computed by 52216
multiplying the taxable gross receipts as determined under section 52217
5727.33 of the Revised Code by four and three-fourths per cent. A 52218
combined company shall be subject to this tax on any gross 52219
receipts derived from operating as a natural gas company, as 52220
determined under division (D) of section 5727.03 of the Revised 52221
Code, and, if applicable, shall be subject to the tax imposed by 52222
section 5727.30 of the Revised Code for all other gross receipts. 52223

(B)(1) For the purpose of providing revenue to meet the needs 52224
of the state, on and after July 1, 2003, an excise tax is hereby 52225
levied on the gross receipts of a pipe-line company. The tax shall 52226
be computed as follows: 52227

(a) Multiply all gross receipts received by a pipe-line 52228
company that are not related to the storage of natural gas or oil 52229
by the percentage of pipeline miles owned and used in this state 52230
by the pipe-line company to generate that revenue in proportion to 52231
that owned and used everywhere by the pipe-line company to 52232
generate that revenue; 52233

(b) Add to that any gross receipts received related to the 52234
storage of gas or oil in this state, including, but not limited 52235
to, charges for injection, storage, and withdrawal; 52236

(c) Multiply the sum of divisions (B)(1)(a) and (b) of this 52237
section by four and three-fourths per cent. 52238

(2) Gross receipts derived from the sale of natural gas or oil by a pipe-line company shall not be included in the pipe-line company's gross receipts under division (B)(1)(a) of this section. Such sales are subject to the sales or use tax, as appropriate, under Chapter 5739. or 5741. of the Revised Code.

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(3) As used in division (B) of this section, "pipeline miles" means the pipeline miles reported by a pipe-line company in its annual report to the appropriate federal regulatory agency, or, if the pipe-line company does not file a federal report, to the public utilities commission of Ohio, for the year preceding the period for which a return is being filed under section 5727.25 of the Revised Code.

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Sec. 5727.25. (A) Except as provided in division (B) of this section, within forty-five days after the last day of March, June, September, and December, each natural gas company ~~or,~~ combined company, or pipe-line company subject to the excise tax imposed by section 5727.24 of the Revised Code shall file a return with the treasurer of state, in such form as the tax commissioner prescribes, and pay the full amount of the tax due on its taxable gross receipts for the preceding calendar quarter, ~~except that the first payment of this tax shall be made on or before November 15, 2000, for the five month period of May 1, 2000, to September 30, 2000.~~ All payments made under this division shall be made by electronic funds transfer in accordance with section 5727.311 of the Revised Code.

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(B) Any natural gas company ~~or,~~ combined company, or pipe-line company subject to the excise tax imposed by this section that has an annual tax liability for the preceding calendar year ending on the thirty-first day of December of less than three hundred twenty-five thousand dollars may elect to file an annual return with the treasurer of state, in such form as the

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tax commissioner prescribes, for the next year. A company that 52270
elects to file an annual return for the calendar year shall file 52271
the return and remit the taxes due on its taxable gross receipts 52272
within forty-five days after the thirty-first day of December. The 52273
first payment of the tax under this division for a pipe-line 52274
company shall be made on or before February 14, ~~2001~~ 2004, for the 52275
period of ~~May~~ July 1, ~~2000~~ 2003, to December 31, ~~2000~~ 2003. The 52276
minimum tax for a natural gas company ~~or~~, combined company, or 52277
pipe-line company subject to this division shall be ~~fifty dollars~~ 52278
equal to the minimum tax imposed that year under division (E) of 52279
section 5733.06 of the Revised Code, and the company shall not be 52280
required to remit the tax due by electronic funds transfer. 52281

(C) A return required to be filed under division (A) or (B) 52282
of this section shall show the amount of tax due from the company 52283
for the period covered by the return and any other information as 52284
prescribed by the tax commissioner. A return shall be considered 52285
filed when received by the treasurer of state. The commissioner 52286
may extend the time for making and filing returns and paying the 52287
tax. 52288

(D) Any natural gas company ~~or~~, combined company, or 52289
pipe-line company that fails to file a return or pay the full 52290
amount of the tax due within the period prescribed under this 52291
section shall pay an additional charge of fifty dollars, or ten 52292
per cent of the tax required to be paid for the reporting period, 52293
whichever is greater. If any tax due is not paid timely in 52294
accordance with this section, the company liable for the tax shall 52295
pay interest, calculated at the rate per annum prescribed by 52296
section 5703.47 of the Revised Code, from the date the tax payment 52297
was due to the date of payment or to the date an assessment was 52298
issued, whichever occurs first. The tax commissioner may collect 52299
any additional charge or interest imposed by this section by 52300
assessment in the manner provided in section 5727.26 of the 52301

Revised Code. The commissioner may abate all or a portion of the 52302
additional charge and may adopt rules governing such abatements. 52303

(E) The taxes, additional charges, penalties, and interest 52304
collected under sections 5727.24 to 5727.29 of the Revised Code 52305
shall be credited in accordance with section 5727.45 of the 52306
Revised Code. 52307

Sec. 5727.26. (A) The tax commissioner may make an 52308
assessment, based on any information in the commissioner's 52309
possession, against any natural gas company ~~or~~ combined company, 52310
or pipe-line company that fails to file a return or pay any tax, 52311
interest, or additional charge as required by sections 5727.24 to 52312
5727.29 of the Revised Code. The commissioner shall give the 52313
company assessed written notice of the assessment in the manner 52314
provided in section 5703.37 of the Revised Code. With the notice, 52315
the commissioner shall provide instructions on how to petition for 52316
reassessment and request a hearing on the petition. A penalty of 52317
up to fifteen per cent may be added to all amounts assessed under 52318
this section. The tax commissioner may adopt rules providing for 52319
the imposition and remission of the penalty. 52320

(B) Unless the company assessed, within sixty days after 52321
service of the notice of assessment, files with the tax 52322
commissioner, either personally or by certified mail, a written 52323
petition signed by the company's authorized agent having knowledge 52324
of the facts, the assessment becomes final, and the amount of the 52325
assessment is due and payable from the company assessed to the 52326
treasurer of state. The petition shall indicate the objections of 52327
the company assessed, but additional objections may be raised in 52328
writing if received by the commissioner prior to the date shown on 52329
the final determination. 52330

If a petition for reassessment has been properly filed, the 52331
commissioner shall proceed under section 5703.60 of the Revised 52332

Code. 52333

(C) After an assessment becomes final, if any portion of the 52334
assessment, including accrued interest, remains unpaid, a 52335
certified copy of the tax commissioner's entry making the 52336
assessment final may be filed in the office of the clerk of the 52337
court of common pleas in the county in which the ~~natural-gas~~ 52338
~~company's or combined~~ company's principal place of business is 52339
located, or in the office of the clerk of the court of common 52340
pleas of Franklin county. 52341

Immediately upon the filing of the entry, the clerk shall 52342
enter judgment for the state against the company assessed in the 52343
amount shown on the entry. The judgment may be filed by the clerk 52344
in a loose-leaf book entitled, "special judgments for the public 52345
utility excise tax on natural gas ~~and~~ companies, combined 52346
companies, and pipe-line companies," and shall have the same 52347
effect as other judgments. Execution shall issue upon the judgment 52348
at the request of the tax commissioner, and all laws applicable to 52349
sales on execution shall apply to sales made under the judgment. 52350

The portion of the assessment not paid within sixty days 52351
after the day the assessment was issued shall bear interest at the 52352
rate per annum prescribed by section 5703.47 of the Revised Code 52353
from the day the tax commissioner issues the assessment until it 52354
is paid. Interest shall be paid in the same manner as the tax and 52355
may be collected by the issuance of an assessment under this 52356
section. 52357

(D) If the tax commissioner believes that collection of the 52358
tax will be jeopardized unless proceedings to collect or secure 52359
collection of the tax are instituted without delay, the 52360
commissioner may issue a jeopardy assessment against the company 52361
liable for the tax. Immediately upon the issuance of the jeopardy 52362
assessment, the commissioner shall file an entry with the clerk of 52363
the court of common pleas in the manner prescribed by division (C) 52364

of this section. Notice of the jeopardy assessment shall be served 52365
on the company assessed or the company's authorized agent in the 52366
manner provided in section 5703.37 of the Revised Code within five 52367
days of the filing of the entry with the clerk. The total amount 52368
assessed is immediately due and payable, unless the company 52369
assessed files a petition for reassessment in accordance with 52370
division (B) of this section and provides security in a form 52371
satisfactory to the commissioner and in an amount sufficient to 52372
satisfy the unpaid balance of the assessment. Full or partial 52373
payment of the assessment does not prejudice the commissioner's 52374
consideration of the petition for reassessment. 52375

(E) All interest collected by the tax commissioner under this 52376
section shall be paid to the treasurer of state, and when paid 52377
shall be considered revenue arising from the tax imposed by 52378
section 5727.24 of the Revised Code. 52379

(F) No assessment shall be made or issued against a natural 52380
gas company ~~or~~, combined company, or pipe-line company for the tax 52381
imposed by section 5727.24 of the Revised Code more than four 52382
years after the return date for the period in which the tax was 52383
reported, or more than four years after the return for the period 52384
was filed, whichever is later. 52385

Sec. 5727.27. Every natural gas company ~~or~~, combined company, 52386
or pipe-line company liable for the tax imposed by section 5727.24 52387
of the Revised Code shall keep complete and accurate records as 52388
prescribed by the tax commissioner. The records shall be preserved 52389
for four years after the return for the tax to which the records 52390
pertain is due or filed, whichever is later. The ~~natural gas~~ 52391
~~company or combined~~ company shall make the records available for 52392
inspection by the commissioner or the commissioner's agent, on the 52393
request of the commissioner or agent. 52394

Sec. 5727.28. (A) The treasurer of state shall refund to a 52395
natural gas company ~~or~~, combined company, or pipe-line company 52396
subject to the tax imposed by section 5727.24 of the Revised Code, 52397
the amount of tax paid illegally or erroneously, or paid on an 52398
illegal or erroneous assessment. Applications for a refund shall 52399
be filed with the tax commissioner, on a form prescribed by the 52400
commissioner, within four years of the illegal or erroneous 52401
payment of the tax. 52402

On the filing of the application, the commissioner shall 52403
determine the amount of refund to which the applicant is entitled. 52404
If the amount is not less than that claimed, the commissioner 52405
shall certify the amount to the director of budget and management 52406
and treasurer of state for payment from the tax refund fund under 52407
section 5703.052 of the Revised Code. If the amount is less than 52408
that claimed, the commissioner shall proceed in accordance with 52409
section 5703.70 of the Revised Code. 52410

If the application for refund is for taxes paid on an illegal 52411
or erroneous assessment, the commissioner shall include in the 52412
certified amount interest calculated at the rate per annum 52413
prescribed by section 5703.47 of the Revised Code from the date of 52414
overpayment to the date of the commissioner's certification. 52415

(B) If a natural gas company ~~or~~, combined company, or 52416
pipe-line company entitled to a refund of taxes under this 52417
section, or section 5703.70 of the Revised Code, is indebted to 52418
the state for any tax or fee administered by the tax commissioner 52419
that is paid to the state, or any charge, penalty, or interest 52420
arising from such a tax or fee, the amount refundable may be 52421
applied in satisfaction of that debt. If the amount refundable is 52422
less than the amount of the debt, it may be applied in partial 52423
satisfaction of the debt. If the amount refundable is greater than 52424
the amount of the debt, the amount remaining after satisfaction of 52425

the debt shall be refunded. 52426

(C) In lieu of granting a refund under division (A) or (B) of 52427
this section, the tax commissioner may allow a ~~natural gas company~~ 52428
~~or combined~~ company to claim a credit of the amount of the tax 52429
refund on the return for the period during which the tax became 52430
refundable. The commissioner may require the company to submit 52431
information to support a claim for a credit under this division, 52432
and the commissioner may disallow the credit if the information is 52433
not provided. 52434

Sec. 5727.30. (A) Except as provided in divisions (B) ~~and (C)~~ 52435
to (F) of this section, each public utility, except railroad 52436
companies, shall be subject to an annual excise tax, as provided 52437
by sections 5727.31 to 5727.62 of the Revised Code, for the 52438
privilege of owning property in this state or doing business in 52439
this state during the twelve-month period next succeeding the 52440
period upon which the tax is based. The tax shall be imposed 52441
against each such public utility that, on the first day of such 52442
twelve-month period, owns property in this state or is doing 52443
business in this state, and the lien for the tax, including any 52444
penalties and interest accruing thereon, shall attach on such day 52445
to the property of the public utility in this state. 52446

(B) An electric company's or a rural electric company's gross 52447
receipts received after April 30, 2001, are not subject to the 52448
annual excise tax imposed by this section. 52449

(C) A natural gas company's gross receipts received after 52450
April 30, 2000, are not subject to the annual excise tax imposed 52451
by this section. 52452

(D) A pipe-line company's gross receipts received after June 52453
30, 2003, are not subject to the annual excise tax imposed by this 52454
section. Notwithstanding any other provision of law, gross 52455
receipts received by a pipe-line company from May 1, 2002, to June 52456

30, 2003, shall be included in the pipe-line company's annual 52457
statement filed on or before August 1, 2003, which shall be the 52458
last statement or report filed under section 5727.31 of the 52459
Revised Code by a pipe-line company. The tax commissioner shall 52460
assess such receipts for that period as provided in section 52461
5727.38 of the Revised Code. A pipe-line company's receipts 52462
received after June 30, 2003, shall be subject to taxation as 52463
provided under sections 5727.24 to 5727.28 of the Revised Code. 52464

(E) A telephone company's gross receipts billed to customers 52465
after June 30, 2004, are not subject to the annual excise tax 52466
imposed by this section. Notwithstanding any other provision of 52467
law, gross receipts billed by a telephone company to customers 52468
prior to July 1, 2004, shall be included in the telephone 52469
company's annual statement filed on or before August 1, 2004, 52470
which shall be the last statement or report filed under section 52471
5727.31 of the Revised Code by a telephone company. A telephone 52472
company shall not deduct from its gross receipts included in that 52473
last statement any receipts it was unable to collect from its 52474
customers for the period of July 1, 2003, to June 30, 2004. 52475

(F) A water transportation company's gross receipts received 52476
after June 30, 2003, are not subject to the annual excise tax 52477
imposed by this section. Notwithstanding any other provision of 52478
law, gross receipts received by a water transportation company 52479
from May 1, 2002, to June 30, 2003, shall be included in the water 52480
transportation company's annual statement filed on or before 52481
August 1, 2003, which shall be the last statement or report filed 52482
under section 5727.31 of the Revised Code by a water 52483
transportation company. The tax commissioner shall assess such 52484
receipts for that period as provided in section 5727.38 of the 52485
Revised Code. 52486

Sec. 5727.32. (A) For the purpose of the tax imposed by 52487

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| section 5727.30 of the Revised Code, the statement required by | 52488 |
| section 5727.31 of the Revised Code shall contain: | 52489 |
| (1) The name of the company; | 52490 |
| (2) The nature of the company, whether a person, association, or corporation, and under the laws of what state or country organized; | 52491 52492 52493 |
| (3) The location of its principal office; | 52494 |
| (4) The name and post-office address of the president, secretary, auditor, treasurer, and superintendent or general manager; | 52495 52496 52497 |
| (5) The name and post-office address of the chief officer or managing agent of the company in this state; | 52498 52499 |
| (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; | 52500 52501 52502 |
| (7) In the case of telegraph and telephone companies: | 52503 |
| (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: | 52504 52505 52506 52507 52508 52509 52510 52511 |
| (i) All of the receipts derived wholly from interstate business or business done for or with the federal government; | 52512 52513 |
| (ii) The receipts of amounts billed on behalf of other entities; | 52514 52515 |
| (iii) The receipts from sales to other telephone companies for resale; | 52516 52517 |

~~(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.~~ 52518
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~~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.~~ 52523
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~~(b) The total gross receipts for such period from business done within this state.~~ 52532
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~~(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:~~ 52534
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(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: 52537
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(i) Receipts from interstate business or business done for the federal government; 52543
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(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; 52545
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~~(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.~~ 52548
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~~(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:~~ 52553
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~~(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.~~ 52560
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~~(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.~~ 52566
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~~(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.~~ 52574
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~~(b) The total gross receipts of the company, for the year next preceding the first day of May, in this state from business~~ 52577
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done within the state. 52579

(B) The reports required by section 5727.31 of the Revised Code shall contain: 52580

(1) The name and principal mailing address of the company; 52582

(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; 52583
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(3) The amount of the excise taxes due with the report as provided by section 5727.31 of the Revised Code. 52587
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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 pipe-line company or 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. 52589
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(B) In ascertaining and determining the gross receipts of each public utility subject to this section, the following gross receipts are excluded: 52606
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|---|---|
| (1) All receipts derived wholly from interstate business; | 52609 |
| (2) All receipts derived wholly from business done for or with the federal government; | 52610 52611 |
| (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. | 52612 52613 52614 52615 52616 |
| (4) All receipts from the sale of merchandise; | 52617 |
| (5) (4) All receipts from sales to other public utilities, except railroad, 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. | 52618 52619 52620 52621 |
| (C) In ascertaining and determining the gross receipts of a telephone company, the following gross receipts are excluded: | 52622 52623 |
| (1) Receipts of amounts billed on behalf of other entities; | 52624 |
| (2) Receipts from sales to other telephone companies for resale, as defined in division (A)(7) of section 5727.32 of the Revised Code; | 52625 52626 52627 |
| (3) Receipts from incoming or outgoing wide area transmission service or wide area transmission type service, including eight hundred or eight hundred type service; | 52628 52629 52630 |
| (4) Receipts from private communications service as described in division (AA)(2) of section 5739.01 of the Revised Code; | 52631 52632 |
| (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. | 52633 52634 52635 |
| (D) In ascertaining and determining the gross receipts of an electric company, receipts derived from the provision of | 52636 52637 |

~~electricity and other services to a qualified former owner of the~~ 52638
~~production facilities that generated the electricity from which~~ 52639
~~those receipts were derived are excluded. This division does not~~ 52640
~~apply to tax years 2002 and thereafter. As used in this division,~~ 52641
~~a "qualified former owner" means a person who meets both of the~~ 52642
~~following conditions:~~ 52643

~~(1) On or before October 11, 1991, the person had sold to an~~ 52644
~~electric company part of the production facility at which the~~ 52645
~~electricity is generated, and, for at least twenty years prior to~~ 52646
~~that sale, the facility was used to generate electricity, but it~~ 52647
~~was not owned in whole or part during that period by an electric~~ 52648
~~company.~~ 52649

~~(2) At the time the electric company provided the electricity~~ 52650
~~or other services for which the exclusion is claimed, the person,~~ 52651
~~or a successor or assign of the person, owned not less than a~~ 52652
~~twenty per cent ownership of the production facility and the~~ 52653
~~rights to not less than twenty per cent of the production of that~~ 52654
~~facility.~~ 52655

~~(E)(C)~~ In ascertaining and determining the gross receipts of 52656
a natural gas company, receipts billed on behalf of other entities 52657
are excluded. The tax imposed by section 5729.811 of the Revised 52658
Code, along with transportation and billing and collection fees 52659
charged to other entities, shall be included in the gross receipts 52660
of a natural gas company. 52661

~~(F)(D)~~ In ascertaining and determining the gross receipts of 52662
a combined company subject to the tax imposed by section 5727.30 52663
of the Revised Code, all receipts derived from operating as a 52664
natural gas company that are subject to the tax imposed by section 52665
5727.24 of the Revised Code are excluded. 52666

~~(G)(E)~~ Except as provided in division ~~(H)(F)~~ of this section, 52667
the amount ascertained by the commissioner under this section, 52668

less a deduction of twenty-five thousand dollars, shall be the 52669
taxable gross receipts of such companies for business done within 52670
this state for that year. 52671

~~(H)~~(F) The amount ascertained under this section, less the 52672
following deduction, shall be the taxable gross receipts of a 52673
natural gas company or combined company subject to the tax imposed 52674
by section 5727.24 of the Revised Code for business done within 52675
this state: 52676

(1) For a natural gas company that files quarterly returns of 52677
the tax imposed by section 5727.24 of the Revised Code, six 52678
thousand two hundred fifty dollars for each quarterly return; 52679

(2) For a natural gas company that files an annual return of 52680
the tax imposed by section 5727.24 of the Revised Code, 52681
twenty-five thousand dollars for each annual return; 52682

(3) For a combined company, twenty-five thousand dollars on 52683
the annual statement filed under section 5727.31 of the Revised 52684
Code. A combined company shall not be entitled to a deduction in 52685
computing gross receipts subject to the tax imposed by section 52686
5727.24 of the Revised Code. 52687

Sec. 5727.38. On or before the first Monday of November, 52688
annually, the tax commissioner shall assess an excise tax against 52689
each public utility subject to the excise tax under section 52690
5727.30 of the Revised Code. The tax shall be computed by 52691
multiplying the taxable gross receipts as determined by the 52692
commissioner under section 5727.33 of the Revised Code by ~~six and~~ 52693
~~three-fourths per cent in the case of pipe line companies, and~~ 52694
~~four and three-fourths per cent in the case of all other~~ 52695
~~companies.~~ The minimum tax for any such company for owning 52696
property or doing business in this state shall ~~be fifty dollars~~ 52697
equal the minimum tax imposed that year under division (E) of 52698
section 5733.06 of the Revised Code. The assessment shall be 52699

certified to the taxpayer and treasurer of state. 52700

Sec. 5727.56. Any public utility whose articles of 52701
incorporation or license certificate to do or transact business in 52702
this state has expired or has been canceled or revoked by the 52703
secretary of state, as provided by law for failure to make any 52704
report or return or to pay any tax or fee, upon payment to the 52705
secretary of state of any additional fees and penalties required 52706
to be paid to ~~him~~ the secretary of state, and upon the filing with 52707
the secretary of state of a certificate from the tax commissioner 52708
that it has complied with all the requirements of law as to 52709
franchise or excise tax reports and paid all franchise or excise 52710
taxes, fees, or penalties due thereon for every year of its 52711
delinquency, and upon the payment to the secretary of state of an 52712
additional fee of ten dollars, shall be reinstated and again 52713
entitled to exercise its rights, privileges, and franchises in 52714
this state, and the secretary of state shall cancel the entry of 52715
cancellation or expiration to exercise its rights, privileges, and 52716
franchises. If the reinstatement is not made within one year from 52717
the date of the cancellation of its articles of incorporation or 52718
date of the cancellation or expiration of its license to do 52719
business, and it appears that articles of incorporation or license 52720
certificate have been issued to a corporation of the same or 52721
similar name, the applicant for reinstatement shall be required by 52722
the secretary of state, as a condition prerequisite to such 52723
reinstatement, to amend its articles by changing its name. A 52724
certificate of reinstatement may be filed in the county recorder's 52725
office of any county in the state, for which the recorder shall 52726
charge and collect a base fee of three dollars for services and a 52727
housing trust fund fee of three dollars pursuant to section 317.36 52728
of the Revised Code. 52729

If a domestic public utility applying for reinstatement has 52730
not previously designated an agent upon whom process may be served 52731

as required by section 1701.07 of the Revised Code, such public 52732
utility shall at the time of reinstatement and as a prerequisite 52733
thereto designate an agent in accordance with such section. 52734

Any officer, shareholder, creditor, or receiver of any such 52735
public utility may at any time take all steps required by this 52736
section to effect such reinstatement, and in such case the 52737
designation of an agent upon whom process may be served shall not 52738
be a prerequisite to the reinstatement of the public utility. 52739

Sec. 5728.04. (A) It is unlawful for any person to operate a 52740
commercial car with three or more axles when operated alone or as 52741
part of a commercial tandem, a commercial car with two axles that 52742
is to be operated as part of a commercial tandem with a gross 52743
vehicle weight or a registered gross vehicle weight exceeding 52744
twenty-six thousand pounds, or a commercial tractor when operated 52745
alone or as part of a commercial tractor combination or commercial 52746
tandem on a public highway ~~without~~ under either of the following 52747
circumstances: 52748

(1) Without a valid fuel use permit for such commercial car 52749
or commercial tractor. 52750

(2) With a suspended or surrendered fuel use permit for such 52751
commercial car or commercial tractor. 52752

(B) The judge or magistrate of any court finding any person 52753
guilty of unlawfully operating a commercial car or commercial 52754
tractor as provided for in this section shall immediately notify 52755
the tax commissioner of such violation and shall transmit to the 52756
tax commissioner the name and the permanent address of the owner 52757
of the commercial car or commercial tractor operated in violation 52758
of this section, the registration number, the state of 52759
registration, and the certificate of title number of the 52760
commercial car or commercial tractor. The commercial car or 52761
commercial tractor involved in a violation of division (A)(1) or 52762

(2) of this section may be detained until a valid fuel use permit is obtained or reinstated. 52763
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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. 52765
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(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. 52772
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(B)(1) Whoever violates division (A)(1) of section 5728.04 of the Revised Code is guilty of a misdemeanor of the fourth degree. 52778
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(2) Whoever violates division (A)(2) of section 5728.04 of the Revised Code is guilty of a felony of the fifth degree. 52780
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Sec. 5733.01. (A) The tax provided by this chapter for domestic corporations shall be the amount charged against each corporation organized for profit under the laws of this state and each nonprofit corporation organized pursuant to Chapter 1729. of the Revised Code, except as provided in sections 5733.09 and 5733.10 of the Revised Code, for the privilege of exercising its franchise during the calendar year in which that amount is payable, and the tax provided by this chapter for foreign corporations shall be the amount charged against each corporation organized for profit and each nonprofit corporation organized or operating in the same or similar manner as nonprofit corporations 52782
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organized under Chapter 1729. of the Revised Code, under the laws 52793
of any state or country other than this state, except as provided 52794
in sections 5733.09 and 5733.10 of the Revised Code, for the 52795
privilege of doing business in this state, owning or using a part 52796
or all of its capital or property in this state, holding a 52797
certificate of compliance with the laws of this state authorizing 52798
it to do business in this state, or otherwise having nexus in or 52799
with this state under the Constitution of the United States, 52800
during the calendar year in which that amount is payable. 52801

(B) A corporation is subject to the tax imposed by section 52802
5733.06 of the Revised Code for each calendar year that it is so 52803
organized, doing business, owning or using a part or all of its 52804
capital or property, holding a certificate of compliance, or 52805
otherwise having nexus in or with this state under the 52806
Constitution of the United States, on the first day of January of 52807
that calendar year. 52808

(C) Any corporation subject to this chapter that is not 52809
subject to the federal income tax shall file its returns and 52810
compute its tax liability as required by this chapter in the same 52811
manner as if that corporation were subject to the federal income 52812
tax. 52813

(D) For purposes of this chapter, a federally chartered 52814
financial institution shall be deemed to be organized under the 52815
laws of the state within which its principal office is located. 52816

(E) ~~Any~~ For purposes of this chapter, any person, as defined 52817
in section 5701.01 of the Revised Code, shall be treated as a 52818
corporation ~~for purposes of this chapter~~ if the person is 52819
classified for federal income tax purposes as an association 52820
taxable as a corporation, and an equity interest in the person 52821
shall be treated as capital stock of the person. 52822

(F) For the purposes of this chapter, "disregarded entity" 52823

has the same meaning as in division (D) of section 5745.01 of the Revised Code. 52824
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(1) A person's interest in a disregarded entity, whether held directly or indirectly, shall be treated as the person's ownership of the assets and liabilities of the disregarded entity, and the income, including gain or loss, shall be included in the person's net income under this chapter. 52826
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(2) Any sale, exchange, or other disposition of the person's interest in the disregarded entity, whether held directly or indirectly, shall be treated as a sale, exchange, or other disposition of the person's share of the disregarded entity's underlying assets or liabilities, and the gain or loss from such sale, exchange, or disposition shall be included in the person's net income under this chapter. 52831
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(3) The disregarded entity's payroll, property, and sales factors shall be included in the person's factors. 52838
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Sec. 5733.04. As used in this chapter: 52840

(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. 52841
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(B) "Taxpayer" means a corporation subject to the tax imposed by section 5733.06 of the Revised Code. 52850
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(C) "Resident" means a corporation organized under the laws of this state. 52852
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(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) 52885
of this section. The amount of such net operating loss, as 52886
determined under the allocation and apportionment provisions of 52887
section 5733.051 and division (B) of section 5733.05 of the 52888
Revised Code for the year in which the net operating loss occurs, 52889
shall be deducted from net income, as determined under the 52890
allocation and apportionment provisions of section 5733.051 and 52891
division (B) of section 5733.05 of the Revised Code, to the extent 52892
necessary to reduce net income to zero with the remaining unused 52893
portion of the deduction, if any, carried forward to the remaining 52894
years of the designated carryover period as described in division 52895
(I)(1)(b) of this section, or until fully utilized, whichever 52896
occurs first. 52897

(b) For losses incurred in taxable years ending on or before 52898
December 31, 1981, the designated carryover period shall be the 52899
five consecutive taxable years after the taxable year in which the 52900
net operating loss occurred. For losses incurred in taxable years 52901
ending on or after January 1, 1982, and beginning before August 6, 52902
1997, the designated carryover period shall be the fifteen 52903
consecutive taxable years after the taxable year in which the net 52904
operating loss occurs. For losses incurred in taxable years 52905
beginning on or after August 6, 1997, the designated carryover 52906
period shall be the twenty consecutive taxable years after the 52907
taxable year in which the net operating loss occurs. 52908

(c) The tax commissioner may require a taxpayer to furnish 52909
any information necessary to support a claim for deduction under 52910
division (I)(1)(a) of this section and no deduction shall be 52911
allowed unless the information is furnished. 52912

(2) Deduct any amount included in net income by application 52913
of section 78 or 951 of the Internal Revenue Code, amounts 52914
received for royalties, technical or other services derived from 52915
sources outside the United States, and dividends received from a 52916

subsidiary, associate, or affiliated corporation that neither 52917
transacts any substantial portion of its business nor regularly 52918
maintains any substantial portion of its assets within the United 52919
States. For purposes of determining net foreign source income 52920
deductible under division (I)(2) of this section, the amount of 52921
gross income from all such sources other than dividend income and 52922
income derived by application of section 78 or 951 of the Internal 52923
Revenue Code shall be reduced by: 52924

(a) The amount of any reimbursed expenses for personal 52925
services performed by employees of the taxpayer for the 52926
subsidiary, associate, or affiliated corporation; 52927

(b) Ten per cent of the amount of royalty income and 52928
technical assistance fees; 52929

(c) Fifteen per cent of the amount of all other income. 52930

The amounts described in divisions (I)(2)(a) to (c) of this 52931
section are deemed to be the expenses attributable to the 52932
production of deductible foreign source income unless the taxpayer 52933
shows, by clear and convincing evidence, less actual expenses, or 52934
the tax commissioner shows, by clear and convincing evidence, more 52935
actual expenses. 52936

(3) ~~Add~~ For taxable years ending prior to the effective date 52937
of this amendment, add any loss or deduct any gain resulting from 52938
the sale, exchange, or other disposition of a capital asset, or an 52939
asset described in section 1231 of the Internal Revenue Code, to 52940
the extent that such loss or gain occurred prior to the first 52941
taxable year on which the tax provided for in section 5733.06 of 52942
the Revised Code is computed on the corporation's net income. For 52943
purposes of division (I)(3) of this section, the amount of the 52944
prior loss or gain shall be measured by the difference between the 52945
original cost or other basis of the asset and the fair market 52946
value as of the beginning of the first taxable year on which the 52947

tax provided for in section 5733.06 of the Revised Code is 52948
computed on the corporation's net income. At the option of the 52949
taxpayer, the amount of the prior loss or gain may be a percentage 52950
of the gain or loss, which percentage shall be determined by 52951
multiplying the gain or loss by a fraction, the numerator of which 52952
is the number of months from the acquisition of the asset to the 52953
beginning of the first taxable year on which the fee provided in 52954
section 5733.06 of the Revised Code is computed on the 52955
corporation's net income, and the denominator of which is the 52956
number of months from the acquisition of the asset to the sale, 52957
exchange, or other disposition of the asset. The adjustments 52958
described in this division do not apply to any gain or loss where 52959
the gain or loss is recognized by a qualifying taxpayer, as 52960
defined in section 5733.0510 of the Revised Code, with respect to 52961
a qualifying taxable event, as defined in that section. 52962

(4) Deduct the dividend received deduction provided by 52963
section 243 of the Internal Revenue Code. 52964

(5) Deduct any interest or interest equivalent on public 52965
obligations and purchase obligations to the extent included in 52966
federal taxable income. As used in divisions (I)(5) and (6) of 52967
this section, "public obligations," "purchase obligations," and 52968
"interest or interest equivalent" have the same meanings as in 52969
section 5709.76 of the Revised Code. 52970

(6) Add any loss or deduct any gain resulting from the sale, 52971
exchange, or other disposition of public obligations to the extent 52972
included in federal taxable income. 52973

(7) To the extent not otherwise allowed, deduct any dividends 52974
or distributions received by a taxpayer from a public utility, 52975
excluding an electric company, or a combined company, a water 52976
transportation company for tax years 2004 and thereafter, or a 52977
telephone company for tax years 2005 and thereafter, if the 52978
taxpayer owns at least eighty per cent of the issued and 52979

outstanding common stock of the public utility. As used in 52980
division (I)(7) of this section, "public utility" means a public 52981
utility as defined in Chapter 5727. of the Revised Code, whether 52982
or not the public utility is doing business in the state. 52983

(8) To the extent not otherwise allowed, deduct any dividends 52984
received by a taxpayer from an insurance company, if the taxpayer 52985
owns at least eighty per cent of the issued and outstanding common 52986
stock of the insurance company. As used in division (I)(8) of this 52987
section, "insurance company" means an insurance company that is 52988
taxable under Chapter 5725. or 5729. of the Revised Code. 52989

(9) Deduct expenditures for modifying existing buildings or 52990
structures to meet American national standards institute standard 52991
A-117.1-1961 (R-1971), as amended; provided, that no deduction 52992
shall be allowed to the extent that such deduction is not 52993
permitted under federal law or under rules of the tax 52994
commissioner. Those deductions as are allowed may be taken over a 52995
period of five years. The tax commissioner shall adopt rules under 52996
Chapter 119. of the Revised Code establishing reasonable 52997
limitations on the extent that expenditures for modifying existing 52998
buildings or structures are attributable to the purpose of making 52999
the buildings or structures accessible to and usable by physically 53000
handicapped persons. 53001

(10) ~~Deduct~~ For taxable years ending prior to the effective 53002
date of this amendment, deduct the amount of wages and salaries, 53003
if any, not otherwise allowable as a deduction but that would have 53004
been allowable as a deduction in computing federal taxable income 53005
before operating loss deduction and special deductions for the 53006
taxable year, had the targeted jobs credit allowed and determined 53007
under sections 38, 51, and 52 of the Internal Revenue Code not 53008
been in effect. 53009

(11) Deduct net interest income on obligations of the United 53010
States and its territories and possessions or of any authority, 53011

commission, or instrumentality of the United States to the extent 53012
the laws of the United States prohibit inclusion of the net 53013
interest for purposes of determining the value of the taxpayer's 53014
issued and outstanding shares of stock under division (B) of 53015
section 5733.05 of the Revised Code. As used in division (I)(11) 53016
of this section, "net interest" means interest net of any expenses 53017
taken on the federal income tax return that would not have been 53018
allowed under section 265 of the Internal Revenue Code if the 53019
interest were exempt from federal income tax. 53020

(12)(a) Except as set forth in division (I)(12)(d) of this 53021
section, to the extent not included in computing the taxpayer's 53022
federal taxable income before operating loss deduction and special 53023
deductions, add gains and deduct losses from direct or indirect 53024
sales, exchanges, or other dispositions, made by a related entity 53025
who is not a taxpayer, of the taxpayer's indirect, beneficial, or 53026
constructive investment in the stock or debt of another entity, 53027
unless the gain or loss has been included in computing the federal 53028
taxable income before operating loss deduction and special 53029
deductions of another taxpayer with a more closely related 53030
investment in the stock or debt of the other entity. The amount of 53031
gain added or loss deducted shall not exceed the product obtained 53032
by multiplying such gain or loss by the taxpayer's proportionate 53033
share, directly, indirectly, beneficially, or constructively, of 53034
the outstanding stock of the related entity immediately prior to 53035
the direct or indirect sale, exchange, or other disposition. 53036

(b) ~~Except as set forth in division (I)(12)(e) of this~~ 53037
~~section, to~~ To the extent not included in computing the taxpayer's 53038
federal taxable income before operating loss deduction and special 53039
deductions, add gains and deduct losses from direct or indirect 53040
sales, exchanges, or other dispositions made by a related entity 53041
who is not a taxpayer, of intangible property other than stock, 53042
securities, and debt, if such property was owned, or used in whole 53043

or in part, at any time prior to or at the time of the sale, 53044
exchange, or disposition by either the taxpayer or by a related 53045
entity that was a taxpayer at any time during the related entity's 53046
ownership or use of such property, unless the gain or loss has 53047
been included in computing the federal taxable income before 53048
operating loss deduction and special deductions of another 53049
taxpayer with a more closely related ownership or use of such 53050
intangible property. The amount of gain added or loss deducted 53051
shall not exceed the product obtained by multiplying such gain or 53052
loss by the taxpayer's proportionate share, directly, indirectly, 53053
beneficially, or constructively, of the outstanding stock of the 53054
related entity immediately prior to the direct or indirect sale, 53055
exchange, or other disposition. 53056

(c) As used in division (I)(12) of this section, "related 53057
entity" means those entities described in divisions (I)(12)(c)(i) 53058
to (iii) of this section: 53059

(i) An individual stockholder, or a member of the 53060
stockholder's family enumerated in section 318 of the Internal 53061
Revenue Code, if the stockholder and the members of the 53062
stockholder's family own, directly, indirectly, beneficially, or 53063
constructively, in the aggregate, at least fifty per cent of the 53064
value of the taxpayer's outstanding stock; 53065

(ii) A stockholder, or a stockholder's partnership, estate, 53066
trust, or corporation, if the stockholder and the stockholder's 53067
partnerships, estates, trusts, and corporations own directly, 53068
indirectly, beneficially, or constructively, in the aggregate, at 53069
least fifty per cent of the value of the taxpayer's outstanding 53070
stock; 53071

(iii) A corporation, or a party related to the corporation in 53072
a manner that would require an attribution of stock from the 53073
corporation to the party or from the party to the corporation 53074
under division (I)(12)(c)(iv) of this section, if the taxpayer 53075

owns, directly, indirectly, beneficially, or constructively, at 53076
least fifty per cent of the value of the corporation's outstanding 53077
stock. 53078

(iv) The attribution rules of section 318 of the Internal 53079
Revenue Code apply for purposes of determining whether the 53080
ownership requirements in divisions (I)(12)(c)(i) to (iii) of this 53081
section have been met. 53082

(d) For purposes of the adjustments required by division 53083
(I)(12)(a) of this section, the term "investment in the stock or 53084
debt of another entity" means only those investments where the 53085
taxpayer and the taxpayer's related entities directly, indirectly, 53086
beneficially, or constructively own, in the aggregate, at any time 53087
during the twenty-four month period commencing one year prior to 53088
the direct or indirect sale, exchange, or other disposition of 53089
such investment at least fifty per cent or more of the value of 53090
either the outstanding stock or such debt of such other entity. 53091

~~(e) For purposes of the adjustments required by division 53092
(I)(12)(b) of this section, the term "related entity" excludes all 53093
of the following: 53094~~

~~(i) Foreign corporations as defined in section 7701 of the 53095
Internal Revenue Code; 53096~~

~~(ii) Foreign partnerships as defined in section 7701 of the 53097
Internal Revenue Code; 53098~~

~~(iii) Corporations, partnerships, estates, and trusts created 53099
or organized in or under the laws of the Commonwealth of Puerto 53100
Rico or any possession of the United States; 53101~~

~~(iv) Foreign estates and foreign trusts as defined in section 53102
7701 of the Internal Revenue Code. 53103~~

~~The exclusions described in divisions (I)(12)(c)(i) to (iv) 53104
of this section do not apply if the corporation, partnership, 53105~~

~~estate, or trust is described in any one of divisions (C)(1) to 53106~~
~~(5) of section 5733.042 of the Revised Code. 53107~~

~~(f)~~ Nothing in division (I)(12) of this section shall require 53108
or permit a taxpayer to add any gains or deduct any losses 53109
described in divisions (I)(12)~~(f)~~(e)(i) and (ii) of this section: 53110

(i) Gains or losses recognized for federal income tax 53111
purposes by an individual, estate, or trust without regard to the 53112
attribution rules described in division (I)(12)(c) of this 53113
section; 53114

(ii) A related entity's gains or losses described in division 53115
(I)(12)(b) of this section if the taxpayer's ownership of or use 53116
of such intangible property was limited to a period not exceeding 53117
nine months and was attributable to a transaction or a series of 53118
transactions executed in accordance with the election or elections 53119
made by the taxpayer or a related entity pursuant to section 338 53120
of the Internal Revenue Code. 53121

(13) Any adjustment required by section 5733.042 of the 53122
Revised Code. 53123

(14) Add any amount claimed as a credit under section 53124
5733.0611 of the Revised Code to the extent that such amount 53125
satisfies either of the following: 53126

(a) It was deducted or excluded from the computation of the 53127
corporation's taxable income before operating loss deduction and 53128
special deductions as required to be reported for the 53129
corporation's taxable year under the Internal Revenue Code; 53130

(b) It resulted in a reduction of the corporation's taxable 53131
income before operating loss deduction and special deductions as 53132
required to be reported for any of the corporation's taxable years 53133
under the Internal Revenue Code. 53134

(15) ~~Deduct~~ For taxable years ending prior to the effective 53135

date of this amendment, deduct the amount contributed by the 53136
taxpayer to an individual development account program established 53137
by a county department of job and family services pursuant to 53138
sections 329.11 to 329.14 of the Revised Code for the purpose of 53139
matching funds deposited by program participants. On request of 53140
the tax commissioner, the taxpayer shall provide any information 53141
that, in the tax commissioner's opinion, is necessary to establish 53142
the amount deducted under division (I)(15) of this section. 53143

(16) Any adjustment required by section 5733.0510 of the 53144
Revised Code. 53145

(17)(a) Add five-sixths of the amount of depreciation expense 53146
allowed under subsection (k) of section 168 of the Internal 53147
Revenue Code, including a person's proportionate or distributive 53148
share of the amount of depreciation expense allowed by that 53149
subsection to any pass-through entity in which the person has 53150
direct or indirect ownership. The tax commissioner, under 53151
procedures established by the commissioner, may waive the add-back 53152
related to a pass-through entity if the person owns, directly or 53153
indirectly, less than five per cent of the pass-through entity. 53154

(b) Nothing in division (I)(17) of this section shall be 53155
construed to adjust or modify the adjusted basis of any asset. 53156

(c) To the extent the add-back is attributable to property 53157
generating income or loss allocable under section 5733.051 of the 53158
Revised Code, the add-back shall be allocated to the same location 53159
as the income or loss generated by that property. Otherwise, the 53160
add-back shall be apportioned, subject to division (B)(2)(d) of 53161
section 5733.05 of the Revised Code. 53162

(18)(a) If a person is required to make the add-back under 53163
division (I)(17)(a) of this section for a tax year, the person 53164
shall deduct one-fifth of the amount added back for each of the 53165
succeeding five tax years. 53166

(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.

(19) Add, to the extent deducted in computing federal taxable income, taxes on or measured by income that are paid to any jurisdiction other than this state and its political subdivisions.

(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)~~(D) 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. 53227

(b)(i) As used in division (L) of this section, "intangible 53228
asset" includes, but is not limited to, the corporation's direct 53229
interest in each pass-through entity only if at all times during 53230
the corporation's taxable year ending prior to the first day of 53231
the tax year the corporation's and the corporation's related 53232
members' combined direct and indirect interests in the capital or 53233
profits of such pass-through entity do not exceed fifty per cent. 53234
If the corporation's interest in the pass-through entity is an 53235
intangible asset for that taxable year, then the distributive 53236
share of any income from the pass-through entity shall be income 53237
from an intangible asset for that taxable year. 53238

(ii) If a corporation's and the corporation's related 53239
members' combined direct and indirect interests in the capital or 53240
profits of a pass-through entity exceed fifty per cent at any time 53241
during the corporation's taxable year ending prior to the first 53242
day of the tax year, "intangible asset" does not include the 53243
corporation's direct interest in the pass-through entity, and the 53244
corporation shall include in its assets its proportionate share of 53245
the assets of any such pass-through entity and shall include in 53246
its gross income its distributive share of the gross income of 53247
such pass-through entity in the same form as was earned by the 53248
pass-through entity. 53249

(iii) A pass-through entity's direct or indirect 53250
proportionate share of any other pass-through entity's assets 53251
shall be included for the purpose of computing the corporation's 53252
proportionate share of the pass-through entity's assets under 53253
division (L)(2)(b)(ii) of this section, and such pass-through 53254
entity's distributive share of any other pass-through entity's 53255
gross income shall be included for purposes of computing the 53256
corporation's distributive share of the pass-through entity's 53257
gross income under division (L)(2)(b)(ii) of this section. 53258

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii), 53259
(2)(a)(i), and (2)(a)(ii) of this section, real property is 53260
described in division (L)(2)(c) of this section only if all of the 53261
following conditions are present at all times during the taxable 53262
year ending prior to the first day of the tax year: 53263

(i) The real property serves as the headquarters of the 53264
corporation's trade or business, or is the place from which the 53265
corporation's trade or business is principally managed or 53266
directed; 53267

(ii) Not more than ten per cent of the value of the real 53268
property and not more than ten per cent of the square footage of 53269
the building or buildings that are part of the real property is 53270
used, made available, or occupied for the purpose of providing, 53271
acquiring, transferring, selling, or disposing of tangible 53272
property or services in the normal course of business to persons 53273
other than related members, the corporation's employees and their 53274
families, and such related members' employees and their families. 53275

(d) As used in division (L) of this section, "related member" 53276
has the same meaning as in ~~division (A)(6)~~ of section 5733.042 of 53277
the Revised Code without regard to division (B) of that section. 53278

(3) The percentages described in division (L)(1)(a) of this 53279
section shall be equal to the quarterly average of those 53280
percentages as calculated during the corporation's taxable year 53281
ending prior to the first day of the tax year. 53282

(4) With respect to the election described in division 53283
(L)(1)(e) of this section: 53284

(a) The election need not accompany a timely filed report; 53285

(b) The election need not accompany the report; rather, the 53286
election may accompany a subsequently filed but timely application 53287
for refund and timely amended report, or a subsequently filed but 53288

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|---|---|
| timely petition for reassessment; | 53289 |
| (c) The election is not irrevocable; | 53290 |
| (d) The election applies only to the tax year specified by the corporation; | 53291 53292 |
| (e) The corporation's related members comply with division (L)(1)(d) of this section. | 53293 53294 |
| Nothing in division (L)(4) of this section shall be construed to extend any statute of limitations set forth in this chapter. | 53295 53296 |
| (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, one of <u>which owns or controls, directly or indirectly, more than fifty</u> <u>per cent of the capital stock with voting rights of one or more of</u> <u>the other corporations, or has more than fifty per cent of its</u> <u>capital stock with voting rights owned or controlled, directly or</u> <u>indirectly, by one of the other corporations or by related</u> <u>interests that own or control, directly or indirectly, more than</u> <u>fifty per cent of the capital stock with voting rights of one or</u> <u>more of the other corporations.</u> | 53297 53298 53299 53300 53301 53302 53303 53304 53305 53306 53307 |
| (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. | 53308 53309 53310 |
| (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. | 53311 53312 53313 53314 53315 53316 53317 |
| (P) "Electric company," and "combined company," <u>telephone</u> | 53318 |

company," and "water transportation company" have the same 53319
meanings as in section 5727.01 of the Revised Code. 53320

(O) "Business income" means income arising from transactions, 53321
activities, and sources in the regular course of a trade or 53322
business and includes income from real property, tangible personal 53323
property, and intangible personal property if the acquisition, 53324
rental, management, and disposition of the property constitute 53325
integral parts of the regular course of a trade or business 53326
operation. "Business income" includes income, including gain or 53327
loss, from a partial or complete liquidation of a business, 53328
including, but not limited to, gain or loss from the sale or other 53329
disposition of goodwill. All income, including gain and loss, 53330
directly or indirectly recognized shall be presumed to be business 53331
income. 53332

(R) "Nonbusiness income" means all income other than business 53333
income. 53334

Sec. 5733.042. (A) As used in this section: 53335

(1) "Affiliated group" has the same meaning as in section 53336
1504 of the Internal Revenue Code. 53337

(2) "Asset value" means the adjusted basis of assets as 53338
determined in accordance with Subchapter O of the Internal Revenue 53339
Code and the Treasury Regulations thereunder. 53340

~~(3) "Intangible expenses and costs" include expenses, losses,~~ 53341
~~and costs for, related to, or in connection directly or indirectly~~ 53342
~~with the direct or indirect acquisition of, the direct or indirect~~ 53343
~~use of, the direct or indirect maintenance or management of, the~~ 53344
~~direct or indirect ownership of, the direct or indirect sale of,~~ 53345
~~the direct or indirect exchange of, or any other direct or~~ 53346
~~indirect disposition of intangible property to the extent such~~ 53347
~~amounts are allowed as deductions or costs in determining taxable~~ 53348

~~income before operating loss deduction and special deductions for 53349
the taxable year under the Internal Revenue Code. Such expenses 53350
and costs include, but are not limited to, losses related to or 53351
incurred in connection directly or indirectly with factoring 53352
transactions, losses related to or incurred in connection directly 53353
or indirectly with discounting transactions, royalty, patent, 53354
technical, and copyright fees, licensing fees, and other similar 53355
expenses and costs. 53356~~

~~(4) "Interest expenses and costs" include but are not limited 53357
to amounts directly or indirectly allowed as deductions under 53358
section 163 of the Internal Revenue Code for purposes of 53359
determining taxable income under the Internal Revenue Code. 53360~~

~~(5) "Member" has the same meaning as in U.S. Treasury 53361
Regulation section 1.1502-1. 53362~~

~~(6) "Related member" means a person that, with respect to the 53363
taxpayer during all or any portion of the taxable year, is a 53364
"related entity" as defined in division (I)(12)(c) of section 53365
5733.04 of the Revised Code, is a component member as defined in 53366
section 1563(b) of the Internal Revenue Code, or is a person to or 53367
from ~~whom~~ which there is attribution of stock ownership in 53368
accordance with section 1563(e) of the Internal Revenue Code 53369
except, for purposes of determining whether a person is a related 53370
member under this division, "twenty per cent" shall be substituted 53371
for "5 per cent" wherever "5 per cent" appears in section 1563(e) 53372
of the Internal Revenue Code. 53373~~

~~(B) This section applies to all corporations for tax years 53374
1999 and thereafter. For tax years prior to 1999, this section 53375
applies only to a corporation that has, or is a member of an 53376
affiliated group that has, or is a member of an affiliated group 53377
with another member that has, one or more of the following: 53378~~

~~(1) Gross sales, including sales to other members of the 53379~~

affiliated group, during the taxable year of at least fifty million dollars; 53380
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(2) Total assets whose asset value at any time during the taxable year is at least twenty-five million dollars; 53382
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(3) Taxable income before operating loss deduction and special deductions during the taxable year of at least five hundred thousand dollars. 53384
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(C) Except as otherwise provided in this section and section 5733.044 of the Revised Code: 53387
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(1) For purposes of computing its net income under division (I) of section 5733.04 of the Revised Code, the corporation shall add ~~interest expenses and costs and intangible~~ all expenses and, costs, and losses directly or indirectly paid, accrued, ~~or~~ incurred to, or recognized in connection directly or indirectly with one or more direct or indirect transactions with, ~~one or more of the following~~ related members: 53389
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~~(1) Any related member whose activities, in any one state, are primarily limited to the maintenance and management of intangible investments or of the intangible investments of corporations, business trusts, or other entities registered as investment companies under the "Investment Company Act of 1940," 15 U.S.C. 80a-1 et seq., as amended, and the collection and distribution of the income from such investments or from tangible property physically located outside such state. For purposes of division (C)(1) of this section, "intangible investments" includes, without limitation, investments in stocks, bonds, notes, and other debt obligations, including debt obligations of related members, interests in partnerships, patents, patent applications, trademarks, trade names, and similar types of intangible assets.~~ 53396
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~~(2) Any related member that is a personal holding company as defined in section 542 of the Internal Revenue Code without regard~~ 53409
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~~to the stock ownership requirements set forth in section 542(a)(2) 53411
of the Internal Revenue Code; 53412~~

~~(3) Any related member that is not a corporation and is 53413
directly, indirectly, constructively, or beneficially owned in 53414
whole or in part by a personal holding company as defined in 53415
section 542 of the Internal Revenue Code without regard to the 53416
stock ownership requirements set forth in section 542(a)(2) of the 53417
Internal Revenue Code; 53418~~

~~(4) Any related member that is a foreign personal holding 53419
company as defined in section 552 of the Internal Revenue Code; 53420~~

~~(5) Any related member that is not a corporation and is 53421
directly, indirectly, constructively, or beneficially owned in 53422
whole or in part by a foreign personal holding company as defined 53423
in section 552 of the Internal Revenue Code; 53424~~

~~(6) Any related member if that related member or another 53425
related member directly or indirectly paid, accrued, or incurred 53426
to, or in connection directly or indirectly with one or more 53427
direct or indirect transactions with, another related member any 53428
interest expenses and costs or intangible expenses and costs in an 53429
amount less than, equal to, or greater than such amounts received 53430
from the corporation. Division (C)(6) of this section applies only 53431
if, within a one hundred twenty month period commencing three 53432
years prior to the beginning of the tax year, a related member 53433
directly or indirectly paid, accrued, or incurred such amounts or 53434
losses with respect to one or more direct or indirect transactions 53435
with an entity described in divisions (C)(1) to (5) of this 53436
section. A rebuttable presumption exists that a related member did 53437
so pay, accrue, or incur such amounts or losses with respect to 53438
one or more direct or indirect transactions with an entity 53439
described in divisions (C)(1) to (5) of this section. A 53440
corporation can rebut this presumption only with a preponderance 53441
of the evidence to the contrary. 53442~~

~~(7) Any related member that, with respect to indebtedness directly or indirectly owed by the corporation to the related member, directly or indirectly charged or imposed on the corporation an excess interest rate. If the related member has charged or imposed on the corporation an excess interest rate, the adjustment required by division (C)(7) of this section with respect to such interest expenses and costs directly or indirectly paid, accrued, or incurred to the related member in connection with such indebtedness does not include so much of such interest expenses and costs that the corporation would have directly or indirectly paid, accrued, or incurred if the related member had charged or imposed the highest possible interest rate that would not have been an excess interest rate. For purposes of division (C)(7) of this section, an excess interest rate is an annual rate that exceeds by more than three per cent the greater of the rate per annum prescribed by section 5703.47 of the Revised Code in effect at the time of the origination of the indebtedness, or the rate per annum prescribed by section 5703.47 of the Revised Code in effect at the time the corporation paid, accrued, or incurred the interest expense or cost to the related member.~~

~~(D)(1) In (2) All inter-related member profit in cost of goods sold shall be eliminated.~~

~~(3) All inter-related member profit and gain in all assets, and the concomitant effect on expense and subsequently recognized gains and losses, shall be eliminated.~~

~~In making the adjustment required by division (C) of this section, the corporation shall make the ~~adjustment~~ adjustments required by section 5733.057 of the Revised Code. The~~

~~(D)(1) The adjustments required by division (C) of this section are not required if either of the following applies:~~

~~(a) The corporation establishes by clear and convincing~~

~~evidence that the adjustments are unreasonable.~~ 53474

~~(b) The the corporation and the tax commissioner agree in writing to the application or use of alternative adjustments and computations to more properly reflect the base required to be determined in accordance with division (B) of section 5733.05 of the Revised Code. Nothing in this division ~~(D)(1)(b) of this section~~ shall be construed to limit or negate the tax commissioner's authority to otherwise enter into agreements and compromises otherwise allowed by law.~~ 53475
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~~(2) The adjustments required by ~~divisions~~ division (C)(1) ~~to~~ ~~(5)~~ of this section do not apply to such portion of ~~interest~~ expenses and costs ~~and intangible expenses and costs~~ that the corporation can establish by the preponderance of the evidence meets ~~both~~ all of the following:~~ 53483
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~~(a) The related member during the same taxable year directly or indirectly paid, accrued, or incurred such portion to a person ~~who~~ that is not a related member ~~of the corporation;~~~~ 53488
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~~(b) During the six-year period commencing three years prior to the first day of the corporation's taxable year, such person or any related member of such person did not directly or indirectly pay, accrue, or incur such portion or any part of such portion to the corporation or to any related member of the corporation;~~ 53491
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~~(c) The transaction giving rise to the ~~interest~~ expenses and costs ~~or the intangible expenses and costs~~ between the corporation and the related member did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.~~ 53496
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~~(3) The adjustments required by ~~division~~ (C)(6) of this section do not apply to such portion of ~~interest~~ expenses and costs ~~and intangible expenses and costs~~ that the corporation can establish by the preponderance of the evidence meets ~~both~~ of the following:~~ 53500
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~~(a) The entity described in any of divisions (C)(1) to (6) of this section to whom the related member directly or indirectly paid, accrued, or incurred such portion, in turn during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person who is not a related member, and~~ 53505
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~~(b) The transaction or transactions giving rise to the interest expenses and costs or the intangible expenses and costs between the corporation, the related member, and the entity described in any of divisions (C)(1) to (5) did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.~~ 53510
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~~(4)(a) The adjustments required by division (C) of this section do not apply except to the extent that the increased tax, if any, attributable to such adjustments would have been be avoided if both the following persons were to compute the tax due under this chapter based upon a combination of income: the corporation and, the related member had been eligible to make and had timely made the election to combine in accordance with division (B) of section 5733.052 of the Revised Code or related members to which the corporation directly or indirectly paid, accrued, or incurred the expenses, costs, or losses described in division (C) of this section, and any other related member or related members directly or indirectly receiving or accruing income from those related members to which the corporation directly or indirectly paid, accrued, or incurred such expenses, costs, or losses described in division (C) of this section.~~ 53516
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~~(b) In the case of a combination of income for purposes of division (D)(3) of this section, the net income of the taxpayer shall be measured by the combined net income of the corporation and all related members described in division (D)(3)(a) of this section. For purposes of such measurement, each corporation's net income shall be determined in the same manner as if the related~~ 53531
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member or related members were taxpayers under this chapter. In 53537
computing combined net income, intercorporate transactions, 53538
including dividends or distributions, between corporations 53539
included in the combination shall be eliminated. If the 53540
computation of net income on a combination of income involves the 53541
use of any of the formulas set forth in this chapter, the factors 53542
used in the formulas shall be the combined totals of the factors 53543
for each corporation included in the combination after the 53544
elimination of any intercorporate transactions. The exemptions and 53545
deductions permitted under this chapter shall be taken in the same 53546
manner as if each corporation filed a separate report, but in 53547
ascertaining if any amount constitutes business income, all 53548
members of the combined group shall be considered to be one 53549
entity. 53550

(4) For purposes of division (D)(3) of this section, each 53551
corporation's net income allocated or apportioned to this state 53552
shall be computed as follows: 53553

(a) To compute each taxpayer's net nonbusiness income 53554
allocated to this state for purposes of division (B) of section 53555
5733.05 of the Revised Code, each corporation's net nonbusiness 53556
income for sources allocated under section 5733.051 of the Revised 53557
Code shall be separately calculated, eliminating intercorporate 53558
transactions, and allocated to this state as provided by section 53559
5733.051 of the Revised Code. 53560

(b) To compute each corporation's net business income 53561
apportioned to this state for purposes of division (B) of section 53562
5733.05 of the Revised Code, the combined net income, other than 53563
net income from nonbusiness income sources allocated under section 53564
5733.051 of the Revised Code, shall be apportioned to this state 53565
and then prorated to each corporation on the basis of each 53566
corporation's proportionate part of the factors used to apportion 53567
the total of such net business income to this state. 53568

(E) Except as otherwise provided in division (F) of this section, if, on the day that is one year after the day the corporation files its report, the corporation has not made the adjustment required by this section or has not fully paid the tax and interest, if any, imposed by this chapter and attributable to such adjustment, the corporation is subject to a penalty equal to twice the interest charged under division (A) of section 5733.26 of the Revised Code for the delinquent payment of such tax and interest. For the purpose of the computation of the penalty imposed by this division, such penalty shall be deemed to be part of the tax due on the dates prescribed by this chapter without regard to the one-year period set forth in this division. The penalty imposed by this division is not in lieu of but is in addition to all other penalties, other similar charges, and interest imposed by this chapter. The tax commissioner may waive, abate, modify, or refund, with interest, all or any portion of the penalty imposed by this division only if the corporation establishes beyond a reasonable doubt that both the failure to fully comply with this section and the failure to fully pay such tax and interest within one year after the date the corporation files its report were not in any part attributable to the avoidance of any portion of the tax imposed by section 5733.06 of the Revised Code.

(F)(1) For purposes of this division, "tax differential difference" means the difference between (a) the tax ~~that is~~ imposed by section 5733.06 of the Revised Code ~~and~~ that is attributable to the ~~adjustment~~ adjustments required by this section, and (b) the amount paid that is so attributable, prior to the day that is one year after the day the corporation files its report.

(2) The penalty imposed by division (E) of this section does not apply if the tax ~~differential~~ difference meets both of the

following requirements: 53601

(a) ~~The tax differential~~ It is less than ten per cent of the 53602
tax imposed by section 5733.06 of the Revised Code; and 53603

(b) ~~The difference~~ It is less than fifty thousand dollars. 53604

(3) Nothing in division (F) of this section shall be 53605
construed to waive, abate, or modify any other penalties, other 53606
similar charges, or interest imposed by other sections of this 53607
chapter. 53608

(G) Nothing in this section shall require a corporation to 53609
add to its net income more than once any ~~amount of interest~~ 53610
~~expenses and costs or intangible~~ expenses and costs that the 53611
corporation pays, accrues, or incurs to a related member ~~described~~ 53612
~~in~~. No adjustments under division (C) of this section shall be 53613
made to the extent the effect of such adjustments occurs as a 53614
result of a consolidated return, elected under section 5733.052 of 53615
the Revised Code, that includes the corporation and the 53616
corporation's related member or related members with respect to 53617
which such adjustments would be made without regard to this 53618
division. 53619

Sec. 5733.044. (A) Section 5733.042 of the Revised Code does 53620
not apply to a corporation for a tax year for payments of expenses 53621
or costs to which all of the following apply: 53622

(1) The corporation establishes by clear and convincing 53623
evidence that the corporation directly remitted such payments to a 53624
related member that, for the six-year period beginning three years 53625
prior to the remittance, was not subject to federal income tax 53626
with respect to the payments and was not required to file a 53627
federal income tax return with the internal revenue service for 53628
purposes of reporting the payments. For purposes of division 53629
(A)(1) of this section, payments shall be treated as directly 53630

remitted to the related member even if those payments are 53631
processed or paid through another related member that does not 53632
charge a fee in connection therewith. 53633

(2) The corporation establishes by clear and convincing 53634
evidence that during the six-year period beginning three years 53635
prior to the remittance to the related member described in 53636
division (A)(1) of this section, the related member did not 53637
directly or indirectly remit any portion of the payments referred 53638
to in division (A)(1) of this section, or any like, similar, or 53639
other amount, to any other related member that, during any portion 53640
of that six-year period, was subject to federal income tax and was 53641
required to file a federal income tax return with the internal 53642
revenue service. 53643

(3) The corporation establishes by clear and convincing 53644
evidence that the corporation is allowed a deduction for federal 53645
income tax purposes with respect to the remittance made to the 53646
related member described in division (A)(1) of this section for 53647
the corporation's taxable year pursuant to an advanced pricing 53648
agreement between the corporation and the internal revenue 53649
service, or that the corporation has satisfied the documentation 53650
requirements of sections 482 and 6662(e) of the Internal Revenue 53651
Code, or that the corporation has complied with section 482 of the 53652
Internal Revenue Code. 53653

(4) The corporation refutes by clear and convincing evidence 53654
any reasonable conclusion of the tax commissioner that the 53655
transaction giving rise to the remittance to the related member 53656
described in division (A)(1) of this section had as a principal 53657
purpose the avoidance of any portion of the tax due under this 53658
chapter. 53659

For purposes of division (A) of this section, "federal income 53660
tax" and "federal income tax return" do not include withholding 53661
taxes and returns filed for purposes of reporting withholding 53662

taxes, providing information other than reporting income tax liability, or claiming the benefits of a tax treaty between the United States and another government. 53663
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(B) Notwithstanding section 5703.56 of the Revised Code to the contrary, a corporation claiming that division (A) of this section applies must refute by clear and convincing evidence any reasonable conclusion of the tax commissioner that any of the doctrines set forth in that section should apply to deny to the corporation the application of division (A) of this section. 53666
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(C) Where the corporation and other related members make payments to another related member described in division (A)(1) of this section, and to the extent such payments are processed or paid through another related member in the manner described in division (A)(1) of this section, this section shall apply only with respect to the corporation's pro-rata share of the total payments made by all such related members to the related member described in division (A)(1) of this section during the taxable year, unless the corporation establishes by clear and convincing evidence the actual amount of the corporation's payments that are made to the related member described in division (A)(1) of this section. Nothing in division (C) of this section shall allow a corporation to apply division (A) of this section to any amount greater than the actual payments made by the corporation to a related member described in division (A)(1) of this section during the taxable year. 53672
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(D) Any adjustments made by the internal revenue service to any related member of the corporation with respect to an advanced pricing agreement or with respect to section 482 of the Internal Revenue Code shall be presumed to be adjustments properly attributed to the corporation, unless the corporation establishes by clear and convincing evidence that the adjustment should be attributed, in whole or in part, to another person. 53688
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(E)(1) If any corporation claims the benefit provided by 53695
division (A) of this section and is not entitled to such benefit, 53696
any adjustment otherwise required by section 5733.042 of the 53697
Revised Code shall be further increased by an amount equal to two 53698
times such adjustment. 53699

(2) Division (E)(1) of this section does not apply to 53700
adjustments made in connection with an advanced pricing agreement. 53701

Sec. 5733.05. As used in this section, "dealer in 53702
intangibles" has the same meaning as in section 5725.01 of the 53703
Revised Code, and "qualified research" means laboratory research, 53704
experimental research, and other similar types of research; 53705
research in developing or improving a product; or research in 53706
developing or improving the means of producing a product. ~~It~~ 53707
"Qualified research" does not include market research, consumer 53708
surveys, efficiency surveys, management studies, ordinary testing 53709
or inspection of materials or products for quality control, 53710
historical research, or literary research. "Product" as used in 53711
this paragraph does not include services or intangible property. 53712

The annual report determines the value of the issued and 53713
outstanding shares of stock of the taxpayer, which under division 53714
(A) or divisions (B) and (C) of this section is the base or 53715
measure of the franchise tax liability. Such determination shall 53716
be made as of the date shown by the report to have been the 53717
beginning of the corporation's annual accounting period that 53718
includes the first day of January of the tax year. For the 53719
purposes of this chapter, the value of the issued and outstanding 53720
shares of stock of any corporation that is a financial institution 53721
shall be deemed to be the value as calculated in accordance with 53722
division (A) of this section. For the purposes of this chapter, 53723
the value of the issued and outstanding shares of stock of any 53724
corporation that is not a financial institution shall be deemed to 53725

be the values as calculated in accordance with divisions (B) and 53726
(C) of this section. Except as otherwise required by this section 53727
or section 5733.056 of the Revised Code, the value of a taxpayer's 53728
issued and outstanding shares of stock under division (A) or (C) 53729
of this section does not include any amount that is treated as a 53730
liability under generally accepted accounting principles. 53731

(A) The total value, as shown by the books of the financial 53732
institution, of its capital, surplus, whether earned or unearned, 53733
undivided profits, and reserves shall be determined as prescribed 53734
by section 5733.056 of the Revised Code for tax years 1998 and 53735
thereafter. 53736

(B) The sum of the corporation's net income during the 53737
corporation's taxable year, allocated or apportioned to this state 53738
as prescribed in divisions (B)(1) and (2) of this section, and 53739
subject to sections 5733.052, 5733.053, 5733.057, 5733.058, 53740
5733.059, and 5733.0510 of the Revised Code: 53741

(1) The net nonbusiness income allocated or apportioned to 53742
this state as provided by section 5733.051 of the Revised Code. 53743

(2) The amount of Ohio apportioned net business income ~~from~~ 53744
~~sources other than those allocated under section 5733.051 of the~~ 53745
~~Revised Code~~, which shall be ~~determined~~ calculated by multiplying 53746
the corporation's net business income by a fraction. The numerator 53747
of the fraction is the sum of the following products: the property 53748
factor multiplied by twenty, the payroll factor multiplied by 53749
twenty, and the sales factor multiplied by sixty. The denominator 53750
of the fraction is one hundred, provided that the denominator 53751
shall be reduced by twenty if the property factor has a 53752
denominator of zero, by twenty if the payroll factor has a 53753
denominator of zero, and by sixty if the sales factor has a 53754
denominator of zero. 53755

The property, payroll, and sales factors shall be determined 53756

as follows, but the numerator and the denominator of the factors 53757
shall not include the portion of any property, payroll, and sales 53758
otherwise includible in the factors to the extent that the portion 53759
relates to, or is used in connection, with the production of 53760
nonbusiness income allocated under section 5733.051 of the Revised 53761
Code: 53762

(a) The property factor is a fraction ~~the~~ that, for a dealer 53763
in intangibles shall be determined pursuant to division (D) of 53764
section 5733.056 of the Revised Code in the same manner as if the 53765
dealer were a financial institution, and for a corporation that is 53766
not a dealer in intangibles shall be determined as follows: The 53767
numerator of ~~which~~ the fraction is the average value of the 53768
corporation's real and tangible personal property owned or rented, 53769
and used in the trade or business in this state during the taxable 53770
year, and the denominator of ~~which~~ the fraction is the average 53771
value of all the corporation's real and tangible personal property 53772
owned or rented, and used in the trade or business everywhere 53773
during such year. Real and tangible personal property used in the 53774
trade or business includes, but is not limited to, real and 53775
tangible personal property that the corporation rents, subrents, 53776
leases, or subleases to others if the income or loss from such 53777
rentals, subrentals, leases, or subleases is business income. 53778
There shall be excluded from the numerator and denominator of the 53779
~~property factor~~ fraction the original cost of all ~~of the following~~ 53780
property within Ohio: ~~property with respect to which a "pollution~~ 53781
~~control facility" certificate has been issued pursuant to section~~ 53782
~~5709.21 of the Revised Code; property with respect to which an~~ 53783
~~"industrial water pollution control certificate" has been issued~~ 53784
~~pursuant to section 6111.31 of the Revised Code; and property used~~ 53785
exclusively during the taxable year for qualified research. 53786

(i) Property owned by the corporation is valued at its 53787
original cost. Property rented by the corporation is valued at 53788

eight times the net annual rental rate. "Net annual rental rate" 53789
means the annual rental rate paid by the corporation less any 53790
annual rental rate received by the corporation from subrentals. 53791

(ii) The average value of property shall be determined by 53792
averaging the values at the beginning and the end of the taxable 53793
year, but the tax commissioner may require the averaging of 53794
monthly values during the taxable year, if reasonably required to 53795
reflect properly the average value of the corporation's property. 53796

(b) The payroll factor is a fraction ~~the~~ that, for a dealer 53797
in intangibles shall be determined pursuant to division (D) of 53798
section 5733.056 of the Revised Code in the same manner as if the 53799
dealer were a financial institution, and for a corporation that is 53800
not a dealer in intangibles shall be determined as follows: The 53801
numerator of ~~which~~ the fraction is the total amount paid in this 53802
state during the taxable year by the corporation for compensation, 53803
and the denominator of ~~which~~ the fraction is the total 53804
compensation paid everywhere by the corporation during such year. 53805
There shall be excluded from the numerator and the denominator of 53806
the ~~payroll factor~~ fraction the total compensation paid in this 53807
state to employees who are primarily engaged in qualified 53808
research. 53809

(i) Compensation means any form of remuneration paid to an 53810
employee for personal services. 53811

(ii) Compensation is paid in this state if: (1) the 53812
recipient's service is performed entirely within this state, (2) 53813
the recipient's service is performed both within and without this 53814
state, but the service performed without this state is incidental 53815
to the recipient's service within this state, (3) some of the 53816
service is performed within this state and either the base of 53817
operations, or if there is no base of operations, the place from 53818
which the service is directed or controlled is within this state, 53819
or the base of operations or the place from which the service is 53820

directed or controlled is not in any state in which some part of 53821
the service is performed, but the recipient's residence is in this 53822
state. 53823

(iii) Compensation is paid in this state to any employee of a 53824
common or contract motor carrier corporation, who performs the 53825
employee's regularly assigned duties on a motor vehicle in more 53826
than one state, in the same ratio by which the mileage traveled by 53827
such employee within the state bears to the total mileage traveled 53828
by such employee everywhere during the taxable year. 53829

(c)(i) The sales factor is a fraction that, for a dealer in 53830
intangibles shall be determined pursuant to division (F) of 53831
section 5733.056 of the Revised Code in the same manner as if the 53832
dealer were a financial institution, and for a corporation that is 53833
not a dealer in intangibles shall be determined as provided in 53834
division (B)(2)(c) of this section. Except as provided in section 53835
5733.059 of the Revised Code, ~~the sales factor is a fraction~~ the 53836
numerator of ~~which~~ the fraction is the total sales in this state 53837
by the corporation during the taxable year, and the denominator of 53838
~~which~~ the fraction is the total sales by the corporation 53839
everywhere during such year. In determining the numerator and 53840
denominator of the ~~sales factor,~~ fraction, receipts excluded from 53841
gross income, receipts not otherwise included in net income under 53842
any provision of this title, and receipts from the sale or other 53843
disposal of a capital asset or an asset described in section 1231 53844
of the Internal Revenue Code shall be eliminated. ~~Also, in~~ 53845
~~determining the numerator and denominator of the sales factor, in~~ 53846
~~the case of a reporting corporation owning at least eighty per~~ 53847
~~cent of the issued and outstanding common stock of one or more~~ 53848
~~insurance companies or public utilities, except an electric~~ 53849
~~company, or owning at least twenty five per cent of the issued and~~ 53850
~~outstanding common stock of one or more financial institutions,~~ 53851
~~receipts received by the reporting corporation from such~~ 53852

~~utilities, insurance companies, and financial institutions shall
be eliminated.~~ 53853
53854

For the purpose of this section and section 5733.03 of the 53855
Revised Code, sales of electricity and of electric transmission 53856
and distribution services shall be situated to this state in the 53857
manner provided under section 5733.059 of the Revised Code. 53858

Sales of real property located in this state are in this 53859
state. Sales of tangible personal property are in this state where 53860
~~such~~ either the property is received in this state by the a 53861
purchaser other than the United States government, or the property 53862
is shipped from a location in this state and either the purchaser 53863
is the United States government or the seller is not liable for a 53864
tax on or measured by net income in the state where the property 53865
is received. ~~In~~ 53866

In the case of delivery of tangible personal property by 53867
common carrier or by other means of transportation, the place at 53868
which such property is ultimately received after all 53869
transportation has been completed shall be considered as the place 53870
at which such property is received by the purchaser. Direct 53871
delivery in this state, other than for purposes of transportation, 53872
to a person or firm designated by a purchaser constitutes delivery 53873
to the purchaser in this state, and direct delivery outside this 53874
state to a person or firm designated by a purchaser does not 53875
constitute delivery to the purchaser in this state, regardless of 53876
where title passes or other conditions of sale. 53877

Except as provided in division (B)(2)(c)(ii) of this section 53878
~~5733.059 of the Revised Code~~, sales, other than sales of 53879
electricity and of electric transmission and distribution 53880
services, of real property, and of tangible personal property, are 53881
in this state if either- 53882

~~(i) The income producing activity is performed solely in this~~ 53883

state; 53884

~~(ii) The income producing activity is performed both within 53885
and without this state (I) the purchaser receives in this state 53886
the benefit of what is sold, or (II) the purchaser receives, in a 53887
state in which the seller is not subject to a tax on or measured 53888
by net income, the benefit of what is sold, and a greater 53889
proportion of the income-producing activity, based on costs of 53890
performance, is performed within this state than in any other 53891
state, based on costs of performance in which the seller is liable 53892
for a tax on or measured by net income. 53893~~

The tax commissioner may adopt rules pursuant to sections 53894
5703.14 and 5733.07 of the Revised Code for ascertaining the 53895
location of the benefit of what is sold. Those rules may provide 53896
for prorating the benefit to more than one location. Such rules 53897
may apply to all corporations, to specified classes of 53898
corporations, or to corporations within a specified industry. 53899

(ii) Notwithstanding division (B)(2)(c)(i) of this section, 53900
no receipts, income, or gain from the sale, exchange, or other 53901
disposition of stocks, bonds, options, or other securities shall 53902
be included in a corporation's sales factor unless the stocks, 53903
bonds, options, or other securities were part of the corporation's 53904
inventory as described in section 1221(a)(1) of the Internal 53905
Revenue Code, and, if they were part of such inventory, only the 53906
receipts from such sale, exchange, or other disposition shall be 53907
included in the sales factor. 53908

(d) If the allocation and apportionment Subject to division 53909
(B)(2)(f) of this section, if the provisions of division (B) of 53910
this section chapter do not fairly represent the extent of the 53911
taxpayer's business activity in this state, the taxpayer may 53912
request, which request must be in writing and must accompany the 53913
report, a timely filed petition for reassessment, or a timely 53914
filed amended report, or the tax commissioner may require, in 53915

respect to all or any part of the taxpayer's allocated or 53916
apportioned base, if reasonable, any one or more of the following: 53917

(i) Separate accounting; 53918

(ii) The exclusion of any one or more of the factors; 53919

(iii) The inclusion of one or more additional factors that 53920
will fairly represent the taxpayer's allocated or apportioned base 53921
in this state; 53922

(iv) The employment of any other method to effectuate an 53923
equitable calculation of the corporation's base. 53924

An alternative method will be effective only with approval by 53925
the tax commissioner. 53926

Nothing in this section shall be construed to extend any 53927
statute of limitations set forth in this chapter. 53928

(e) Pursuant to sections 5703.14 and 5733.07 of the Revised 53929
Code, the tax commissioner may adopt rules providing for 53930
alternative allocation and apportionment methods, and alternative 53931
calculations of a corporation's base, that apply to all 53932
corporations, to specified classes of corporations, or to 53933
corporations within a specified industry. 53934

(f) Unless prior written approval is received from the 53935
commissioner, a person making a request under division (B)(2)(d) 53936
of this section to apportion or to allocate income in a manner 53937
other than as provided in this chapter without regard to division 53938
(B)(2)(d) of this section must first pay the tax imposed under 53939
this chapter, computed in a good faith and reasonable manner, 53940
based on the provisions of this chapter without regard to division 53941
(B)(2)(d) of this section. In addition to the other penalties 53942
provided for under this chapter, the commissioner may impose an 53943
additional penalty of up to fifteen per cent on the difference in 53944
tax as determined by the commissioner and the tax paid by the 53945

corporation that, without obtaining the prior written approval of 53946
the commissioner, apportsions or allocates income in a manner other 53947
than as provided by this chapter without regard to division 53948
(B)(2)(d) of this section. The penalty so imposed may be billed 53949
and assessed in the same manner as the tax. 53950

A request under division (B)(2)(d) of section 5733.05 of the 53951
Revised Code, either to apportion or allocate income or to 53952
calculate a corporation's base in a manner other than as provided 53953
in this chapter without regard to division (B)(2)(d) of this 53954
section, shall not be allowed or granted to a corporation that 53955
fails to obtain from the commissioner prior written approval 53956
either to apportion or allocate income in a manner other than as 53957
provided in this chapter without regard to division (B)(2)(d) of 53958
this section, and that fails to compute and pay fully the tax 53959
imposed by this chapter, in a good faith and reasonable manner, 53960
based on the provisions of this chapter without regard to division 53961
(B)(2)(d) of this section. 53962

Nothing in this section requires the tax commissioner to 53963
allow or grant any request for, or prevents the commissioner from 53964
requiring, an alternative method under division (B)(2)(d) of this 53965
section. 53966

~~(C)(1) Subject to divisions (C)(2) and (3) of this section,~~ 53967
~~the~~ The total value, as shown on the books of each corporation 53968
that is not a qualified holding company, of the net book value of 53969
a ~~the~~ corporation's assets less the net carrying value of its 53970
liabilities, ~~and~~ excluding from the corporation's assets land 53971
devoted exclusively to agricultural use as of the first Monday of 53972
June in the corporation's taxable year as determined by the county 53973
auditor of the county in which the land is located pursuant to 53974
section 5713.31 of the Revised Code, and making any adjustment 53975
required by division (D) of this section. For the purposes of 53976
determining that total value, any reserves shown on the 53977

corporation's books shall be considered liabilities or contra 53978
assets, as the case may be, except for any reserves that are 53979
deemed appropriations of retained earnings under generally 53980
accepted accounting principles. 53981

(2)(a) The base upon which the tax is levied under division 53982
(C) of section 5733.06 of the Revised Code shall be computed by 53983
multiplying the amount determined under division (C)(1) of this 53984
section by the fraction determined under divisions (B)(2)(a) to 53985
(c) of this section and, if applicable, divisions (B)(2)(d)(ii) to 53986
(iv) of this section, and with regard to section 5733.052 of the 53987
Revised Code, but substituting "net worth" for "net income" 53988
wherever "net income" appears in division (B)(2)(c) in this 53989
section. For purposes of division (C)(2) of this section, the 53990
numerator and denominator of each of the fractions shall include 53991
the portion of any real and tangible personal property, payroll, 53992
and sales, respectively, relating to, or used in connection with 53993
the production of, net nonbusiness income allocated under section 53994
5733.051 of the Revised Code. Nothing in this division shall allow 53995
any amount to be included in the numerator or denominator more 53996
than once. If the commissioner approves an alternative method 53997
pursuant to divisions (B)(2)(d) and (e) of this section for 53998
purposes of determining the taxpayer's base under division (B) of 53999
this section, a consistent method shall be employed for purposes 54000
of determining the taxpayer's base under division (C) of this 54001
section. 54002

(D) This division does not apply with respect to any person 54003
purporting to have elected to be a qualifying holding company if 54004
the person is participating, or is required to participate, in the 54005
filing of a consolidated report described in section 5733.052 of 54006
the Revised Code. Notwithstanding any other section of this 54007
chapter to the contrary, no person participating, or required to 54008
participate, in the filing of a consolidated report described in 54009

section 5733.052 of the Revised Code shall be eligible to make an election to be a qualifying holding company for the tax year. 54010
54011

(1) If, on the last day of the taxpayer's taxable year 54012
preceding the tax year, the taxpayer is a related member to a 54013
corporation that elects to be a qualifying holding company for the 54014
tax year beginning after the last day of the taxpayer's taxable 54015
year, or if, on the last day of the taxpayer's taxable year 54016
preceding the tax year, a corporation that elects to be a 54017
qualifying holding company for the tax year beginning after the 54018
last day of the taxpayer's taxable year is a related member to the 54019
taxpayer, ~~then~~ the taxpayer's total value for the purposes of 54020
division (C) of this section shall be adjusted by the qualifying 54021
amount. Except as otherwise provided under division ~~(C)(D)(2)(b)~~ 54022
of this section, "qualifying amount" means the amount that, when 54023
added to the taxpayer's total value, and when subtracted from the 54024
net carrying value of the taxpayer's liabilities computed without 54025
regard to division ~~(C)(2)(D)~~ of this section, or when subtracted 54026
from the taxpayer's total value and when added to the net carrying 54027
value of the taxpayer's liabilities computed without regard to 54028
division ~~(C)(2)(D)~~ of this section, results in the taxpayer's 54029
debt-to-equity ratio equaling the debt-to-equity ratio of the 54030
qualifying controlled group on the last day of the taxable year 54031
ending prior to the first day of the tax year computed on a 54032
consolidated basis in accordance with general accepted accounting 54033
principles. For the purposes of division ~~(C)(2)(a)(D)(1)~~ of this 54034
section, the corporation's total value, after the adjustment 54035
required by that division, shall not exceed the net book value of 54036
the corporation's assets. 54037

~~(b)(i)(2)(a)~~ The amount added to the taxpayer's total value 54038
and subtracted from the net carrying value of the taxpayer's 54039
liabilities shall not exceed the amount of the net carrying value 54040
of the taxpayer's liabilities owed to the taxpayer's related 54041

members. 54042

~~(ii)(b)~~ A liability owed to the taxpayer's related members 54043
includes, but is not limited to, any amount that the corporation 54044
owes to a person that is not a related member if the corporation's 54045
related member or related members in whole or in part guarantee 54046
any portion or all of that amount, or pledge, hypothecate, 54047
mortgage, or carry out any similar transactions to secure any 54048
portion or all of that amount. 54049

~~(3) The base upon which the tax is levied under division (C)~~ 54050
~~of section 5733.06 of the Revised Code shall be computed by~~ 54051
~~multiplying the amount determined under divisions (C)(1) and (2)~~ 54052
~~of this section by the fraction determined under divisions~~ 54053
~~(B)(2)(a) to (c) of this section and, if applicable, divisions~~ 54054
~~(B)(2)(d)(ii) to (iv) of this section but without regard to~~ 54055
~~section 5733.052 of the Revised Code.~~ 54056

~~(4) For purposes of division (C)(D) of this section, "related~~ 54057
~~member" has the same meaning as in division (A)(6) of section~~ 54058
~~5733.042 of the Revised Code without regard to division (B) of~~ 54059
~~that section.~~ 54060

Sec. 5733.051. Subject For purposes of this section, "capital 54061
gain" does not include any item of income that is not treated as a 54062
capital gain under section 1245 or 1250 of the Internal Revenue 54063
Code or under any other similar section of the Internal Revenue 54064
Code. 54065

For purposes of this section, "available" means information 54066
is such that a person is able to learn of the information by the 54067
due date plus extensions, if any, for filing the report for the 54068
tax year immediately following the last day of the taxable year, 54069
and "modified qualifying controlled group" means that portion of a 54070
qualifying controlled group consisting of the corporation the sale 54071
of which resulted in the gain or loss described in division (E) of 54072

this section together with all members of the qualifying 54073
controlled group owned directly or indirectly by that corporation, 54074
or the corporation that directly paid the dividend or directly 54075
made the distribution described in division (F) of this section 54076
together with all members of the qualifying controlled group owned 54077
directly or indirectly by that corporation. 54078

Unless the corporation has received prior written approval 54079
from the tax commissioner, a corporation making a request under 54080
division (B)(2)(d) of section 5733.05 of the Revised Code to 54081
allocate or apportion income, or to calculate the base, in a 54082
manner other than as provided in this section must first pay the 54083
tax imposed under this chapter, computed and paid in full in a 54084
good faith and reasonable manner, without regard to division 54085
(B)(2)(d) of section 5733.05 of the Revised Code. Unless the 54086
person receives prior written approval from the commissioner and 54087
unless the person computes and pays in full the tax imposed by 54088
this chapter, in a good faith and reasonable manner, without 54089
regard to division (B)(2)(d) of section 5733.05 of the Revised 54090
Code, the allocation or apportionment of income in a manner other 54091
than as provided in this section shall not be allowed or granted. 54092

Nothing in this section requires the commissioner to allow or 54093
grant any request for, or prevents the commissioner from 54094
requiring, an alternative method under division (B)(2)(d) of 54095
section 5733.05 of the Revised Code. 54096

Subject to section 5733.0510 of the Revised Code, net income 54097
of a corporation ~~subject to the tax imposed by section 5733.06 of~~ 54098
~~the Revised Code~~ shall be allocated and apportioned to this state 54099
as follows: 54100

(A) Net rents and royalties from real property located in 54101
this state are allocable to this state. Net rents and royalties 54102
from real property not located in this state are allocable outside 54103
this state. 54104

(B) Net rents and royalties from tangible personal property, 54105
to the extent such property is utilized in this state, are 54106
allocable to this state ~~if the taxpayer is otherwise subject to~~ 54107
~~the tax imposed by section 5733.06 of the Revised Code.~~ Net rents 54108
and royalties from tangible personal property, to the extent such 54109
property is utilized outside this state, are allocable outside 54110
this state. 54111

(C) Capital gains and losses from the sale or other 54112
disposition of real property located in this state are allocable 54113
to this state. Capital gains and losses from the sale or other 54114
disposition of real property located outside this state are 54115
allocable outside this state. 54116

(D) Capital gains and losses from the sale or other 54117
disposition of tangible personal property are allocable to this 54118
state ~~if the property had a situs in this state at the time of~~ 54119
~~sale and the taxpayer is otherwise subject to the tax imposed by~~ 54120
~~section 5733.06 of the Revised Code~~ to the extent such property 54121
was utilized in this state prior to the property's sale or other 54122
disposition. Capital gains and losses from the sale or other 54123
disposition of tangible personal property are allocable outside 54124
this state to the extent such property was utilized outside this 54125
state prior to the property's sale or other disposition. 54126

(E) Capital gains and losses from the sale or other 54127
disposition of intangible property which may produce income 54128
enumerated in division (F)(1) of this section are allocable on the 54129
same basis as set forth in that division, substituting the day of 54130
the sale or disposition for the day on which the payor pays the 54131
dividend or makes the distribution, but if the location of the 54132
physical assets described in that division is not available to the 54133
taxpayer, such gains and losses are apportionable under division 54134
(I) of this section. Capital gains and losses from the sale or 54135
other disposition of all other intangible property are 54136

apportionable under division (I) of this section. 54137

(F) "Dividends or distributions" to which this division 54138
refers are dividends directly or indirectly paid by or 54139
distributions directly or indirectly made by any person classified 54140
for federal income tax purposes as an association taxable as a 54141
corporation. 54142

(1) Dividends or distributions which are not otherwise 54143
deducted or excluded from net income, other than dividends or 54144
distributions from a domestic international sales corporation, are 54145
allocable shall be allocated to this state in accordance with the 54146
ratio of the book value of the physical assets of the payor of the 54147
dividends or distributions located in this state divided by the 54148
book value of the total physical assets of the payor located 54149
everywhere by multiplying such dividends and distributions by a 54150
fraction. The numerator of the fraction is the book value of the 54151
physical assets in this state of the payor or, if the payor is a 54152
member of a modified qualifying controlled group on the last day 54153
of the payor's fiscal or calendar year ending immediately prior to 54154
the day on which the payor pays the dividend or makes the 54155
distribution, the sum of the book values of the physical assets in 54156
this state of the payor and of all the other members of the 54157
modified qualifying controlled group of which the payor is a 54158
member on the last day of the payor's fiscal or calendar year 54159
ending immediately prior to the day on which the payor pays the 54160
dividend or makes the distribution. The denominator of the 54161
fraction is the book value of the physical assets everywhere of 54162
the payor or, if the payor is a member of a modified qualifying 54163
controlled group on the last day of the payor's fiscal or calendar 54164
year ending immediately prior to the day on which the payor pays 54165
the dividend or makes the distribution, the sum of the book values 54166
of the physical assets everywhere of the payor and of all the 54167
other members of the modified qualifying controlled group of which 54168

the payor is a member on the last day of the payor's fiscal or 54169
calendar year ending immediately prior to the day on which the 54170
payor pays the dividend or makes the distribution. Dividends or 54171
distributions received from a domestic international sales 54172
corporation, or from a payor for which the location of ~~whose~~ 54173
physical assets described in this division is ~~unavailable~~ not 54174
available to the taxpayer, are apportionable under division (I) of 54175
this section. 54176

(2) If the payor of a dividend or distribution, or if that 54177
payor and any members of the qualifying controlled group of which 54178
the payor is a member on the last day of the payor's fiscal or 54179
calendar year ending immediately prior to the day on which the 54180
payor pays the dividend or makes the distribution, separately or 54181
cumulatively own, directly or indirectly, on the last day of the 54182
payor's fiscal or calendar year ending immediately prior to the 54183
day on which the payor pays the dividend or makes the 54184
distribution, more than fifty per cent of the equity of a 54185
pass-through entity, then for purposes of division (F)(1) of this 54186
section the payor and the other members are deemed to own the 54187
proportionate share of the physical assets that the pass-through 54188
entity directly or indirectly owns on the last day of the payor's 54189
fiscal or calendar year ending immediately prior to the day on 54190
which the payor pays the dividend or makes the distribution. 54191

(3) For the purposes of division (F)(3) of this section, 54192
"upper level pass-through entity" means a pass-through entity 54193
directly or indirectly owning any equity of another pass-through 54194
entity, and "lower level pass-through entity" means that other 54195
pass-through entity. For purposes of divisions (F)(1) and (2) of 54196
this section, an upper level pass-through entity is deemed to own, 54197
on the last day of the upper level pass-through entity's fiscal or 54198
calendar year, the proportionate share of the lower level 54199
pass-through entity's physical assets that the lower level 54200

pass-through entity directly or indirectly owns on the last day of 54201
the lower level pass-through entity's fiscal or calendar year 54202
ending within or with the last day of the upper level pass-through 54203
entity's fiscal or calendar year. If the upper level pass-through 54204
entity directly and indirectly owns less than fifty per cent of 54205
the equity of the lower level pass-through entity on each day of 54206
the upper level pass-through entity's fiscal or calendar year in 54207
which or with which ends the fiscal or calendar year of the lower 54208
level pass-through entity and if, based upon clear and convincing 54209
evidence, complete information about the location and cost of the 54210
physical assets of the lower level pass-through entity is not 54211
available to the upper level pass-through entity, then for 54212
purposes of divisions (F)(1) and (2) of this section, the upper 54213
level pass-through entity shall be deemed as owning no equity of 54214
the lower level pass-through entity for each day during the upper 54215
level pass-through entity's calendar or fiscal year in which or 54216
with which ends the lower level pass-through entity's fiscal or 54217
calendar year. 54218

(G) ~~Patent and copyright~~ Net rents, net royalties, and net 54219
technical assistance fees, not representing the principal source 54220
of gross receipts of the taxpayer, from intangible property 54221
are allocable to this state to the extent that the activity of the 54222
payor thereof giving rise to the payment takes place in this 54223
state. If the location of the a payor's activity is unavailable 54224
not available to the taxpayer, such corporation, the net rents, 54225
net royalties, and net technical assistance fees are allocable or 54226
apportionable under division (I) of this section. 54227

(H)(1) ~~The following amounts described in division (B)(5) of~~ 54228
~~section 5747.20 of the Revised Code~~ are allocable to this state: 54229

(a) All lottery prize awards paid by the state lottery 54230
commission pursuant to Chapter 3770. of the Revised Code; 54231

(b) All earnings, profit, income, and gain from the sale, 54232

exchange, or other disposition of lottery prize awards paid or to 54233
be paid to any person by the state lottery commission pursuant to 54234
Chapter 3770. of the Revised Code; 54235

(c) All earnings, profit, income, and gain from the direct or 54236
indirect ownership of lottery prize awards paid or to be paid to 54237
any person by the state lottery commission pursuant to Chapter 54238
3770. of the Revised Code; 54239

(d) All earnings, profit, income, and gain from the direct or 54240
indirect interest in any right in or to any lottery prize awards 54241
paid or to be paid to any person by the state lottery commission 54242
pursuant to Chapter 3770. of the Revised Code. 54243

(2) Lottery prize awards and related earnings, profit, 54244
income, or gain with respect to lotteries sponsored by persons or 54245
agencies outside this state shall be allocated outside this state. 54246

(I) ~~Any~~ Every other item of net nonbusiness income, from 54247
sources other than those enumerated in divisions (A) to (H) of 54248
this section, is allocated entirely to this state except to the 54249
extent the allocation of such item of net nonbusiness income 54250
entirely to this state is not within the taxing power of this 54251
state under the Constitution of the United States. To the extent 54252
such allocation entirely to this state would not be within the 54253
taxing power of this state under the Constitution of the United 54254
States, such item of net nonbusiness income is apportionable to 54255
this state on the basis of the mechanism provided in division 54256
(B)(2) of section 5733.05 and in section 5733.057 of the Revised 54257
Code. 54258

Sec. 5733.052. (A) Any elected, requested, or required 54259
combination of income made pursuant to this section prior to the 54260
effective date of the repeal and reenactment of this section by 54261
.B. of the 125th general assembly shall not apply to taxable years 54262
ending on or after that effective date. No elected, requested, or 54263

required combination of income shall be allowed for taxable years 54264
ending on or after that effective date. Nothing in this section 54265
affects or modifies each taxpayer's unused net operating losses 54266
calculated pursuant to this section prior to that effective date. 54267

(B)(1)(a)(i) At any time during the period or extended period 54268
described in section 5733.11 of the Revised Code, a taxpayer may 54269
elect to file a consolidated report for the tax year and pay the 54270
tax so computed in accordance with this section. 54271

(ii) At any time during the period or extended period 54272
described in section 5733.11 of the Revised Code, the taxpayer may 54273
revoke the election described in division (B)(1)(a)(i) of this 54274
section and seek a refund of any excess tax paid, together with 54275
appropriate interest and any previously paid penalty related to 54276
the refund of tax. 54277

(b)(i) The tax commissioner may not revoke or set aside a 54278
taxpayer's election to file a consolidated report allowed by 54279
division (B)(1)(a)(i) of this section. 54280

(ii) The tax commissioner may not revoke or set aside a 54281
taxpayer's revocation, allowed by division (B)(1)(a)(ii) of this 54282
section, of the taxpayer's previous election to file a 54283
consolidated report. Nothing in division (B)(1)(b)(ii) shall limit 54284
the tax commissioner's authority under division (B)(2)(a) of this 54285
section to require that the taxpayer file a consolidated report 54286
for the tax year to which the taxpayer's revocation applies. 54287

(2)(a) At any time during the period or extended period 54288
described in section 5733.11 of the Revised Code, the tax 54289
commissioner, to the extent allowed by the Constitution of the 54290
United States, may require a taxpayer to file a consolidated 54291
report for the tax year, and pay the appropriate tax, interest, 54292
and penalty if the tax commissioner ascertains that, in order to 54293
properly reflect income, such a consolidation is necessary because 54294

of intercorporate transactions and the tax liability imposed by 54295
section 5733.06 of the Revised Code. 54296

(b) At any time during the period or extended period 54297
described in section 5733.11 of the Revised Code, the tax 54298
commissioner may revoke the requirement under division (B)(2)(a) 54299
of this section that the taxpayer file a consolidated report for 54300
the tax year. 54301

(i) If such revocation by the tax commissioner results in the 54302
imposition of additional tax, interest, and penalty, the taxpayer 54303
or taxpayers shall immediately pay all additional tax, interest, 54304
and penalty. 54305

(ii) If such revocation by the tax commissioner results in a 54306
reduction of tax, interest, and penalty, the tax commissioner 54307
shall immediately refund to the taxpayer or taxpayers the excess 54308
tax paid, together with interest and any related penalty 54309
previously paid. 54310

(C) Except as set forth in divisions (C)(1) and (2) and (E) 54311
of this section, the concepts and principles set forth in sections 54312
1501 and 1502 of the Internal Revenue Code and the United States 54313
Department of Treasury regulations issued thereunder shall apply 54314
to the consolidated report. To the extent not inconsistent with 54315
sections 1501 and 1502 of the Internal Revenue Code and the United 54316
States Department of Treasury regulations issued thereunder: 54317

(1) The consolidated report shall show and include the 54318
consolidated net income of all members of the consolidated federal 54319
income tax return for the taxable year immediately preceding the 54320
tax year, but shall not include a financial institution or a 54321
person exempt from the tax imposed under this chapter under 54322
division (A) or (C) of section 5733.09 of the Revised Code. 54323

(2) The consolidated report shall show and include the 54324
consolidated net worth, as of the date shown by the report to have 54325

been the beginning of the annual accounting period that includes 54326
the first day of January of the tax year, for all members of the 54327
consolidated federal income tax return for the taxable year ending 54328
immediately prior to such date, but shall not include a financial 54329
institution or a person exempt from the tax imposed under this 54330
chapter under division (A) or (C) of section 5733.09 of the 54331
Revised Code. 54332

(3) Each item of income, gain, expense, or loss shall be 54333
ascertained to be business income or nonbusiness income as if all 54334
the corporations participating, or required to participate, in the 54335
filing of the consolidated tax report were one corporation. 54336

(4) The following items shall be ascertained as if all the 54337
corporations participating, or required to participate, in the 54338
filing of the consolidated tax report were one corporation: the 54339
calculation of the apportionment fraction described in division 54340
(B) of section 5733.05 of the Revised Code, the calculation of 54341
business income apportioned to this state, the calculation of 54342
nonbusiness income allocated or apportioned to this state, the 54343
calculation of the net worth apportioned to this state, and the 54344
computation of the tax described in section 5733.06 of the Revised 54345
Code. 54346

(D) Unless another section of the Revised Code expressly 54347
provides otherwise, then to the extent not inconsistent with 54348
sections 1501 and 1502 of the Internal Revenue Code and the United 54349
States Department of Treasury regulations issued thereunder, the 54350
computation of all credits shall be ascertained as if all the 54351
corporations participating, or required to participate, in the 54352
filing of the consolidated tax report were one corporation. 54353

(E) Notwithstanding division (C) of this section to the 54354
contrary, each corporation participating, or required to 54355
participate, in the filing of the consolidated report allowed by 54356
this section shall be jointly and severally liable for the tax, 54357

interest, and penalty imposed by this chapter. An assessment 54358
against one or more corporations shall not bar, and shall not be a 54359
waiver of, the subsequent assessment of, and collection from, any 54360
or all other corporations participating, or required to 54361
participate, in the filing of the consolidated report. 54362

Sec. 5733.056. (A) As used in this section: 54363

(1) "Billing address" means the street address where any 54364
notice, statement, ~~or~~ bill, or similar acknowledgement relating to 54365
a customer's account is ~~mailed~~ sent, as indicated in the books and 54366
records of the taxpayer on the first day of the taxable year or on 54367
such later date in the taxable year when the customer relationship 54368
began. If the notice, statement, bill, or similar acknowledgement 54369
is sent by mail to a post office box or is sent electronically or 54370
by other means to an address other than a street address, or if no 54371
notice, statement, bill, or acknowledgement is sent, the 54372
customer's street address set forth in the books and records of 54373
the taxpayer is the billing address. 54374

(2) "Borrower or credit card holder located in this state" 54375
means: 54376

(a) A borrower, other than a credit card holder, that is 54377
engaged in a trade or business and maintains its commercial 54378
domicile in this state; or 54379

(b) A borrower that is not engaged in a trade or business, or 54380
a credit card holder, whose billing address is in this state. 54381

(3) "Branch" means a "domestic branch" as defined in section 54382
3 of the "Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 54383
1813(o), as amended. 54384

(4) "Compensation" means wages, salaries, commissions, and 54385
any other form of remuneration paid to employees for personal 54386
services that are included in such employee's gross income under 54387

the Internal Revenue Code. In the case of employees not subject to 54388
the Internal Revenue Code, such as those employed in foreign 54389
countries, the determination of whether such payments would 54390
constitute gross income to such employees under the Internal 54391
Revenue Code shall be made as though such employees were subject 54392
to the Internal Revenue Code. 54393

(5) "Credit card" means a credit, travel, or entertainment 54394
card. 54395

(6) "Credit card issuer's reimbursement fee" means the fee a 54396
taxpayer receives from a merchant's bank because one of the 54397
persons to whom the taxpayer has issued a credit card has charged 54398
merchandise or services to the credit card. 54399

(7) "Deposits" has the meaning given in section 3 of the 54400
"Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 1813(1), 54401
as amended. 54402

(8) "Employee" means, with respect to a particular taxpayer, 54403
any individual who under the usual common law rules applicable in 54404
determining the employer-employee relationship, has the status of 54405
an employee of that taxpayer. 54406

(9) "Gross rents" means the actual sum of money or other 54407
consideration payable for the use or possession of property. 54408
"Gross rents" includes: 54409

(a) Any amount payable for the use or possession of real 54410
property or tangible personal property whether designated as a 54411
fixed sum of money or as a percentage of receipts, profits, or 54412
otherwise; 54413

(b) Any amount payable as additional rent or in lieu of rent, 54414
such as interest, taxes, insurance, repairs, or any other amount 54415
required to be paid by the terms of a lease or other arrangement; 54416
and 54417

(c) A proportionate part of the cost of any improvement to 54418
real property made by or on behalf of the taxpayer which reverts 54419
to the owner or lessor upon termination of a lease or other 54420
arrangement. The amount to be included in gross rents is the 54421
amount of amortization or depreciation allowed in computing the 54422
taxable income base for the taxable year. However, where a 54423
building is erected on leased land, by or on behalf of the 54424
taxpayer, the value of the land is determined by multiplying the 54425
gross rent by eight, and the value of the building is determined 54426
in the same manner as if owned by the taxpayer. 54427

(d) The following are not included in the term "gross rents": 54428

(i) Reasonable amounts payable as separate charges for water 54429
and electric service furnished by the lessor; 54430

(ii) Reasonable amounts payable as service charges for 54431
janitorial services furnished by the lessor; 54432

(iii) Reasonable amounts payable for storage, provided such 54433
amounts are payable for space not designated and not under the 54434
control of the taxpayer; and 54435

(iv) That portion of any rental payment which is applicable 54436
to the space subleased from the taxpayer and not used by it. 54437

(10) "Loan" means any extension of credit resulting from 54438
direct negotiations between the taxpayer and its customer, or the 54439
purchase, in whole or in part, of such extension of credit from 54440
another. Loans include debt obligations of subsidiaries, 54441
participations, syndications, and leases treated as loans for 54442
federal income tax purposes. "Loan" does not include: properties 54443
treated as loans under section 595 of the Internal Revenue Code; 54444
futures or forward contracts; options; notional principal 54445
contracts such as swaps; credit card receivables, including 54446
purchased credit card relationships; non-interest bearing balances 54447
due from depositor institutions; cash items in the process of 54448

collection; federal funds sold; securities purchased under 54449
agreements to resell; assets held in a trading account; 54450
securities; interests in a real estate mortgage investment conduit 54451
or other mortgage-backed or asset-backed security; and other 54452
similar items. 54453

(11) "Loan secured by real property" means that fifty per 54454
cent or more of the aggregate value of the collateral used to 54455
secure a loan or other obligation, when valued at fair market 54456
value as of the time the original loan or obligation was incurred, 54457
was real property. 54458

(12) "Merchant discount" means the fee, or negotiated 54459
discount, charged to a merchant by the taxpayer for the privilege 54460
of participating in a program whereby a credit card is accepted in 54461
payment for merchandise or services sold to the card holder. 54462

(13) "Participation" means an extension of credit in which an 54463
undivided ownership interest is held on a pro rata basis in a 54464
single loan or pool of loans and related collateral. In a loan 54465
participation, the credit originator initially makes the loan and 54466
then subsequently resells all or a portion of it to other lenders. 54467
The participation may or may not be known to the borrower. 54468

(14) "Principal base of operations" with respect to 54469
transportation property means the place of more or less permanent 54470
nature from which the property is regularly directed or 54471
controlled. With respect to an employee, the "principal base of 54472
operations" means the place of more or less permanent nature from 54473
which the employee regularly (a) starts work and to which the 54474
employee customarily returns in order to receive instructions from 54475
the employer or (b) communicates with the employee's customers or 54476
other persons or (c) performs any other functions necessary to the 54477
exercise of the trade or profession at some other point or points. 54478

(15) "Qualified institution" means a financial institution 54479

that on or after June 1, 1997: 54480

(a)(i) Has consummated one or more approved transactions with 54481
insured banks with different home states that would qualify under 54482
section 102 of the "Riegle-Neal Interstate Banking and Branching 54483
Efficiency Act of 1994," Public Law 103-328, 108 Stat. 2338; 54484

(ii) Is a federal savings association or federal savings bank 54485
that has consummated one or more interstate acquisitions that 54486
result in a financial institution that has branches in more than 54487
one state; or 54488

(iii) Has consummated one or more approved interstate 54489
acquisitions under authority of Title XI of the Revised Code that 54490
result in a financial institution that has branches in more than 54491
one state; and 54492

(b) Has at least nine per cent of its deposits in this state 54493
as of the last day of June prior to the beginning of the tax year. 54494

(16) "Real property owned" and "tangible personal property 54495
owned" mean real and tangible personal property, respectively, on 54496
which the taxpayer may claim depreciation for federal income tax 54497
purposes, or to which the taxpayer holds legal title and on which 54498
no other person may claim depreciation for federal income tax 54499
purposes, or could claim depreciation if subject to federal income 54500
tax. Real and tangible personal property do not include coin, 54501
currency, or property acquired in lieu of or pursuant to a 54502
foreclosure. 54503

(17) "Regular place of business" means an office at which the 54504
taxpayer carries on its business in a regular and systematic 54505
manner and which is continuously maintained, occupied, and used by 54506
employees of the taxpayer. 54507

(18) "State" means a state of the United States, the District 54508
of Columbia, the commonwealth of Puerto Rico, or any territory or 54509
possession of the United States. 54510

(19) "Syndication" means an extension of credit in which two 54511
or more persons fund and each person is at risk only up to a 54512
specified percentage of the total extension of credit or up to a 54513
specified dollar amount. 54514

(20) "Transportation property" means vehicles and vessels 54515
capable of moving under their own power, such as aircraft, trains, 54516
water vessels and motor vehicles, as well as any equipment or 54517
containers attached to such property, such as rolling stock, 54518
barges, trailers, or the like. 54519

(21) "Commissions earned" includes, but is not limited to, 54520
brokerage commissions, asset management fees, and similar fees 54521
charged in the regular course of business to a customer for the 54522
maintenance and management of the customer's brokerage account. 54523

(B) The annual financial institution report determines the 54524
value of the issued and outstanding shares of stock of the 54525
taxpayer, and is the base or measure of the franchise tax 54526
liability. Such determination shall be made as of the date shown 54527
by the report to have been the beginning of the financial 54528
institution's annual accounting period that includes the first day 54529
of January of the tax year. For purposes of this section, division 54530
(A) of section 5733.05, and division (D) of section 5733.06 of the 54531
Revised Code, the value of the issued and outstanding shares of 54532
stock of the financial institution shall include the total value, 54533
as shown by the books of the financial institution, of its 54534
capital, surplus, whether earned or unearned, undivided profits, 54535
and reserves, but exclusive of: 54536

(1) Reserves for accounts receivable, depreciation, 54537
depletion, and any other valuation reserves with respect to 54538
specific assets; 54539

(2) Taxes due and payable during the year for which such 54540
report was made; 54541

(3) Voting stock and participation certificates in 54542
corporations chartered pursuant to the "Farm Credit Act of 1971," 54543
85 Stat. 597, 12 U.S.C. 2091, as amended; 54544

(4) Good will, net aggregate appreciation under the equity 54545
method of accounting of investments in the capital stock of 54546
directly owned first-tier affiliates, and abandoned property as 54547
set up in the annual report of the financial institution, provided 54548
a certified balance sheet of the company is made available upon 54549
the request of the tax commissioner. Such balance sheet shall not 54550
be a part of the public records, but shall be a confidential 54551
report for use of the tax commissioner only. 54552

(5) A portion of the value of the issued and outstanding 54553
shares of stock of such financial institution equal to the amount 54554
obtained by multiplying such value by the quotient obtained by: 54555

(a) Dividing (1) the amount of the financial institution's 54556
assets, as shown on its books, represented by investments in the 54557
capital stock and indebtedness of public utilities, except 54558
combined companies or electric companies, telephone companies for 54559
tax years 2005 or thereafter, or water transportation companies 54560
for tax years 2004 and thereafter, of which at least eighty per 54561
cent of the utility's issued and outstanding common stock is owned 54562
by the financial institution by (2) the total assets of such 54563
financial institution as shown on its books; 54564

(b) Dividing (1) the amount of the financial institution's 54565
assets, as shown on its books, represented by investments in the 54566
capital stock and indebtedness of insurance companies of which at 54567
least eighty per cent of the insurance company's issued and 54568
outstanding common stock is owned by the financial institution by 54569
(2) the total assets of such financial institution as shown on its 54570
books; 54571

(c) Dividing (1) the amount of the financial institution's 54572

assets, as shown on its books, represented by investments in the 54573
capital stock and indebtedness of other financial institutions of 54574
which at least twenty-five per cent of the other financial 54575
institution's issued and outstanding common stock is owned by the 54576
financial institution by (2) the total assets of the financial 54577
institution as shown on its books. Division (B)(5)(c) of this 54578
section applies only with respect to such other financial 54579
institutions that for the tax year immediately following the 54580
taxpayer's taxable year will pay the tax imposed by division (D) 54581
of section 5733.06 of the Revised Code. 54582

(6) Land that has been determined pursuant to section 5713.31 54583
of the Revised Code by the county auditor of the county in which 54584
the land is located to be devoted exclusively to agricultural use 54585
as of the first Monday of June in the financial institution's 54586
taxable year. 54587

(7) Property within this state used exclusively during the 54588
taxable year for qualified research as defined in section 5733.05 54589
of the Revised Code. 54590

(C) The base upon which the tax levied under division (D) of 54591
section 5733.06 of the Revised Code shall be computed by 54592
multiplying the value of a financial institution's issued and 54593
outstanding shares of stock as determined in division (B) of this 54594
section by a fraction. The numerator of the fraction is the sum of 54595
the following: the property factor multiplied by fifteen, the 54596
payroll factor multiplied by fifteen, and the sales factor 54597
multiplied by seventy. The denominator of the fraction is one 54598
hundred, provided that the denominator shall be reduced by fifteen 54599
if the property factor has a denominator of zero, by fifteen if 54600
the payroll factor has a denominator of zero, and by seventy if 54601
the sales factor has a denominator of zero. 54602

(D) A financial institution shall calculate the property 54603
factor as follows: 54604

(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 54636
basis does not properly reflect average value, the tax 54637
commissioner may require averaging on a more frequent basis. The 54638
taxpayer may elect to average on a more frequent basis. When 54639
averaging on a more frequent basis is required by the tax 54640
commissioner or is elected by the taxpayer, the same method of 54641
valuation must be used consistently by the taxpayer with respect 54642
to property within and without this state and on all subsequent 54643
returns unless the taxpayer receives prior permission from the tax 54644
commissioner or the tax commissioner requires a different method 54645
of determining value. 54646

(4)(a) The average value of real property and tangible 54647
personal property that the taxpayer has rented from another and is 54648
not treated as property owned by the taxpayer for federal income 54649
tax purposes, shall be determined annually by multiplying the 54650
gross rents payable during the taxable year by eight. 54651

(b) Where the use of the general method described in division 54652
(D)(4)(a) of this section results in inaccurate valuations of 54653
rented property, any other method which properly reflects the 54654
value may be adopted by the tax commissioner or by the taxpayer 54655
when approved in writing by the tax commissioner. Once approved, 54656
such other method of valuation must be used on all subsequent 54657
returns unless the taxpayer receives prior approval from the tax 54658
commissioner or the tax commissioner requires a different method 54659
of valuation. 54660

(5)(a) Except as described in division (D)(5)(b) of this 54661
section, real property and tangible personal property owned by or 54662
rented to the taxpayer is considered to be located within this 54663
state if it is physically located, situated, or used within this 54664
state. 54665

(b) Transportation property is included in the numerator of 54666
the property factor to the extent that the property is used in 54667

this state. The extent an aircraft will be deemed to be used in 54668
this state and the amount of value that is to be included in the 54669
numerator of this state's property factor is determined by 54670
multiplying the average value of the aircraft by a fraction, the 54671
numerator of which is the number of landings of the aircraft in 54672
this state and the denominator of which is the total number of 54673
landings of the aircraft everywhere. If the extent of the use of 54674
any transportation property within this state cannot be 54675
determined, then the property will be deemed to be used wholly in 54676
the state in which the property has its principal base of 54677
operations. A motor vehicle will be deemed to be used wholly in 54678
the state in which it is registered. 54679

(6)(a)(i) A loan, other than a loan or advance described in 54680
division (D)(6)(d) of this section, is considered to be located 54681
within this state if it is properly assigned to a regular place of 54682
business of the taxpayer within this state. 54683

(ii) A loan is properly assigned to the regular place of 54684
business with which it has a preponderance of substantive 54685
contacts. A loan assigned by the taxpayer to a regular place of 54686
business without the state shall be presumed to have been properly 54687
assigned if: 54688

(I) The taxpayer has assigned, in the regular course of its 54689
business, such loan on its records to a regular place of business 54690
consistent with federal or state regulatory requirements; 54691

(II) Such assignment on its records is based upon substantive 54692
contacts of the load to such regular place of business; and 54693

(III) The taxpayer uses the records reflecting assignment of 54694
loans for the filing of all state and local tax returns for which 54695
an assignment of loans to a regular place of business is required. 54696

(iii) The presumption of proper assignment of a loan provided 54697
in division (D)(6)(a)(ii) of this section may be rebutted upon a 54698

showing by the tax commissioner, supported by a preponderance of 54699
the evidence, that the preponderance of substantive contacts 54700
regarding such loan did not occur at the regular place of business 54701
to which it was assigned on the taxpayer's records. When such 54702
presumption has been rebutted, the loan shall then be located 54703
within this state if (1) the taxpayer had a regular place of 54704
business within this state at the time the loan was made; and (2) 54705
the taxpayer fails to show, by a preponderance of the evidence, 54706
that the preponderance of substantive contacts regarding such loan 54707
did not occur within this state. 54708

(b) In the case of a loan which is assigned by the taxpayer 54709
to a place without this state which is not a regular place of 54710
business, it shall be presumed, subject to rebuttal by the 54711
taxpayer on a showing supported by the preponderance of evidence, 54712
that the preponderance of substantive contacts regarding the loan 54713
occurred within this state if, at the time the loan was made the 54714
taxpayer's commercial domicile was within this state. 54715

(c) To determine the state in which the preponderance of 54716
substantive contacts relating to a loan have occurred, the facts 54717
and circumstances regarding the loan at issue shall be reviewed on 54718
a case-by-case basis and consideration shall be given to such 54719
activities as the solicitation, investigation, negotiation, 54720
approval, and administration of the loan. The terms 54721
"solicitation," "investigation," "negotiation," "approval," and 54722
"administration" are defined as follows: 54723

(i) "Solicitation" is either active or passive. Active 54724
solicitation occurs when an employee of the taxpayer initiates the 54725
contact with the customer. Such activity is located at the regular 54726
place of business which the taxpayer's employee is regularly 54727
connected with or working out of, regardless of where the services 54728
of such employee were actually performed. Passive solicitation 54729
occurs when the customer initiates the contact with the taxpayer. 54730

If the customer's initial contact was not at a regular place of 54731
business of the taxpayer, the regular place of business, if any, 54732
where the passive solicitation occurred is determined by the facts 54733
in each case. 54734

(ii) "Investigation" is the procedure whereby employees of 54735
the taxpayer determine the creditworthiness of the customer as 54736
well as the degree of risk involved in making a particular 54737
agreement. Such activity is located at the regular place of 54738
business which the taxpayer's employees are regularly connected 54739
with or working out of, regardless of where the services of such 54740
employees were actually performed. 54741

(iii) Negotiation is the procedure whereby employees of the 54742
taxpayer and its customer determine the terms of the agreement, 54743
such as the amount, duration, interest rate, frequency of 54744
repayment, currency denomination, and security required. Such 54745
activity is located at the regular place of business to which the 54746
taxpayer's employees are regularly connected or working from, 54747
regardless of where the services of such employees were actually 54748
performed. 54749

(iv) "Approval" is the procedure whereby employees or the 54750
board of directors of the taxpayer make the final determination 54751
whether to enter into the agreement. Such activity is located at 54752
the regular place of business to which the taxpayer's employees 54753
are regularly connected or working from, regardless of where the 54754
services of such employees were actually performed. If the board 54755
of directors makes the final determination, such activity is 54756
located at the commercial domicile of the taxpayer. 54757

(v) "Administration" is the process of managing the account. 54758
This process includes bookkeeping, collecting the payments, 54759
corresponding with the customer, reporting to management regarding 54760
the status of the agreement, and proceeding against the borrower 54761
or the security interest if the borrower is in default. Such 54762

activity is located at the regular place of business that oversees 54763
this activity. 54764

(d) A loan or advance to a subsidiary corporation at least 54765
fifty-one per cent of whose common stock is owned by the financial 54766
institution shall be allocated in and out of the state by the 54767
application of a ratio whose numerator is the sum of the net book 54768
value of the subsidiary's real property owned in this state and 54769
the subsidiary's tangible personal property owned in this state 54770
and whose denominator is the sum of the subsidiary's real property 54771
owned wherever located and the subsidiary's tangible personal 54772
property owned wherever located. For purposes of calculating this 54773
ratio, the taxpayer shall determine net book value in accordance 54774
with generally accepted accounting principles. If the subsidiary 54775
corporation owns at least fifty-one per cent of the common stock 54776
of another corporation, the ratio shall be calculated by including 54777
the other corporation's real property and tangible personal 54778
property. The calculation of the ratio applies with respect to all 54779
lower-tiered subsidiaries, provided that the immediate parent 54780
corporation of the subsidiary owns at least fifty-one per cent of 54781
the common stock of that subsidiary. 54782

(7) For purposes of determining the location of credit card 54783
receivables, credit card receivables shall be treated as loans and 54784
shall be subject to division (D)(6) of this section. 54785

(8) A loan that has been properly assigned to a state shall, 54786
absent any change of material fact, remain assigned to that state 54787
for the length of the original term of the loan. Thereafter, the 54788
loan may be properly assigned to another state if the loan has a 54789
preponderance of substantive contact to a regular place of 54790
business there. 54791

(E) A financial institution shall calculate the payroll 54792
factor as follows: 54793

(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 Except as set forth in division (I) of this section, 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 54824
within and without this state during the taxable year. The method 54825
of calculating receipts for purposes of the denominator is the 54826
same as the method used in determining receipts for purposes of 54827
the numerator. 54828

(2) The numerator of the sales factor includes receipts from 54829
the lease or rental of real property owned by the taxpayer if the 54830
property is located within this state, or receipts from the 54831
sublease of real property if the property is located within this 54832
state. 54833

(3)(a) Except as described in division (F)(3)(b) of this 54834
section the numerator of the sales factor includes receipts from 54835
the lease or rental of tangible personal property owned by the 54836
taxpayer if the property is located within this state when it is 54837
first placed in service by the lessee. 54838

(b) Receipts from the lease or rental of transportation 54839
property owned by the taxpayer are included in the numerator of 54840
the sales factor to the extent that the property is used in this 54841
state. The extent an aircraft will be deemed to be used in this 54842
state and the amount of receipts that is to be included in the 54843
numerator of this state's sales factor is determined by 54844
multiplying all the receipts from the lease or rental of the 54845
aircraft by a fraction, the numerator of which is the number of 54846
landings of the aircraft in this state and the denominator of 54847
which is the total number of landings of the aircraft. If the 54848
extent of the use of any transportation property within this state 54849
cannot be determined, then the property will be deemed to be used 54850
wholly in the state in which the property has its principal base 54851
of operations. A motor vehicle will be deemed to be used wholly in 54852
the state in which it is registered. 54853

(4)(a) The numerator of the sales factor includes interest 54854
and fees or penalties in the nature of interest from loans secured 54855

by real property if the property is located within this state. If 54856
the property is located both within this state and one or more 54857
other states, the receipts described in this paragraph are 54858
included in the numerator of the sales factor if more than fifty 54859
per cent of the fair market value of the real property is located 54860
within this state. If more than fifty per cent of the fair market 54861
value of the real property is not located within any one state, 54862
then the receipts described in this paragraph shall be included in 54863
the numerator of the sales factor if the borrower is located in 54864
this state. 54865

(b) The determination of whether the real property securing a 54866
loan is located within this state shall be made as of the time the 54867
original agreement was made and any and all subsequent 54868
substitutions of collateral shall be disregarded. 54869

(5) The numerator of the sales factor includes interest and 54870
fees or penalties in the nature of interest from loans not secured 54871
by real property if the borrower is located in this state. 54872

(6) The numerator of the sales factor includes net gains from 54873
the sale of loans. Net gains from the sale of loans includes 54874
income recorded under the coupon stripping rules of section 1286 54875
of the Internal Revenue Code. 54876

(a) The amount of net gains, but not less than zero, from the 54877
sale of loans secured by real property included in the numerator 54878
is determined by multiplying such net gains by a fraction the 54879
numerator of which is the amount included in the numerator of the 54880
sales factor pursuant to division (F)(4) of this section and the 54881
denominator of which is the total amount of interest and fees or 54882
penalties in the nature of interest from loans secured by real 54883
property. 54884

(b) The amount of net gains, but not less than zero, from the 54885
sale of loans not secured by real property included in the 54886

numerator is determined by multiplying such net gains by a 54887
fraction the numerator of which is the amount included in the 54888
numerator of the sales factor pursuant to division (F)(5) of this 54889
section and the denominator of which is the total amount of 54890
interest and fees or penalties in the nature of interest from 54891
loans not secured by real property. 54892

(7) The numerator of the sales factor includes interest and 54893
fees or penalties in the nature of interest from credit card 54894
receivables and receipts from fees charged to card holders, such 54895
as annual fees, if the billing address of the card holder is in 54896
this state. 54897

(8) The numerator of the sales factor includes net gains, but 54898
not less than zero, from the sale of credit card receivables 54899
multiplied by a fraction, the numerator of which is the amount 54900
included in the numerator of the sales factor pursuant to division 54901
(F)(7) of this section and the denominator of which is the 54902
taxpayer's total amount of interest and fees or penalties in the 54903
nature of interest from credit card receivables and fees charged 54904
to card holders. 54905

(9) The numerator of the sales factor includes all credit 54906
card issuer's reimbursement fees multiplied by a fraction, the 54907
numerator of which is the amount included in the numerator of the 54908
sales factor pursuant to division (F)(7) of this section and the 54909
denominator of which is the taxpayer's total amount of interest 54910
and fees or penalties in the nature of interest from credit card 54911
receivables and fees charged to card holders. 54912

(10) The numerator of the sales factor includes receipts from 54913
merchant discount if the commercial domicile of the merchant is in 54914
this state. Such receipts shall be computed net of any card holder 54915
charge backs, but shall not be reduced by any interchange 54916
transaction fees or by any issuer's reimbursement fees paid to 54917
another for charges made by its card holders. 54918

(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 54950
sold under agreements to resell or repurchase; options; futures 54951
contracts; forward contracts; notional principal contracts such as 54952
swaps; equities; and foreign currency transactions. With respect 54953
to the investment and trading assets and activities described in 54954
divisions (F)(13)(a)(i) and (ii) of this section, the sales factor 54955
shall include the amounts described in such divisions. 54956

(i) The sales factor shall include the amount by which 54957
interest from federal funds sold and securities purchased under 54958
resale agreements exceeds interest expense on federal funds 54959
purchased and securities sold under repurchase agreements. 54960

(ii) The sales factor shall include the amount by which 54961
interest, dividends, gains, and other income from trading assets 54962
and activities, including, but not limited to, assets and 54963
activities in the matched book, in the arbitrage book, and foreign 54964
currency transactions, exceed amounts paid in lieu of interest, 54965
amounts paid in lieu of dividends, and losses from such assets and 54966
activities. 54967

(b) The numerator of the sales factor includes interest, 54968
dividends, net gains, but not less than zero, and other income 54969
from investment assets and activities and from trading assets and 54970
activities described in division (F)(13)(a) of this section that 54971
are attributable to this state. 54972

(i) The amount of interest, other than interest described in 54973
division (F)(13)(b)(iv) of this section, dividends, other than 54974
dividends described in that division, net gains, but not less than 54975
zero, and other income from investment assets and activities in 54976
the investment account to be attributed to this state and included 54977
in the numerator is determined by multiplying all such income from 54978
such assets and activities by a fraction, the numerator of which 54979
is the average value of such assets which are properly assigned to 54980
a regular place of business of the taxpayer within this state and 54981

the denominator of which is the average value of all such assets. 54982

(ii) The amount of interest from federal funds sold and 54983
purchased and from securities purchased under resale agreements 54984
and securities sold under repurchase agreements attributable to 54985
this state and included in the numerator is determined by 54986
multiplying the amount described in division (F)(13)(a)(i) of this 54987
section from such funds and such securities by a fraction, the 54988
numerator of which is the average value of federal funds sold and 54989
securities purchased under agreements to resell which are properly 54990
assigned to a regular place of business of the taxpayer within 54991
this state and the denominator of which is the average value of 54992
all such funds and such securities. 54993

(iii) The amount of interest, dividends, gains, and other 54994
income from trading assets and activities, including but not 54995
limited to assets and activities in the matched book, in the 54996
arbitrage book, and foreign currency transaction, but excluding 54997
amounts described in division (F)(13)(b)(i) or (ii) of this 54998
section, attributable to this state and included in the numerator 54999
is determined by multiplying the amount described in division 55000
(F)(13)(a)(ii) of this section by a fraction, the numerator of 55001
which is the average value of such trading assets which are 55002
properly assigned to a regular place of business of the taxpayer 55003
within this state and the denominator of which is the average 55004
value of all such assets. 55005

(iv) The amount of dividends received on the capital stock 55006
of, and the amount of interest received from loans and advances 55007
to, subsidiary corporations at least fifty-one per cent of whose 55008
common stock is owned by the reporting financial institution shall 55009
be allocated in and out of this state by the application of a 55010
ratio whose numerator is the sum of the net book value of the 55011
payor's real property owned in this state and the payor's tangible 55012
personal property owned in this state and whose denominator is the 55013

sum of the net book value of the payor's real property owned 55014
wherever located and the payor's tangible personal property owned 55015
wherever located. For purposes of calculating this ratio, the 55016
taxpayer shall determine net book value in accordance with 55017
generally accepted accounting principles. 55018

(v) For purposes of this division, average value shall be 55019
determined using the rules for determining the average value of 55020
tangible personal property set forth in division (D)(2) and (3) of 55021
this section. 55022

(c) In lieu of using the method set forth in division 55023
(F)(13)(b) of this section, the taxpayer may elect, or the tax 55024
commissioner may require in order to fairly represent the business 55025
activity of the taxpayer in this state, the use of the method set 55026
forth in division (F)(13)(c) of this section. 55027

(i) The amount of interest, other than interest described in 55028
division (F)(13)(b)(iv) of this section, dividends, other than 55029
dividends described in that division, net gains, but not less than 55030
zero, and other income from investment assets and activities in 55031
the investment account to be attributed to this state and included 55032
in the numerator is determined by multiplying all such income from 55033
such assets and activities by a fraction, the numerator of which 55034
is the gross income from such assets and activities which are 55035
properly assigned to a regular place of business of the taxpayer 55036
within this state, and the denominator of which is the gross 55037
income from all such assets and activities. 55038

(ii) The amount of interest from federal funds sold and 55039
purchased and from securities purchased under resale agreements 55040
and securities sold under repurchase agreements attributable to 55041
this state and included in the numerator is determined by 55042
multiplying the amount described in division (F)(13)(a)(i) of this 55043
section from such funds and such securities by a fraction, the 55044
numerator of which is the gross income from such funds and such 55045

securities which are properly assigned to a regular place of 55046
business of the taxpayer within this state and the denominator of 55047
which is the gross income from all such funds and such securities. 55048

(iii) The amount of interest, dividends, gains, and other 55049
income from trading assets and activities, including, but not 55050
limited to, assets and activities in the matched book, in the 55051
arbitrage book, and foreign currency transactions, but excluding 55052
amounts described in division (F)(13)(a)(i) or (ii) of this 55053
section, attributable to this state and included in the numerator, 55054
is determined by multiplying the amount described in division 55055
(F)(13)(a)(ii) of this section by a fraction, the numerator of 55056
which is the gross income from such trading assets and activities 55057
which are properly assigned to a regular place of business of the 55058
taxpayer within this state and the denominator of which is the 55059
gross income from all such assets and activities. 55060

(iv) The amount of dividends received on the capital stock 55061
of, and the amount of interest received from loans and advances 55062
to, subsidiary corporations at least fifty-one per cent of whose 55063
common stock is owned by the reporting financial institution shall 55064
be allocated in and out of this state by the application of a 55065
ratio whose numerator is the sum of the net book value of the 55066
payor's real property owned in this state and the payor's tangible 55067
personal property owned in this state and whose denominator is the 55068
sum of the payor's real property owned wherever located and the 55069
payor's tangible personal property owned wherever located. For 55070
purposes of calculating this ratio, the taxpayer shall determine 55071
net book value in accordance with generally accepted accounting 55072
principles. 55073

(d) If the taxpayer elects or is required by the tax 55074
commissioner to use the method set forth in division (F)(13)(c) of 55075
this section, it shall use this method on all subsequent returns 55076
unless the taxpayer receives prior permission from the tax 55077

commissioner to use or the tax commissioner requires a different 55078
method. 55079

(e) The taxpayer shall have the burden of proving that an 55080
investment asset or activity or trading asset or activity was 55081
properly assigned to a regular place of business outside of this 55082
state by demonstrating that the day-to-day decisions regarding the 55083
asset or activity occurred at a regular place of business outside 55084
this state. Where the day-to-day decisions regarding an investment 55085
asset or activity or trading asset or activity occur at more than 55086
one regular place of business and one such regular place of 55087
business is in this state and one such regular place of business 55088
is outside this state such asset or activity shall be considered 55089
to be located at the regular place of business of the taxpayer 55090
where the investment or trading policies or guidelines with 55091
respect to the asset or activity are established. Unless the 55092
taxpayer demonstrates to the contrary, such policies and 55093
guidelines shall be presumed to be established at the commercial 55094
domicile of the taxpayer. 55095

(14) The numerator of the sales factor includes receipts from 55096
commissions earned on brokerage accounts owned by customers having 55097
a billing address in this state. 55098

(15) The numerator of the sales factor includes all other 55099
receipts if either: 55100

(a) The income-producing activity is performed solely in this 55101
state; or 55102

(b) The income-producing activity is performed both within 55103
and without this state and a greater proportion of the 55104
income-producing activity is performed within this state than in 55105
any other state, based on costs of performance. 55106

(G) A qualified institution may calculate the base upon which 55107
the fee provided for in division (D) of section 5733.06 of the 55108

Revised Code is determined for each tax year by multiplying the 55109
value of its issued and outstanding shares of stock determined 55110
under division (B) of this section by a single deposits fraction 55111
whose numerator is the deposits assigned to branches in this state 55112
and whose denominator is the deposits assigned to branches 55113
everywhere. Deposits shall be assigned to branches in the same 55114
manner in which the assignment is made for regulatory purposes. If 55115
the base calculated under this division is less than the base 55116
calculated under division (C) of this section, then the qualifying 55117
institution may elect to substitute the base calculated under this 55118
division for the base calculated under division (C) of this 55119
section. Such election may be made annually for each tax year on 55120
the corporate report. The election need not accompany the report; 55121
rather, the election may accompany a subsequently filed but timely 55122
application for refund, a subsequently filed but timely amended 55123
report, or a subsequently filed but timely petition for 55124
reassessment. The election is not irrevocable and it applies only 55125
to the specified tax year. Nothing in this division shall be 55126
construed to extend any statute of limitations set forth in this 55127
chapter. 55128

(H) If the apportionment provisions of this section do not 55129
fairly represent the extent of the taxpayer's business activity in 55130
this state, the taxpayer may petition for or the tax commissioner 55131
may require, in respect to all or any part of the taxpayer's 55132
business activity, if reasonable: 55133

(1) Separate accounting; 55134

(2) The exclusion of any one or more of the factors; 55135

(3) The inclusion of one or more additional factors which 55136
will fairly represent the taxpayer's business activity in this 55137
state; or 55138

(4) The employment of any other method to effectuate an 55139

equitable allocation and apportionment of the taxpayer's value. 55140

(I) If, under division (F) of this section, a receipt is 55141
included in the denominator but is not included in the numerator 55142
of the sales factor, and if, based upon the principles and 55143
concepts set forth in this section, the receipt would be sitused 55144
to a state in which the person is not liable for a tax measured on 55145
or by net worth, then the receipt shall be included in the 55146
numerator of the sales factor, notwithstanding division (F) of 55147
this section to the contrary, if the activity or property 55148
generating the receipt has more nexus with this state than with 55149
any other state in which the person is liable for a tax measured 55150
on or by net worth. 55151

Sec. 5733.057. As used in this section, "adjusted qualifying 55152
amount" has the same meaning as in section 5733.40 of the Revised 55153
Code. 55154

This section does not apply to division (F) of section 55155
5733.051 of the Revised Code. 55156

Except as otherwise provided in divisions (A) and (B) of 55157
section 5733.401 and in sections 5733.058 and 5747.401 of the 55158
Revised Code, in making all apportionment, allocation, income, 55159
gain, loss, deduction, tax, and credit computations under this 55160
chapter and under sections 5747.41 and 5747.43 of the Revised 55161
Code, each person shall include in that person's items of business 55162
income, nonbusiness income, adjusted qualifying amounts, allocable 55163
income or loss, if any, apportionable income or loss, property, 55164
compensation, and sales, the person's entire distributive share or 55165
proportionate share of the items of business income, nonbusiness 55166
income, adjusted qualifying amounts, allocable income or loss, 55167
apportionable income or loss, property, compensation, and sales of 55168
any pass-through entity in which the person has a direct or 55169
indirect ownership interest at any time during the pass-through 55170

entity's calendar or fiscal year ending within, or with the last 55171
day of the person's taxable year. A pass-through entity's direct 55172
or indirect distributive share or proportionate share of any other 55173
pass-through entity's items of business income, nonbusiness 55174
income, adjusted qualifying amounts, allocable income or loss, 55175
apportionable income or loss, property, compensation, and sales 55176
shall be included for the purposes of computing the person's 55177
distributive share or proportionate share of the pass-through 55178
entity's items of business income, nonbusiness income, adjusted 55179
qualifying amounts, allocable income or loss, apportionable income 55180
or loss, property, compensation, and sales under this section. 55181
Those items shall be in the same form as was recognized by the 55182
pass-through entity. 55183

Sec. 5733.059. (A) As used in this section: 55184

(1) "Customer" means a person who purchases electricity for 55185
consumption either by that person or by the person's related 55186
member and the electricity is not for resale directly or 55187
indirectly to any person other than a related member. 55188

(2) "Related member" has the same meaning as in ~~division~~ 55189
~~(A)(6)~~ of section 5733.042 of the Revised Code without regard to 55190
division (B) of that section. 55191

(B) Except as provided in division (C) of this section, this 55192
division applies only to sales of electric transmission and 55193
distribution services. For purposes of sections 5733.05 and 55194
5747.21 of the Revised Code: 55195

(1) Sales of the transmission of electricity are in this 55196
state in proportion to the ratio of the wire mileage of the 55197
taxpayer's transmission lines located in this state divided by the 55198
wire mileage of the taxpayer's transmission lines located 55199
everywhere. Transmission wire mileage shall be weighted for the 55200
voltage capacity of each line. 55201

(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 situated 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 situated to this state in accordance with division (D) of this section.

(D) Any person who makes a sale of electricity shall situate 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 55233
a location in this state or directly or indirectly delivers the 55234
electricity exactly to the border of this state and another state; 55235

(4) A sale of electricity if the seller or the seller's 55236
related member directly or indirectly directs the delivery of the 55237
electricity to a location in this state or directly or indirectly 55238
directs the delivery of the electricity exactly to the border of 55239
this state and another state. 55240

(E) If the situsing provisions of this section do not fairly 55241
represent the extent of the taxpayer's or the taxpayer's related 55242
member's activity in this state, the taxpayer may request, or the 55243
tax commissioner may require, in respect to all or part of a 55244
taxpayer's or related member's sales, if reasonable, any of the 55245
following: 55246

(1) Separate accounting; 55247

(2) The exclusion of one or more additional situsing factors 55248
that will fairly represent the taxpayer's and the related member's 55249
sales in this state; 55250

(3) The inclusion of one or more additional situsing factors 55251
that will fairly represent the taxpayer's and the related member's 55252
sales in this state. 55253

The taxpayer's request shall be in writing and shall be filed 55254
with the report required by section 5733.02 of the Revised Code, a 55255
timely filed petition for reassessment, or a timely filed amended 55256
report. An alternative situsing method shall be effective with the 55257
approval of the tax commissioner. 55258

Nothing in this section shall be construed to extend any 55259
statute of limitations set forth in this chapter. 55260

(F) If the situsing provisions of this section do not fairly 55261
represent activity in this state, the tax commissioner may 55262

promulgate rules to situs sales using a methodology that fairly 55263
reflects sales in this state. 55264

(G) Notwithstanding ~~sections 5733.111 and 5747.131~~ section 55265
5703.56 of the Revised Code to the contrary, a person situsing a 55266
sale outside this state has the burden to establish by a 55267
preponderance of the evidence that the doctrines enumerated in 55268
those sections do not apply. 55269

Sec. 5733.06. The tax hereby charged each corporation subject 55270
to this chapter other than a financial institution shall be the 55271
greater of the following: the minimum payment required under 55272
division (E) of this section, the sum of the amounts computed 55273
under divisions (A) and (B) of this section, after the reduction, 55274
if any, provided by division (J) of this section, or the amount 55275
computed under division (C) of this section, after the reduction, 55276
if any, provided by division (J) of this section, ~~except that the~~. 55277
The tax hereby charged each financial institution subject to this 55278
chapter shall be the greater of the minimum payment required under 55279
division (E) of this section or the amount computed under division 55280
(D) of this section~~+~~. 55281

(A) ~~Except as set forth in division (F) of this section~~ For 55282
tax year 2003, five and one-tenth per cent upon the first fifty 55283
thousand dollars of the value of the taxpayer's issued and 55284
outstanding shares of stock as determined under division (B) of 55285
section 5733.05 of the Revised Code~~+~~, except as set forth in 55286
division (F) of this section, and zero for each subsequent tax 55287
year. 55288

(B) ~~Except as set forth in division (F) of this section~~ For 55289
tax year 2003, eight and one-half per cent upon the value so 55290
determined in excess of fifty thousand dollars~~;~~ or, except as set 55291
forth in division (F) of this section, and for each subsequent tax 55292
year the following per cent upon the total value of the taxpayer's 55293

| | |
|--|-------|
| <u>issued and outstanding shares of stock as determined under</u> | 55294 |
| <u>division (B) of section 5733.05 of the Revised Code:</u> | 55295 |
| <u>(1) For tax year 2004, eight and one-half per cent;</u> | 55296 |
| <u>(2) For tax year 2005, eight per cent;</u> | 55297 |
| <u>(3) For tax year 2006, seven and one-half per cent;</u> | 55298 |
| <u>(4) For tax year 2007 and each subsequent tax year, seven per</u> | 55299 |
| <u>cent.</u> | 55300 |
| (C)(1) Except as otherwise provided under division (G) of | 55301 |
| this section, four mills times that portion of the value of the | 55302 |
| issued and outstanding shares of stock as determined under | 55303 |
| division (C) of section 5733.05 of the Revised Code. For <u>for tax</u> | 55304 |
| <u>year 2003, and for each subsequent tax year two mills times the</u> | 55305 |
| <u>first one million dollars of such value plus three mills times the</u> | 55306 |
| <u>next one million five hundred thousand dollars of such value plus</u> | 55307 |
| <u>four mills times any such value in excess of two million five</u> | 55308 |
| <u>hundred thousand dollars.</u> | 55309 |
| <u>For</u> the purposes of division (C) of this section, division | 55310 |
| (C)(2) of section 5733.065, and division (C) of section 5733.066 | 55311 |
| of the Revised Code, the value of the issued and outstanding | 55312 |
| shares of stock of an eligible corporation for tax year 2003 | 55313 |
| through tax year 2007, or of a qualified holding company <u>not</u> | 55314 |
| <u>participating, and not required to participate, in the filing of a</u> | 55315 |
| <u>consolidated report described in section 5733.052 of the Revised</u> | 55316 |
| <u>Code, is zero.</u> | 55317 |
| (2) As used in division (C) of this section, "eligible | 55318 |
| corporation" means a person treated as a corporation for federal | 55319 |
| income tax purposes that meets all of the following criteria: | 55320 |
| (a) The corporation conducts business for an entire taxable | 55321 |
| year as a qualified trade or business as defined by division (C) | 55322 |
| of section 122.15 of the Revised Code. | 55323 |

(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~~ (1) Except as set forth in division (E)(2) of this

section, the tax shall be charged from any corporation that has 55354
been adjudicated bankrupt, or for which a receiver has been 55355
appointed, or that has made a general assignment for the benefit 55356
of creditors, except for the portion of the then current tax year 55357
during which the tax commissioner finds such corporation had the 55358
power to exercise its corporate franchise unimpaired by such 55359
proceedings or act. The minimum payment for ~~all corporations~~ each 55360
corporation shall be fifty dollars for each tax year through tax 55361
year 2003, and three hundred dollars for each tax year thereafter. 55362

(2) With respect to corporations participating, or required 55363
to participate, in the filing of a consolidated report as 55364
described in section 5733.052 of the Revised Code, division (E)(1) 55365
of this section applies only if every participating corporation, 55366
or every corporation required to participate, has been adjudicated 55367
bankrupt, has had a receiver appointed, or has made a general 55368
assignment for the benefit of creditors. 55369

~~The tax charged to corporations under this chapter for the~~ 55370
~~privilege of engaging in business in this state, which is an~~ 55371
~~excise tax levied on the value of the issued and outstanding~~ 55372
~~shares of stock, shall in no manner be construed as prohibiting or~~ 55373
~~otherwise limiting the powers of municipal corporations, joint~~ 55374
~~economic development zones created under section 715.691 of the~~ 55375
~~Revised Code, and joint economic development districts created~~ 55376
~~under section 715.70 or 715.71 or sections 715.72 to 715.81 of the~~ 55377
~~Revised Code in this state to impose an income tax on the income~~ 55378
~~of such corporations.~~ 55379

~~(F) If two or more taxpayers satisfy the ownership or control~~ 55380
~~requirements of division (A) of section 5733.052 of the Revised~~ 55381
~~Code are members of the same qualifying controlled group, each~~ 55382
~~such taxpayer shall substitute "the taxpayer's pro-rata amount"~~ 55383
~~for "fifty thousand dollars" in divisions (A) and (B) of this~~ 55384
~~section for tax year 2003 and in division (C)(1) of section~~ 55385

5733.065 and divisions (A) and (B) of section 5733.066 of the 55386
Revised Code for tax year 2003 and each subsequent tax year. For 55387
purposes of this division, "the taxpayer's pro-rata amount" is an 55388
amount that, when added to the other such taxpayers' pro-rata 55389
amounts, does not exceed fifty thousand dollars. For the purpose 55390
of making that computation, the taxpayer's pro-rata amount shall 55391
not be less than zero. Nothing in this division derogates from or 55392
eliminates the requirement to make the alternative computation of 55393
tax under division (C) of this section or under division (C)(2) of 55394
section 5733.065 or division (C) of section 5733.066 of the 55395
Revised Code. 55396

(G)(1) The tax liability of any corporation under division 55397
(C) of this section shall not exceed one hundred fifty thousand 55398
dollars for tax year 2003, and shall not exceed five hundred 55399
thousand dollars for each subsequent tax year, except as set forth 55400
in division (G)(2) of this section. 55401

(2) With respect to corporations participating in the filing 55402
of a consolidated report as described in section 5733.052 of the 55403
Revised Code, the tax liability of the consolidated group under 55404
division (C) of this section shall not exceed five hundred 55405
thousand dollars times the number of corporations described in 55406
division (B) of section 5733.01 of the Revised Code and that are 55407
participating, or required to participate, in the filing of the 55408
consolidated report. 55409

(H)(1) For the purposes of division (H) of this section, 55410
"exiting corporation" means a corporation that satisfies all of 55411
the following conditions: 55412

(a) The corporation had nexus with or in this state under the 55413
Constitution of the United States during any portion of a calendar 55414
year; 55415

(b) The corporation was not a corporation described in 55416

division (A) of section 5733.01 of the Revised Code on the first 55417
day of January immediately following that calendar year; 55418

(c) The corporation was not a financial institution on the 55419
first day of January immediately following that calendar year; 55420

(d) If the corporation was a transferor as defined in section 55421
5733.053 of the Revised Code, the corporation's transferee was not 55422
required to add to the transferee's net income the income of the 55423
transferor pursuant to division (B) of that section; 55424

(e) During any portion of that calendar year, or any portion 55425
of the immediately preceding calendar year, the corporation had 55426
net income that was not included in a report filed by the 55427
corporation or its transferee pursuant to section 5733.02, 55428
5733.021, 5733.03, 5733.031, or 5733.053 of the Revised Code; 55429

(f) The corporation would have been subject to the tax 55430
computed under divisions (A), (B), (C), (F), and (G) of this 55431
section if the corporation is assumed to be a corporation 55432
described in division (A) of section 5733.01 of the Revised Code 55433
on the first day of January immediately following the calendar 55434
year to which division (H)(1)(a) of this section refers. 55435

(2) For the purposes of division (H) of this section, 55436
"unreported net income" means net income that was not previously 55437
included in a report filed pursuant to section 5733.02, 5733.021, 55438
5733.03, 5733.031, or 5733.053 of the Revised Code and that was 55439
realized or recognized during the calendar year to which division 55440
(H)(1) of this section refers or the immediately preceding 55441
calendar year. 55442

(3) Each exiting corporation shall pay a tax computed by 55443
first allocating and apportioning the unreported net income 55444
pursuant to division (B) of section 5733.05 and section 5733.051 55445
and, if applicable, section 5733.052 of the Revised Code. The 55446
exiting corporation then shall compute the tax due on its 55447

unreported net income allocated and apportioned to this state by 55448
applying divisions (A), (B), and (F) of this section to that 55449
income. 55450

(4) Divisions (C) and (G) of this section, division (D)(2) of 55451
section 5733.065, and division (C) of section 5733.066 of the 55452
Revised Code do not apply to an exiting corporation, but exiting 55453
corporations are subject to every other provision of this chapter. 55454

(5) Notwithstanding division (B) of section 5733.01 or 55455
sections 5733.02, 5733.021, and 5733.03 of the Revised Code to the 55456
contrary, each exiting corporation shall report and pay the tax 55457
due under division (H) of this section on or before the 55458
thirty-first day of May immediately following the calendar year to 55459
which division (H)(1)(a) of this section refers. The exiting 55460
corporation shall file that report on the form most recently 55461
prescribed by the tax commissioner for the purposes of complying 55462
with sections 5733.02 and 5733.03 of the Revised Code. Upon 55463
request by the corporation, the tax commissioner may extend the 55464
date for filing the report. 55465

(6) If, on account of the application of section 5733.053 of 55466
the Revised Code, net income is subject to the tax imposed by 55467
divisions (A) and (B) of this section, such income shall not be 55468
subject to the tax imposed by division (H)(3) of this section. 55469

(7) The amendments made to division (H) of this section by 55470
Am. Sub. S.B. 287 of the 123rd general assembly do not apply to 55471
any transfer, as defined in section 5733.053 of the Revised Code, 55472
for which negotiations began prior to January 1, 2001, and that 55473
was commenced in and completed during calendar year 2001, unless 55474
the taxpayer makes an election prior to December 31, 2001, to 55475
apply those amendments. 55476

(8) The tax commissioner may adopt rules governing division 55477
(H) of this section. 55478

(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.

(K) The tax charged to corporations under this chapter for

the privilege of engaging in business in this state, which is an 55510
excise tax levied on the value of the issued and outstanding 55511
shares of stock, shall in no manner be construed as prohibiting or 55512
otherwise limiting the powers of municipal corporations, joint 55513
economic development zones created under section 715.691 of the 55514
Revised Code, or joint economic development districts created 55515
under section 715.70 or 715.71 or sections 715.72 to 715.81 of the 55516
Revised Code in this state to impose an income tax on the income 55517
of such corporations. 55518

Sec. 5733.065. (A) As used in this section, "litter stream 55519
products" means: 55520

(1) Intoxicating liquor, beer, wine, mixed beverages, or 55521
spirituous liquor as defined in section 4301.01 of the Revised 55522
Code; 55523

(2) Soft drinks as defined in section 913.22 of the Revised 55524
Code; 55525

(3) Glass, metal, plastic, or fiber containers with a 55526
capacity of less than two gallons sold for the purpose of being 55527
incorporated into or becoming a part of a product enumerated in 55528
divisions (A)(1) and (2) of this section; 55529

(4) Container crowns and closures sold for the purpose of 55530
being incorporated into or becoming a part of a product enumerated 55531
in divisions (A)(1) and (2) of this section; 55532

(5) Packaging materials transferred or intended for transfer 55533
of use or possession in conjunction with retail sales of products 55534
enumerated in divisions (A)(1) and (2) of this section; 55535

(6) Packaging materials in the finished form in which they 55536
are to be used, including sacks, bags, cups, lids, straws, plates, 55537
wrappings, boxes, or containers of any type used in the packaging 55538
or serving of food or beverages, when the food or beverages are 55539

prepared for human consumption by a restaurant or take-out food 55540
outlet at the premises where sold at retail and are delivered to a 55541
purchaser for consumption off the premises where the food or 55542
beverages are sold; 55543

(7) Cigarettes, cigars, tobacco, matches, candy, and gum. 55544

(B) For the purpose of providing additional funding for the 55545
division of recycling and litter prevention under Chapter 1502. of 55546
the Revised Code, there is hereby levied an additional tax on 55547
corporations for the privilege of manufacturing or selling litter 55548
stream products in this state. The tax imposed by this section is 55549
in addition to the tax charged under section 5733.06 of the 55550
Revised Code, computed at the rate prescribed by section 5733.066 55551
of the Revised Code. This section does not apply for tax year 1981 55552
to a corporation whose taxable year for tax year 1981 ended on or 55553
before June 30, 1980. 55554

(C) The tax shall be imposed upon each corporation subject to 55555
the tax imposed by section 5733.06 of the Revised Code that 55556
manufactures or sells litter stream products in this state. The 55557
tax for each year shall be in an amount equal to the greater of 55558
either: 55559

(1) ~~Twenty-two~~ Except as set forth in division (F) of section 55560
5733.06 of the Revised Code, twenty-two hundredths of one per cent 55561
upon the value of that portion, in excess of fifty thousand 55562
dollars, of the taxpayer's issued and outstanding shares of stock 55563
as determined under division (B) of section 5733.05 of the Revised 55564
Code ~~that is subject to the rate contained in division (B) of~~ 55565
~~section 5733.06 of the Revised Code;~~ 55566

(2) Fourteen one-hundredths of a mill times the value of the 55567
taxpayer's issued and outstanding shares of stock as determined 55568
under division (C) of section 5733.05 of the Revised Code. 55569

The additional tax charged any taxpayer or group of combined 55570

taxpayers pursuant to this section for any tax year shall not 55571
exceed five thousand dollars. 55572

(D)(1) In the case of a corporation engaged in the business 55573
of manufacturing litter stream products, no tax shall be due under 55574
this section unless the sale of litter stream products in this 55575
state during the taxable year exceeds five per cent of the total 55576
sales in this state of the corporation during that period or 55577
unless the total sales in this state of litter stream products by 55578
the corporation during the taxable year exceed ten million 55579
dollars. 55580

(2) In the case of a corporation engaged in the business of 55581
selling litter stream products in the form in which the item is or 55582
is to be received, no tax shall be due under this section unless 55583
the corporation's sales of litter stream products in this state 55584
during the taxable year constitute more than five per cent of its 55585
total sales in this state during that period. 55586

(3) In the case of a corporation transferring possession of 55587
litter stream products included in division (A)(6) of this 55588
section, in which food or beverages prepared for human consumption 55589
are placed, when the food or beverages are prepared for retail 55590
sale at the premises where sold and are delivered to a purchaser 55591
for consumption off the premises where the food or beverages are 55592
sold, no tax shall be due under this section unless such sales for 55593
off-premises consumption during the taxable year exceed five per 55594
cent of the corporation's total annual sales during the taxable 55595
year. 55596

(E)(1) The tax imposed by this section is due in the 55597
proportions and on the dates on which the tax imposed by section 55598
5733.06 of the Revised Code may be paid without penalty. 55599

(2) Payment of the tax and any reports or returns required to 55600
enable the tax commissioner to determine the correct amount of the 55601

tax shall be submitted with and are due at the same time as 55602
payments and reports required to be submitted under this chapter. 55603

(3) If the tax is not paid in full on or before the date 55604
required by division (E)(1) of this section, the unpaid portion of 55605
the tax due and unpaid shall be subject to all provisions of this 55606
chapter for the collection of unpaid, delinquent taxes imposed by 55607
section 5733.06 of the Revised Code, except that all such taxes, 55608
interest, and penalties, when collected, shall be treated as 55609
proceeds arising from the tax imposed by this section and shall be 55610
deposited in the general revenue fund. 55611

The tax levied on corporations under this section does not 55612
prohibit or otherwise limit the authority of municipal 55613
corporations to impose an income tax on the income of such 55614
corporations. 55615

Sec. 5733.066. There To provide funding for the division of 55616
recycling and litter prevention under Chapter 1502. of the Revised 55617
Code, there shall be added to the rates contained in tax charged 55618
by section 5733.06 of the Revised Code the following greater of 55619
the sum of divisions (A) and (B) of this section or division (C) 55620
of this section: 55621

(A) ~~To the rate~~ Except as set forth in division ~~(A)~~(F) of 55622
~~that~~ section 5733.06 of the Revised Code, eleven-hundredths per 55623
cent upon that portion the first fifty thousand dollars of the 55624
value of the taxpayer's issued and outstanding shares of stock as 55625
determined under division (B) of section 5733.05 of the Revised 55626
Code ~~that is subject to such rate, an additional eleven hundredths~~ 55627
~~per cent upon that value to provide funding for the division of~~ 55628
~~recycling and litter prevention under Chapter 1502. of the Revised~~ 55629
~~Code;~~ 55630

(B) ~~To the rate~~ Except as set forth in division ~~(B)~~(F) of 55631
~~that~~ section 5733.06 of the Revised Code, twenty-two-hundredths 55632

~~per cent upon that portion of the value so, in excess of fifty
thousand dollars, of the taxpayer's issued and outstanding shares
of stock as determined that is subject to that rate, an additional
twenty two hundredths per cent upon that value to provide funding
for the division recycling and litter prevention under Chapter
1502. under division (B) of section 5733.05 of the Revised Code;~~

~~(C) To the rate in division (C) of that section
Fourteen-hundredths of one mill times that portion of the value of
the taxpayer's issued and outstanding shares of stock as
determined under division (C) of section 5733.05 of the Revised
Code, an additional fourteen one hundredths mills times that value
to provide funding for the division of recycling and litter
prevention under Chapter 1502. of the Revised Code.~~

The additional tax charged any taxpayer or group of combined
taxpayers pursuant to this section for any tax year shall not
exceed five thousand dollars.

This section does not apply to any family farm corporation as
defined in section 4123.01 of the Revised Code.

The tax levied on corporations under this section does not
prohibit or otherwise limit the authority of municipal
corporations to impose an income tax on the income of such
corporations.

Sec. 5733.069. (A) As used in this section:

(1) "Average of the payroll factor and the property factor"
means one-half multiplied by the sum of the payroll factor and the
property factor.

(2) Subject to divisions (C) and (H) of this section, "export
sales" means sales used in determining the denominator of the
sales factor under division (B)(2)(c) of section 5733.05 of the
Revised Code, as long as the sales meet the requirements of

division (A)(2)(a) of this section and either or both of divisions 55663
(A)(2)(b) and (c) of this section. 55664

(a) The gross receipts with respect to the sales qualify as 55665
foreign trading gross receipts as defined under section 924 of the 55666
Internal Revenue Code and regulations prescribed thereunder, 55667
except not including foreign trading gross receipts defined under 55668
section 924(a)(5) of the Internal Revenue Code and regulations 55669
prescribed thereunder. In addition, for the purposes of division 55670
(A)(2)(a) of this section, section 924 of the Internal Revenue 55671
Code is considered to apply to any taxpayer, not just an FSC as 55672
that term is defined under section 922 of the Internal Revenue 55673
Code. 55674

(b) In the case of sales of tangible personal property, the 55675
taxpayer establishes by preponderance of the evidence that the 55676
property is not received by the purchaser within the United 55677
States. If the property is delivered by common carrier or by other 55678
means of transportation, the place at which the property is 55679
ultimately received after all transportation has been completed 55680
shall be considered as the place at which the property is received 55681
by the purchaser. Direct delivery in the United States, other than 55682
for purposes of transportation, to a person or firm designated by 55683
the purchaser constitutes delivery to the purchaser in the United 55684
States. Direct delivery outside the United States to a person or 55685
firm designated by the purchaser does not constitute delivery to 55686
the purchaser in the United States, regardless of where title 55687
passes or other condition of sale. 55688

In addition, the taxpayer also establishes by clear and 55689
convincing evidence one of the following: 55690

(i) With respect to sales of tangible personal property to a 55691
related member, within the twelve-month period subsequent to the 55692
delivery to the related member, the related member in turn sells 55693
the property, or leases it for a period of at least five years, 55694

and delivers the property in the same form or as a component part 55695
of other property to a purchaser or lessee who is not a related 55696
member. In addition, during the twenty-four-month period 55697
commencing with the date of such sale or lease by the related 55698
member, the purchaser or lessee or a related member of the 55699
purchaser or lessee does not receive, use, or consume the 55700
property, either in the same form or as a component part of other 55701
property, within the United States, and does not directly or 55702
indirectly sell or lease the property, either in the same form or 55703
as a component part of other property, for use or consumption in 55704
the United States. 55705

(ii) With respect to all other sales of tangible personal 55706
property, during the twenty-four-month period commencing with such 55707
sale, the purchaser or a related member of the purchaser does not 55708
receive, use, or consume the property, either in the same form or 55709
as a component part of other property, in the United States, and 55710
does not directly or indirectly sell the property, either in the 55711
same form or as a component part of other property, for use or 55712
consumption in the United States. 55713

(c) In the case of sales of services, the taxpayer 55714
establishes by preponderance of the evidence that the purchaser 55715
uses or consumes the services or the object of the services in a 55716
location other than the United States. If a purchaser will receive 55717
and use or consume the services or the object of the services both 55718
within and outside the United States, the sale is considered to be 55719
a sale of services or of the object of the services used or 55720
consumed outside the United States by the purchaser only to the 55721
extent of such proportionate use or consumption outside the United 55722
States. The taxpayer shall establish by preponderance of the 55723
evidence that the services or the object of the services was 55724
ultimately received and used or consumed outside the United 55725
States. Direct or indirect sales of services or the object of 55726

services to a related member do not meet the requirements of 55727
division (A)(2)(c) of this section unless the taxpayer establishes 55728
by preponderance of the evidence that within the twelve-month 55729
period subsequent to the sale to the related member, the related 55730
member in turn sold and delivered or rendered the services or the 55731
object of the services to a person who is not a related member and 55732
such person ultimately received and used or consumed the services 55733
or the object of the services outside the United States. In no 55734
event shall a sale of services qualify as an export sale if the 55735
taxpayer or the taxpayer's related member directly or indirectly 55736
acquired such services from a person who is not a United States 55737
person and if the taxpayer or the taxpayer's related member in 55738
turn directly or indirectly sold such services in substantially 55739
the same form. For purposes of this section, services are sold in 55740
substantially the same form where more than fifty per cent of the 55741
fair market value of such services sold is attributable to 55742
services directly or indirectly purchased by the taxpayer or by 55743
the taxpayer's related member from a person who is not a United 55744
States person. 55745

(3) "Incremental increase in export sales" means one-half the 55746
difference obtained by subtracting the amount of the taxpayer's 55747
export sales for the second preceding taxable year from the amount 55748
of the taxpayer's export sales for the taxable year. 55749

If the taxpayer's taxable year is a period of greater than or 55750
less than three hundred sixty-five days, or three hundred 55751
sixty-six days for a taxable year that includes February 55752
twenty-nine, the amount of the export sales for that taxable year 55753
shall be adjusted and restated to an annualized amount. 55754

(4) Subject to divisions (C), (F)(1), (H), and (I) of this 55755
section, "Ohio payroll increase factor" means twelve and one-half 55756
multiplied by the difference obtained by subtracting two 55757
one-hundredths from the largest of the following quotients: 55758

(a) The numerator of the payroll factor for the taxable year 55759
minus the numerator of the payroll factor for the immediately 55760
preceding taxable year, divided by the numerator of the payroll 55761
factor for the immediately preceding taxable year; 55762

(b) The numerator of the payroll factor for the taxable year 55763
minus the numerator of the payroll factor for the second preceding 55764
taxable year, divided by the numerator of the payroll factor for 55765
the second preceding taxable year; 55766

(c) The numerator of the payroll factor for the taxable year 55767
minus the numerator of the payroll factor for the third preceding 55768
taxable year, divided by the numerator of the payroll factor for 55769
the third preceding taxable year. 55770

If the numerator of the payroll factor for a taxable year 55771
represents payroll for a period of greater than or less than three 55772
hundred sixty-five days, or three hundred sixty-six days for a 55773
taxable year that includes February twenty-nine, for purposes of 55774
this section the numerator for that taxable year shall be adjusted 55775
and restated to an annualized amount. If neither the taxpayer nor 55776
its related members were subject to the tax imposed by section 55777
5733.06 of the Revised Code for any of the three immediately 55778
preceding tax years, the numerator of the payroll factor for any 55779
such year shall be considered to be one dollar. 55780

In no event shall the Ohio payroll increase factor be greater 55781
than one or less than zero. 55782

(5) Subject to divisions (C), (F)(2), and (H) of this 55783
section, "Ohio property increase factor" means ten multiplied by 55784
the largest of the following quotients: 55785

(a) The numerator of the property factor for the taxable year 55786
minus the numerator of the property factor for the immediately 55787
preceding taxable year, divided by the numerator of the property 55788
factor for the immediately preceding taxable year; 55789

(b) The numerator of the property factor for the taxable year 55790
minus the numerator of the property factor for the second 55791
preceding taxable year, divided by the numerator of the property 55792
factor for the second preceding taxable year; 55793

(c) The numerator of the property factor for the taxable year 55794
minus the numerator of the property factor for the third preceding 55795
taxable year, divided by the numerator of the property factor for 55796
the third preceding taxable year. 55797

If neither the taxpayer nor its related members were subject 55798
to the tax imposed by section 5733.06 of the Revised Code for any 55799
of the three immediately preceding tax years, the numerator of the 55800
property factor for any such year shall be considered to be one 55801
dollar. 55802

In no event shall the Ohio property increase factor be 55803
greater than one or less than zero. 55804

(6) Subject to divisions (H) and (I) of this section, 55805
"payroll factor" has the same meaning as in division (B)(2)(b) of 55806
section 5733.05 of the Revised Code with any adjustments, 55807
exclusions, or alterations made in accordance with division 55808
(B)(2)(d) of that section. 55809

(7) "Pre-tax profit from the incremental increase in export 55810
sales" means fifteen per cent of the incremental increase in 55811
export sales, except that the taxpayer may establish by 55812
preponderance of the evidence that the pre-tax profit margin from 55813
such sales is an amount exceeding fifteen per cent but not 55814
exceeding fifty per cent. For purposes of this section, the 55815
pre-tax profit margin shall be determined on a product line by 55816
product line basis, and equals the quotient of the taxpayer's 55817
taxable income with respect to the product line before operating 55818
loss deduction and special deductions, as required to be reported 55819
for the taxable year under the Internal Revenue Code, divided by 55820

the taxpayer's sales for the product line less sales returns, 55821
allowances, and discounts. 55822

Nothing in division (A)(7) of this section shall be used or 55823
construed to support a request under division (B)(2)(d) of section 55824
5733.05 of the Revised Code. 55825

(8) Subject to division (H) of this section, "property 55826
factor" has the same meaning as in division (B)(2)(a) of section 55827
5733.05 of the Revised Code with any adjustments, exclusions, or 55828
alterations made in accordance with division (B)(2)(d) of that 55829
section. 55830

(9) "Related member" has the same meaning as ~~under division~~ 55831
~~(A)(6) of~~ in section 5733.042 of the Revised Code without regard 55832
to division (B) of that section. 55833

(10) "Tentative credit" means the credit under division (B) 55834
of this section without regard to the limitations set forth in 55835
division (D) of this section. 55836

(11) "United States" means the United States and its 55837
territories and possessions. 55838

(12) "United States person" has the same meaning as under 55839
section 7701(A)(30) of the Internal Revenue Code. 55840

(B) A nonrefundable credit is allowed against the tax imposed 55841
by section 5733.06 of the Revised Code. The credit shall be 55842
claimed in the order required under section 5733.98 of the Revised 55843
Code. Subject to divisions (C), (D), and (G) of this section, the 55844
credit equals the sum of the following: 55845

(1) For tax years 1993 to 2000, ten per cent of the product 55846
obtained by multiplying all of the following together: 55847

(a) The pre-tax profit from the incremental increase in 55848
export sales for the taxable year; 55849

(b) The average of the property factor and the payroll factor 55850

for the taxable year; 55851

(c) The greater of the Ohio payroll increase factor or the 55852
Ohio property increase factor. 55853

(2) For tax years 1994 to 2005, the sum of any amounts 55854
carried forward from tax years 1993 to 2000 in accordance with 55855
division (E) of this section. 55856

(C)(1) In the case of a taxpayer having a related member or a 55857
group of taxpayers having a related member, the credit available 55858
under this section to the taxpayer or group of taxpayers shall be 55859
computed as if the taxpayer or all taxpayers of the group and all 55860
such related members were a consolidated, single taxpayer. The 55861
credit shall be allocated to such taxpayer or to such group of 55862
taxpayers in any amount elected for the tax year by the taxpayer 55863
or group. Such election shall be revocable and amendable during 55864
the period described in division (B)(1) of section 5733.12 of the 55865
Revised Code. Nothing in this section shall be construed to treat 55866
as an export sale a sale by a related member who is not a United 55867
States person if such sale would not qualify as an export sale 55868
without regard to the consolidation requirement set forth in this 55869
section. 55870

(2) For purposes of this section, a taxpayer's or related 55871
member's export sales and the numerators and denominators of the 55872
taxpayer's or related member's payroll and property factors shall 55873
include the taxpayer's or related member's proportionate shares of 55874
the export sales and numerators and denominators of the payroll 55875
and property factors, respectively, for all pass-through entities. 55876
For purposes of applying division (C)(2) of this section, the tax 55877
commissioner shall be guided by the concepts set forth in section 55878
41(f)(2) of the Internal Revenue Code and regulations prescribed 55879
thereunder. Nothing in this section shall be construed to limit or 55880
disallow pass-through treatment of a pass-through entity's income, 55881
deductions, credits, or other amounts necessary to compute the tax 55882

imposed by section 5733.06 of the Revised Code and the credits 55883
allowed by this chapter. 55884

(D) In no circumstance shall the credit provided by this 55885
section be less than zero. 55886

If the tentative credit for a tax year for a taxpayer and any 55887
related members is greater than two hundred fifty thousand dollars 55888
or the aggregate tax due for the taxpayer and any related members 55889
after taking into account any other nonrefundable credits that 55890
precede the credit under this section in the order required under 55891
section 5733.98 of the Revised Code, then the credit allowed for 55892
the tax year for the taxpayer and any related members shall not 55893
exceed the lesser of two hundred fifty thousand dollars or the 55894
aggregate tax due for the taxpayer and any related members after 55895
taking into account any other nonrefundable credits that precede 55896
the credit under this section in that order. 55897

(E)(1) Pursuant to division (B)(2) of this section, the 55898
greater of the amount described in division (E)(1)(a) or the 55899
amount described in division (E)(1)(b) of this section shall be 55900
allowed as a nonrefundable credit in each ensuing tax year: 55901

(a) The excess, if any, of the tentative credit for the tax 55902
year over two hundred fifty thousand dollars; 55903

(b) The excess, if any, of the tentative credit for the tax 55904
year over the aggregate tax due for the tax year for the taxpayer 55905
and any related members, after taking into account any other 55906
nonrefundable credits for the tax year that precede the credit 55907
under this section in the order required under section 5733.98 of 55908
the Revised Code. 55909

(2) Any such amount allowed as a credit in an ensuing tax 55910
year shall be deducted from the balance carried forward to the 55911
next ensuing tax year. Such credit shall be taken into account 55912
prior to the allowance of any credit for such tax year under 55913

division (B)(1) of this section. In no event shall any amount or 55914
any portion of any amount described in division (E)(1)(a) or (b) 55915
of this section be allowed in tax year 2006 or any subsequent tax 55916
year. 55917

(F)(1) With respect to the computation of the Ohio payroll 55918
increase factor, divisions (A)(4)(b) and (c) of this section shall 55919
not apply to tax years 1993 and 1994, and division (A)(4)(c) of 55920
this section shall not apply to tax year 1995. 55921

(2) With respect to the computation of the Ohio property 55922
increase factor, divisions (A)(5)(b) and (c) of this section shall 55923
not apply to tax years 1993 and 1994, and division (A)(5)(c) of 55924
this section shall not apply to tax year 1995. 55925

(G) The aggregate credit allowed to the taxpayer and any 55926
related members for tax years 1993 to 2005 shall not exceed three 55927
million two hundred fifty thousand dollars. 55928

(H)(1) If a taxpayer or a taxpayer's related member acquires 55929
the major portion of a trade or business of another person or the 55930
major portion of a separate unit of a trade or business of another 55931
person, then for purposes of applying this section for any tax 55932
year subsequent to the end of the taxable year in which the 55933
acquisition occurred, the amount of the taxpayer's export sales, 55934
payroll, subject to division (I) of this section, and property for 55935
periods before the acquisition shall be increased by so much of 55936
such amounts paid or incurred by the previous owner of the 55937
acquired trade, business, or separate unit as is attributable to 55938
the portion of such trade, business, or separate unit acquired by 55939
the taxpayer or related member. 55940

(2) If a taxpayer or a taxpayer's related member disposes of 55941
a major portion of a trade or business or the major portion of a 55942
separate unit of a trade or business in a transaction to which 55943
division (H)(1) of this section applies, and if the taxpayer or 55944

the related member furnished the acquiring person such information 55945
as is necessary for the application of division (H)(1) of this 55946
section, then for purposes of applying this section to any tax 55947
year subsequent to the end of the taxable year in which the 55948
disposition occurred, the amount of the taxpayer's export sales, 55949
payroll, subject to division (I) of this section, and property for 55950
periods before the disposition shall be decreased by so much of 55951
such amounts as is attributable to the portion of such trade, 55952
business, or separate unit disposed of by the taxpayer or related 55953
member. 55954

(3) For purposes of applying this division, the tax 55955
commissioner shall be guided by the concepts set forth in section 55956
41(f)(3) of the Internal Revenue Code and regulations prescribed 55957
thereunder. 55958

(I) For purposes of this section, payroll and compensation do 55959
not include amounts in excess of two hundred thousand dollars 55960
directly or indirectly paid or accrued during the taxable year to 55961
an employee. For purposes of applying this division, the aggregate 55962
payroll and compensation directly or indirectly paid or accrued by 55963
the taxpayer and by the taxpayer's related members, if any, to an 55964
employee and to the employee's children, grandchildren, parents, 55965
and spouse, other than a spouse who is legally separated from the 55966
employee, shall be considered to be paid to the employee. 55967

(J) With respect to allowing the credit provided by this 55968
section, the tax commissioner shall be guided by the doctrines of 55969
"economic reality," "sham transaction," "step transaction," and 55970
"substance over form." The taxpayer shall bear the burden of 55971
establishing by preponderance of the evidence that any transaction 55972
giving rise to a claimed credit did not have as a principal 55973
purpose the avoidance of any portion of the tax imposed by section 55974
5733.06 of the Revised Code. 55975

Nothing in this section shall be construed to limit solely to 55976

this section the application of the doctrines listed in this 55977
division. 55978

Sec. 5733.09. (A) ~~An~~ (1) Except as provided in divisions 55979
(A)(2) to (4) of this section, an incorporated company, whether 55980
foreign or domestic, owning and operating a public utility in this 55981
state, and required by law to file reports with the tax 55982
commissioner and to pay an excise tax upon its gross receipts, and 55983
insurance, fraternal, beneficial, bond investment, and other 55984
corporations required by law to file annual reports with the 55985
superintendent of insurance ~~and dealers in intangibles, the shares~~ 55986
~~of which are, or the capital or ownership in capital employed by~~ 55987
~~such dealer is, subject to the taxes imposed by section 5707.03 of~~ 55988
~~the Revised Code, shall not be subject to this chapter, except for~~ 55989
sections 5733.031, 5733.042, 5733.05, 5733.052, 5733.053, 55990
5733.069, 5733.0611, 5733.40, 5733.41, and sections 5747.40 to 55991
5747.453 of the Revised Code. However, for reports required to be 55992
filed under section 5725.14 of the Revised Code in 2003 and 55993
thereafter, nothing in this section shall be construed to exempt 55994
the property of any dealer in intangibles under section 5725.13 of 55995
the Revised Code from the tax imposed under section 5707.03 of the 55996
Revised Code. ~~An~~ 55997

(2) An electric company subject to the filing requirements of 55998
section 5727.08 of the Revised Code or otherwise having nexus with 55999
or in this state under the Constitution of the United States, or 56000
any other corporation having any gross receipts directly 56001
attributable to providing public utility service as an electric 56002
company or having any property directly attributable to providing 56003
public utility service as an electric company, is subject to this 56004
chapter. 56005

(3) A telephone company that no longer pays an excise tax 56006
under section 5727.30 of the Revised Code on its gross receipts 56007

billed after June 30, 2004, is first subject to taxation under 56008
this chapter for tax year 2005. For that tax year, a telephone 56009
company with a taxable year beginning in 2003 and ending in 2004 56010
shall compute the tax imposed under this chapter, or shall compute 56011
the net operating loss carry forward for tax year 2005, by 56012
multiplying the tax owed under this chapter, net of all 56013
nonrefundable credits, or the loss for the taxable year, by fifty 56014
per cent. 56015

(4) A water transportation company that no longer pays an 56016
excise tax under section 5727.30 of the Revised Code on its gross 56017
receipts after June 30, 2003, is first subject to taxation under 56018
this chapter for tax year 2004. For that tax year, a water 56019
transportation company shall compute the tax imposed under this 56020
chapter, or shall compute the net operating loss carry forward for 56021
tax year 2004, by multiplying the tax owed under this chapter, net 56022
of all nonrefundable credits, or the loss for the taxable year, by 56023
fifty per cent. 56024

(B) A corporation that has made an election under subchapter 56025
S, chapter one, subtitle A, of the Internal Revenue Code for its 56026
taxable year under such code is exempt from the tax imposed by 56027
section 5733.06 of the Revised Code that is based on that taxable 56028
year. 56029

A corporation that makes such an election shall file a notice 56030
of such election with the tax commissioner between the first day 56031
of January and the thirty-first day of March of each tax year that 56032
the election is in effect. 56033

(C) An entity defined to be a "real estate investment trust" 56034
by section 856 of the Internal Revenue Code, a "regulated 56035
investment company" by section 851 of the Internal Revenue Code, 56036
or a "real estate mortgage investment conduit" by section 860D of 56037
the Internal Revenue Code, is exempt from taxation for a tax year 56038
as a corporation under this chapter ~~and is exempt from taxation~~ 56039

~~for a return year as a dealer in intangibles under Chapter 5725.~~ 56040
~~of the Revised Code~~ if it provides the report required by this 56041
division. By the last day of March of the tax or return year the 56042
entity shall submit to the tax commissioner the name of the entity 56043
with a list of the names, addresses, and social security or 56044
federal identification numbers of all investors, shareholders, and 56045
other similar investors who owned any interest or invested in the 56046
entity during the preceding calendar year. The commissioner may 56047
extend the date by which the report must be submitted for 56048
reasonable cause shown by the entity. The commissioner may 56049
prescribe the form of the report required for exemption under this 56050
division. 56051

(D)(1) As used in this division: 56052

(a) "Commercial printer" means a person primarily engaged in 56053
the business of commercial printing. However, "commercial printer" 56054
does not include a person primarily engaged in the business of 56055
providing duplicating services using photocopy machines or other 56056
xerographic processes. 56057

(b) "Commercial printing" means printing by one or more 56058
common processes such as letterpress, lithography, gravure, 56059
screen, or digital imaging, and includes related activities such 56060
as binding, platemaking, prepress operation, cartographic 56061
composition, and typesetting. 56062

(c) "Contract for printing" means an oral or written 56063
agreement for the purchase of printed materials produced by a 56064
commercial printer. 56065

(d) "Intangible property located at the premises of a 56066
commercial printer" means intangible property of any kind owned or 56067
licensed by a customer of the commercial printer and furnished to 56068
the commercial printer for use in commercial printing. 56069

(e) "Printed material" means any tangible personal property 56070

produced or processed by a commercial printer pursuant to a 56071
contract for printing. 56072

(f) "Related member" has the same meaning as in ~~division~~ 56073
~~(A)(6)~~ of section 5733.042 of the Revised Code without regard to 56074
division (B) of that section. 56075

(2) Except as provided in divisions (D)(3) and (4) of this 56076
section, a corporation not otherwise subject to the tax imposed by 56077
section 5733.06 of the Revised Code for a tax year does not become 56078
subject to that tax for the tax year solely by reason of any one 56079
or more of the following occurring in this state during the 56080
taxable year that ends immediately prior to the tax year: 56081

(a) Ownership by the corporation or a related member of the 56082
corporation of tangible personal property or intangible property 56083
located during all or any portion of the taxable year or on the 56084
first day of the tax year at the premises of a commercial printer 56085
with which the corporation or the corporation's related member has 56086
a contract for printing with respect to such property or the 56087
premises of a commercial printer's related member with which the 56088
corporation or the corporation's related member has a contract for 56089
printing with respect to such property; 56090

(b) Sales by the corporation or a related member of the 56091
corporation of property produced at and shipped or distributed 56092
from the premises of a commercial printer with which the 56093
corporation or the corporation's related member has a contract for 56094
printing with respect to such property or the premises of a 56095
commercial printer's related member with which the corporation or 56096
the corporation's related member has a contract for printing with 56097
respect to such property; 56098

(c) Activities of employees, officers, agents, or contractors 56099
of the corporation or a related member of the corporation on the 56100
premises of a commercial printer with which the corporation or the 56101

corporation's related member has a contract for printing or the 56102
premises of a commercial printer's related member with which the 56103
corporation or the corporation's related member has a contract for 56104
printing, where the activities are directly and solely related to 56105
quality control, distribution, or printing services, or any 56106
combination thereof, performed by or at the direction of the 56107
commercial printer or the commercial printer's related member. 56108

(3) The exemption under this division does not apply for a 56109
taxable year to any corporation having on the first day of January 56110
of the tax year or at any time during the taxable year ending 56111
immediately preceding the first day of January of the tax year a 56112
related member which, on the first day of January of the tax year 56113
or during any portion of such taxable year of the corporation, has 56114
nexus in or with this state under the Constitution of the United 56115
States or holds a certificate of compliance with the laws of this 56116
state authorizing it to do business in this state. 56117

(4) With respect to allowing the exemption under this 56118
division, the tax commissioner shall be guided by the doctrines of 56119
"economic reality," "sham transaction," "step transaction," and 56120
"substance over form." A corporation shall bear the burden of 56121
establishing by a preponderance of the evidence that any 56122
transaction giving rise to an exemption claimed under this 56123
division did not have as a principal purpose the avoidance of any 56124
portion of the tax imposed by section 5733.06 of the Revised Code. 56125

Application of the doctrines listed in division (D)(4) of 56126
this section is not limited to this division. 56127

Sec. 5733.18. Annually, on the day fixed for the payment of 56128
any excise or franchise tax required to be paid by law, such tax, 56129
together with any penalties subsequently accruing thereon, shall 56130
become a lien on all property in this state of a corporation, 56131
whether such property is employed by the corporation in the 56132

prosecution of its business or is in the hands of an assignee, 56133
trustee, or receiver for the benefit of the creditors and 56134
stockholders. Such lien shall continue until such taxes, together 56135
with any penalties subsequently accruing, are paid. 56136

Upon failure of such corporation to pay such tax on the day 56137
fixed for payment, the tax commissioner may file, for which filing 56138
no fee shall be charged, in the office of the county recorder in 56139
each county in this state in which such corporation owns or has a 56140
beneficial interest in real estate, notice of such lien containing 56141
a brief description of such real estate. Such lien shall not be 56142
valid as against any mortgagee, purchaser, or judgment creditor 56143
whose rights have attached prior to the time such notice is so 56144
filed in the county in which the real estate which is the subject 56145
of such mortgage, purchase, or judgment lien is located. Such 56146
notice shall be recorded in a book kept by the recorder, called 56147
the corporation franchise lien record, and indexed under the name 56148
of the corporation charged with such tax. When such tax, together 56149
with any penalties subsequently accruing thereon, has been paid, 56150
the tax commissioner shall furnish to the corporation an 56151
acknowledgment of such payment which the corporation may record 56152
with the recorder of each county in which notice of such lien has 56153
been filed, for which recording the recorder shall charge and 56154
receive a base fee of two dollars for services and a housing trust 56155
fund fee of two dollars pursuant to section 317.36 of the Revised 56156
Code. 56157

Sec. 5733.22. (A)(1) Any corporation whose articles of 56158
incorporation or license certificate to do or transact business in 56159
this state has been canceled by the secretary of state pursuant to 56160
section 5733.20 of the Revised Code for failure to make any report 56161
or return or to pay any tax or fee, shall be reinstated and again 56162
entitled to exercise its rights, privileges, and franchises in 56163
this state, and the secretary of state shall cancel the entry of 56164

cancellation to exercise its rights, privileges, and franchises 56165
upon compliance with all of the following: 56166

(a) Payment to the secretary of state of any additional fees 56167
and penalties required to be paid to the secretary of state; 56168

(b) Filing with the secretary of state a certificate from the 56169
tax commissioner that it has complied with all the requirements of 56170
law as to franchise or excise tax reports and paid all franchise 56171
or excise taxes, fees, or penalties due thereon for every year of 56172
its delinquency; 56173

(c) Payment to the secretary of state of an additional fee of 56174
ten dollars. 56175

(2) The applicant for reinstatement shall be required by the 56176
secretary of state, as a condition prerequisite to such 56177
reinstatement, to amend its articles by changing its name if all 56178
of the following apply: 56179

(a) The reinstatement is not made within one year from the 56180
date of the cancellation of its articles of incorporation or date 56181
of the cancellation of its license to do business; 56182

(b) It appears that the applicant's articles of incorporation 56183
or license certificate has been issued to another entity and is 56184
not distinguishable upon the record from the name of the 56185
applicant; 56186

(c) It appears that the articles of organization of a limited 56187
liability company, registration of a foreign limited liability 56188
company, certificate of limited partnership, registration of a 56189
foreign limited partnership, registration of a domestic or foreign 56190
limited liability partnership, or registration of a trade name has 56191
been issued to another entity and is not distinguishable upon the 56192
record from the name of the applicant. A certificate of 56193
reinstatement may be filed in the recorder's office of any county 56194
in the state, for which the recorder shall charge and collect a 56195

base fee of three dollars for services and a housing trust fund 56196
fee of three dollars pursuant to section 317.36 of the Revised 56197
Code. 56198

Any officer, shareholder, creditor, or receiver of any such 56199
corporation may at any time take all steps required by this 56200
section to effect such reinstatement. 56201

(B) The rights, privileges, and franchises of a corporation 56202
whose articles of incorporation have been reinstated in accordance 56203
with this section, are subject to section 1701.922 of the Revised 56204
Code. 56205

(C) Notwithstanding a violation of section 5733.21 of the 56206
Revised Code, upon reinstatement of a corporation's articles of 56207
incorporation in accordance with this section, neither section 56208
5733.20 nor section 5733.21 of the Revised Code shall be applied 56209
to invalidate the exercise or attempt to exercise any right, 56210
privilege, or franchise on behalf of the corporation by an 56211
officer, agent, or employee of the corporation after cancellation 56212
and prior to the reinstatement of the articles, if the conditions 56213
set forth in divisions (B)(1)(a) and (b) of section 1701.922 of 56214
the Revised Code are met. 56215

Sec. 5733.33. (A) As used in this section: 56216

(1) "Manufacturing machinery and equipment" means engines and 56217
machinery, and tools and implements, of every kind used, ~~or~~ 56218
~~designed to be used,~~ in refining and or manufacturing and 56219
capitalized by a manufacturer entitled to the depreciation 56220
deduction for the property for federal income tax purposes. 56221

"Manufacturing machinery and equipment" does not include ~~property~~ 56222
~~acquired after December 31, 1999, that is used~~ any of the 56223
following: 56224

(a) ~~For~~ Property used for the transmission and or 56225

distribution of electricity; 56226

(b) ~~For~~ Property used for the generation of electricity, if 56227
fifty per cent or more of ~~the~~ that electricity ~~that the property~~ 56228
~~generates~~ is consumed, during the one-hundred-twenty-month period 56229
commencing with the date the property is placed in service, by 56230
persons that are not related members to the person who generates 56231
the electricity; 56232

(c) Property used to provide a service, including, but not 56233
limited to, health care diagnostic equipment, veterinary 56234
diagnostic equipment, and equipment for providing 56235
telecommunications service or mobile telecommunications service as 56236
defined in section 5739.01 of the Revised Code; 56237

(d) Property exempted from taxation under section 3706.041 or 56238
5709.25 of the Revised Code; 56239

(e) Property owned by a corporation claiming exemption from 56240
taxes imposed by this chapter under division (A) or (C) of section 56241
5733.09 of the Revised Code. 56242

(2) "New manufacturing machinery and equipment" means 56243
manufacturing machinery and equipment owned by, and the original 56244
use in this state of which commences with, either the taxpayer or 56245
~~with a partnership of a pass-through entity in~~ which the taxpayer 56246
is a partner. ~~"New manufacturing machinery and equipment" does not~~ 56247
~~include property acquired after December 31, 1999, that is used+~~ 56248

~~(a) For the transmission and distribution of electricity;~~ 56249

~~(b) For the generation of electricity, if fifty per cent or~~ 56250
~~more of the electricity that the property generates is consumed,~~ 56251
~~during the one hundred twenty month period commencing with the~~ 56252
~~date the property is placed in service, by persons that are not~~ 56253
~~related members to the person who generates the electricity~~ an 56254
equity investor. 56255

(3)(a) "Purchase" has the same meaning as in section 179(d)(2) of the Internal Revenue Code and includes a manufacturer's acquisition of property by lease if the lessee-manufacturer has capitalized the property and is entitled to the depreciation deduction for the property for federal income tax purposes. For purposes of this section, if the lessee-manufacturer has capitalized the property and is entitled to the depreciation deduction for the property for federal income tax purposes, and the lessee-manufacturer takes possession of the property not later than ninety days after the lease agreement becomes effective, then the lessee-manufacturer is the purchaser and owner of the property and the lessor is not deemed to have used the property in this state by acquiring and holding the property solely for the purposes of such lease; otherwise, the lessor is considered to be the purchaser and owner of the property and is not entitled to the credit provided by this section.

(b) For purposes of this section, any property that is not manufactured or assembled primarily by the taxpayer is considered purchased at the time the agreement to acquire the property becomes binding. Any property that is manufactured or assembled primarily by the taxpayer is considered purchased at the time the taxpayer places the property in service in the county for which the taxpayer will calculate the county excess amount.

~~(c) Notwithstanding section 179(d) of the Internal Revenue Code,~~ A taxpayer's direct or indirect acquisition of new manufacturing machinery and equipment is not purchased on or after July 1, 1995, if the taxpayer, or a person whose relationship to the taxpayer is described in subparagraphs (A), (B), or (C) of section 179(d)(2) of the Internal Revenue Code, had directly or indirectly entered into a binding agreement to acquire the property at any time prior to July 1, 1995.

(4) "Qualifying period" means the period that begins July 1,

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| 1995, and ends December 31, 2005. | 56288 |
| (5) "County average new manufacturing machinery and equipment investment" means either of the following: | 56289 |
| | 56290 |
| (a) The average annual cost of new manufacturing machinery and equipment purchased for use in the county during baseline years, in the case of a taxpayer that was in existence for more than one year during baseline years. | 56291 |
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| (b) Zero, in the case of a taxpayer that was not in existence for more than one year during baseline years. | 56295 |
| | 56296 |
| (6) "Partnership" includes a limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state, provided that the company is not classified for federal income tax purposes as an association taxable as a corporation <u>"Manufacturer" has the same meaning as in section 5711.16 of the Revised Code.</u> | 56297 |
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| (7) "Partner" includes a member of a limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state, provided that the company is not classified for federal income tax purposes as an association taxable as a corporation <u>"Equity investor in a pass-through entity" means an investor having such an equity interest in a pass-through entity that the depreciation deduction on the pass-through entity's new manufacturing machinery and equipment is passed through to the investor for federal income tax purposes.</u> | 56303 |
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| (8) "Distressed area" means either a municipal corporation that has a population of at least fifty thousand or a county that meets two of the following criteria of economic distress, or a municipal corporation the majority of the population of which is situated in such a county: | 56312 |
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| | 56316 |
| (a) Its average rate of unemployment, during the most recent five-year period for which data are available, is equal to at | 56317 |
| | 56318 |

least one hundred twenty-five per cent of the average rate of unemployment for the United States for the same period;

(b) It has a per capita income equal to or below eighty per cent of the median county per capita income of the United States as determined by the most recently available figures from the United States census bureau;

(c)(i) In the case of a municipal corporation, at least twenty per cent of the residents have a total income for the most recent census year that is below the official poverty line;

(ii) In the case of a county, in intercensal years, the county has a ratio of transfer payment income to total county income equal to or greater than twenty-five per cent.

(9) "Eligible area" means a distressed area, a labor surplus area, an inner city area, or a situational distress area.

(10) "Inner city area" means, in a municipal corporation that has a population of at least one hundred thousand and does not meet the criteria of a labor surplus area or a distressed area, targeted investment areas established by the municipal corporation within its boundaries that are comprised of the most recent census block tracts that individually have at least twenty per cent of their population at or below the state poverty level or other census block tracts contiguous to such census block tracts.

(11) "Labor surplus area" means an area designated as a labor surplus area by the United States department of labor.

(12) "Official poverty line" has the same meaning as in division (A) of section 3923.51 of the Revised Code.

(13) "Situational distress area" means a county or a municipal corporation that has experienced or is experiencing a closing or downsizing of a major employer, that will adversely affect the county's or municipal corporation's economy. In order

to be designated as a situational distress area for a period not 56349
to exceed thirty-six months, the county or municipal corporation 56350
may petition the director of development. The petition shall 56351
include written documentation that demonstrates all of the 56352
following adverse effects on the local economy: 56353

(a) The number of jobs lost by the closing or downsizing; 56354

(b) The impact that the job loss has on the county's or 56355
municipal corporation's unemployment rate as measured by the state 56356
director of job and family services; 56357

(c) The annual payroll associated with the job loss; 56358

(d) The amount of state and local taxes associated with the 56359
job loss; 56360

(e) The impact that the closing or downsizing has on the 56361
suppliers located in the county or municipal corporation. 56362

(14) "Cost" has the same ~~meaning and~~ limitation as in section 56363
179(d)(3) of the Internal Revenue Code. 56364

(15) "Baseline years" means: 56365

(a) Calendar years 1992, 1993, and 1994, with regard to a 56366
credit claimed for the purchase during calendar year 1995, 1996, 56367
1997, or 1998 of new manufacturing machinery and equipment; 56368

(b) Calendar years 1993, 1994, and 1995, with regard to a 56369
credit claimed for the purchase during calendar year 1999 of new 56370
manufacturing machinery and equipment; 56371

(c) Calendar years 1994, 1995, and 1996, with regard to a 56372
credit claimed for the purchase during calendar year 2000 of new 56373
manufacturing machinery and equipment; 56374

(d) Calendar years 1995, 1996, and 1997, with regard to a 56375
credit claimed for the purchase during calendar year 2001 of new 56376
manufacturing machinery and equipment; 56377

| | |
|---|---|
| (e) Calendar years 1996, 1997, and 1998, with regard to a credit claimed for the purchase during calendar year 2002 of new manufacturing machinery and equipment; | 56378 56379 56380 |
| (f) Calendar years 1997, 1998, and 1999, with regard to a credit claimed for the purchase during calendar year 2003 of new manufacturing machinery and equipment; | 56381 56382 56383 |
| (g) Calendar years 1998, 1999, and 2000, with regard to a credit claimed for the purchase during calendar year 2004 of new manufacturing machinery and equipment; | 56384 56385 56386 |
| (h) Calendar years 1999, 2000, and 2001, with regard to a credit claimed for the purchase during calendar year 2005 of new manufacturing machinery and equipment; | 56387 56388 56389 |
| (16) "Related member" has the same meaning as in section 5733.042 of the Revised Code. | 56390 56391 |
| (B)(1) Subject to division (I) of this section, a nonrefundable credit is allowed against the tax imposed by section 5733.06 of the Revised Code for a taxpayer that purchases new manufacturing machinery and equipment during the qualifying period, provided that the new manufacturing machinery and equipment are <u>is</u> installed in this state no later than December 31, 2006. | 56392 56393 56394 56395 56396 56397 56398 |
| (2)(a) Except as otherwise provided in division (B)(2)(b) of this section, a credit may be claimed under this section in excess of one million dollars only if the cost of all manufacturing machinery and equipment owned in this state by the taxpayer claiming the credit on the last day of the calendar year exceeds the cost of all manufacturing machinery and equipment owned in this state by the taxpayer on the first day of that calendar year. | 56399 56400 56401 56402 56403 56404 56405 |
| As used in division (B)(2)(a) of this section, "calendar year" means the calendar year in which the machinery and equipment | 56406 56407 |

for which the credit is claimed was purchased. 56408

(b) Division (B)(2)(a) of this section does not apply if the 56409
taxpayer claiming the credit applies for and is issued a waiver of 56410
the requirement of that division. A taxpayer may apply to the 56411
director of development for such a waiver in the manner prescribed 56412
by the director, and the director may issue such a waiver if the 56413
director determines that granting the credit is necessary to 56414
increase or retain employees in this state, and that the credit 56415
has not caused relocation of manufacturing machinery and equipment 56416
among counties within this state for the primary purpose of 56417
qualifying for the credit. 56418

(C)(1) Except as otherwise provided in division (C)(2) and 56419
division (I) of this section, the credit amount is equal to seven 56420
and one-half per cent of the excess of the cost of the new 56421
manufacturing machinery and equipment purchased during the 56422
calendar year for use in a county over the county average new 56423
manufacturing machinery and equipment investment for that county. 56424

(2) Subject to division (I) of this section, as used in 56425
division (C)(2) of this section "county excess" means the 56426
taxpayer's excess cost for a county as computed under division 56427
(C)(1) of this section. 56428

Subject to division (I) of this section, a taxpayer with a 56429
county excess, whose purchases included purchases for use in any 56430
eligible area in the county, the credit amount is equal to 56431
thirteen and one-half per cent of the cost of the new 56432
manufacturing machinery and equipment purchased during the 56433
calendar year for use in the eligible areas in the county, 56434
provided that the cost subject to the thirteen and one-half per 56435
cent rate shall not exceed the county excess. If the county excess 56436
is greater than the cost of the new manufacturing machinery and 56437
equipment purchased during the calendar year for use in eligible 56438
areas in the county, the credit amount also shall include an 56439

amount equal to seven and one-half per cent of the amount of the 56440
difference. 56441

(3) If a taxpayer is allowed a credit for purchases of new 56442
manufacturing machinery and equipment in more than one county or 56443
eligible area, it shall aggregate the amount of those credits each 56444
year. 56445

(4) The taxpayer shall claim one-seventh of the credit amount 56446
for the tax year immediately following the calendar year in which 56447
the new manufacturing machinery and equipment is purchased for use 56448
in the county by the taxpayer or ~~partnership~~ pass-through entity. 56449
One-seventh of the taxpayer credit amount is allowed for each of 56450
the six ensuing tax years. Except for carried-forward amounts, the 56451
taxpayer is not allowed any credit amount remaining if the new 56452
manufacturing machinery and equipment is sold by the taxpayer or 56453
~~partnership~~ pass-through entity or is transferred by the taxpayer 56454
or ~~partnership~~ pass-through entity out of the county before the 56455
end of the seven-year period unless, at the time of the sale or 56456
transfer, the new manufacturing machinery and equipment has been 56457
fully depreciated for federal income tax purposes. 56458

(5)(a) A taxpayer that acquires manufacturing machinery and 56459
equipment as a result of a merger with the taxpayer with whom 56460
commenced the original use in this state of the manufacturing 56461
machinery and equipment, or with a taxpayer that was a ~~partner~~ an 56462
equity investor in a ~~partnership with whom~~ pass-through entity 56463
with which commenced the original use in this state of the 56464
manufacturing machinery and equipment, is entitled to any 56465
remaining or carried-forward credit amounts to which the taxpayer 56466
was entitled. 56467

(b) A taxpayer that enters into an agreement under division 56468
(C)(3) of section 5709.62 of the Revised Code and that acquires 56469
manufacturing machinery or equipment as a result of purchasing a 56470
large manufacturing facility, as defined in section 5709.61 of the 56471

Revised Code, from another taxpayer with whom commenced the 56472
original use in this state of the manufacturing machinery or 56473
equipment, and that operates the large manufacturing facility so 56474
purchased, is entitled to any remaining or carried-forward credit 56475
amounts to which the other taxpayer who sold the facility would 56476
have been entitled under this section had the other taxpayer not 56477
sold the manufacturing facility or equipment. 56478

(c) New manufacturing machinery and equipment is not 56479
considered sold if a pass-through entity transfers to another 56480
pass-through entity substantially all of its assets as part of a 56481
plan of reorganization under which substantially all gain and loss 56482
is not recognized by the pass-through entity that is transferring 56483
the new manufacturing machinery and equipment to the transferee 56484
and under which the transferee's basis in the new manufacturing 56485
machinery and equipment is determined, in whole or in part, by 56486
reference to the basis of the pass-through entity which 56487
transferred the new manufacturing machinery and equipment to the 56488
transferee. 56489

(d) Division (C)(5) of this section shall apply only if the 56490
acquiring taxpayer or transferee does not sell the new 56491
manufacturing machinery and equipment or transfer the new 56492
manufacturing machinery and equipment out of the county before the 56493
end of the seven-year period to which division (C)(4) of this 56494
section refers. 56495

(e) Division (C)(5)(b) of this section applies only to the 56496
extent that the taxpayer that sold the manufacturing machinery or 56497
equipment, upon request, timely provides to the tax commissioner 56498
any information that the tax commissioner considers to be 56499
necessary to ascertain any remaining or carried-forward amounts to 56500
which the taxpayer that sold the facility would have been entitled 56501
under this section had the taxpayer not sold the manufacturing 56502
machinery or equipment. Nothing in division (C)(5)(b) or (e) of 56503

this section shall be construed to allow a taxpayer to claim any 56504
credit amount with respect to the acquired manufacturing machinery 56505
or equipment that is greater than the amount that would have been 56506
available to the other taxpayer that sold the manufacturing 56507
machinery or equipment had the other taxpayer not sold the 56508
manufacturing machinery or equipment. 56509

(D) The taxpayer shall claim the credit in the order required 56510
under section 5733.98 of the Revised Code. Each year, any credit 56511
amount in excess of the tax due under section 5733.06 of the 56512
Revised Code after allowing for any other credits that precede the 56513
credit under this section in that order may be carried forward for 56514
three tax years. 56515

(E) A taxpayer purchasing new manufacturing machinery and 56516
equipment and intending to claim the credit shall file, with the 56517
department of development, a notice of intent to claim the credit 56518
on a form prescribed by the department of development. The 56519
department of development shall inform the tax commissioner of the 56520
notice of intent to claim the credit. 56521

(F) The director of development shall annually certify, by 56522
the first day of January of each year during the qualifying 56523
period, the eligible areas for the tax credit for the calendar 56524
year that includes that first day of January. The director shall 56525
send a copy of the certification to the tax commissioner. 56526

(G) New manufacturing machinery and equipment for which a 56527
taxpayer claims the credit under section 5733.31, 5733.311, 56528
5747.26, or 5747.261 of the Revised Code shall not be considered 56529
new manufacturing machinery and equipment for purposes of the 56530
credit under this section. 56531

(H)(1) Notwithstanding sections 5733.11 and 5747.13 of the 56532
Revised Code, but subject to division (H)(2) of this section, the 56533
tax commissioner may issue an assessment against a person with 56534

respect to a credit claimed under this section for new 56535
manufacturing machinery and equipment described in division 56536
(A)(1)(b) ~~or (2)(b)~~ of this section, if the machinery or equipment 56537
subsequently does not qualify for the credit. 56538

(2) Division (H)(1) of this section shall not apply after the 56539
twenty-fourth month following the last day of the period described 56540
in ~~divisions~~ division (A)(1)(b) ~~and (2)(b)~~ of this section. 56541

(I) Notwithstanding any other provision of this section to 56542
the contrary, in the case of a qualifying controlled group, the 56543
credit available under this section to a taxpayer or taxpayers in 56544
the qualifying controlled group shall be computed as if all 56545
corporations in the group were a single corporation. The credit 56546
shall be allocated to such a taxpayer or taxpayers in the group in 56547
any amount elected for the taxable year by the group. Such 56548
election shall be revocable and amendable during the period 56549
described in division (B) of section 5733.12 of the Revised Code. 56550

This division applies to all purchases of new manufacturing 56551
machinery and equipment made on or after January 1, 2001, and to 56552
all baseline years used to compute any credit attributable to such 56553
purchases; provided, that this division may be applied solely at 56554
the election of the qualifying controlled group with respect to 56555
all purchases of new manufacturing machinery and equipment made 56556
before that date, and to all baseline years used to compute any 56557
credit attributable to such purchases. The qualifying controlled 56558
group at any time may elect to apply this division to purchases 56559
made prior to January 1, 2001, subject to the following: 56560

(1) The election is irrevocable; 56561

(2) The election need not accompany a timely filed report, 56562
but the election may accompany a subsequently filed but timely 56563
application for refund, a subsequently filed but timely amended 56564
report, or a subsequently filed but timely petition for 56565

reassessment. 56566

Sec. 5733.39. (A) As used in this section: 56567

(1) "Compliance facility" means property that is designed, 56568
constructed, or installed, and used, at a coal-fired electric 56569
generating facility for the primary purpose of complying with acid 56570
rain control requirements under Title IV of the "Clean Air Act 56571
Amendments of 1990," 104 Stat. 2584, 42 U.S.C.A. 7651, and that 56572
controls or limits emissions of sulfur or nitrogen compounds 56573
resulting from the combustion of coal through the removal or 56574
reduction of those compounds before, during, or after the 56575
combustion of the coal, but before the combustion products are 56576
emitted into the atmosphere. "Compliance facility" also includes 56577
any of the following: 56578

(a) A facility that removes sulfur compounds from coal before 56579
the combustion of the coal and that is located off the premises of 56580
the electric generating facility where the coal processed by the 56581
compliance facility is burned; 56582

(b) Modifications to the electric generating facility where 56583
the compliance facility is constructed or installed that are 56584
necessary to accommodate the construction or installation, and 56585
operation, of the compliance facility; 56586

(c) A byproduct disposal facility, as defined in section 56587
3734.051 of the Revised Code, that exclusively disposes of wastes 56588
produced by the compliance facility and other coal combustion 56589
byproducts produced by the generating unit in or to which the 56590
compliance facility is incorporated or connected regardless of 56591
whether the byproduct disposal facility is located on the same 56592
premises as the compliance facility or generating unit that 56593
produces the wastes disposed of at the facility; 56594

(d) Facilities or equipment that is acquired, constructed, or 56595

installed, and used, at a coal-fired electric generating facility 56596
exclusively for the purpose of handling the byproducts produced by 56597
the compliance facility or other coal combustion byproducts 56598
produced by the generating unit in or to which the compliance 56599
facility is incorporated or connected; 56600

(e) A flue gas desulfurization system that is connected to a 56601
coal-fired electric generating unit; 56602

(f) Facilities or equipment acquired, constructed, or 56603
installed, and used, at a coal-fired electric generating unit 56604
primarily for the purpose of handling the byproducts produced by a 56605
compliance facility or other coal combustion byproducts produced 56606
by the generating unit in or to which the compliance facility is 56607
incorporated or connected. 56608

(2) "Ohio coal" has the same meaning as in section 4913.01 of 56609
the Revised Code. 56610

(3) "Sale and leaseback transaction" has the same meaning as 56611
in section 5727.01 of the Revised Code. 56612

(B) An electric company shall be allowed a nonrefundable 56613
credit against the tax imposed by section 5733.06 of the Revised 56614
Code for Ohio coal used in any of its coal-fired electric 56615
generating units after April 30, 2001, but before January 1, 2005. 56616
Section 5733.057 of the Revised Code shall apply when calculating 56617
the credit allowed by this section. The credit shall be claimed at 56618
the rate of three dollars per ton of Ohio coal burned in a 56619
coal-fired electric generating unit during the taxable year ending 56620
immediately preceding ~~the~~ a tax year before tax year 2004, and one 56621
dollar per ton of Ohio coal burned in a coal-fired electric 56622
generating unit during the taxable year ending immediately 56623
preceding tax year 2004 and tax year 2005. The credit is allowed 56624
only if both of the following conditions are met during such 56625
taxable year: 56626

(1) The coal-fired electric generating unit is owned and used 56627
by the company claiming the credit or leased and used by that 56628
company under a sale and leaseback transaction. 56629

(2) A compliance facility is attached to, incorporated in, or 56630
used in conjunction with the coal-fired generating unit. 56631

(C) The credit shall be claimed in the order required under 56632
section 5733.98 of the Revised Code. The taxpayer may carry 56633
forward any credit amount in excess of its tax due after allowing 56634
for any other credits that precede the credit allowed under this 56635
section in the order required under section 5733.98 of the Revised 56636
Code. The excess credit may be carried forward for three years 56637
following the tax year for which it is claimed under this section. 56638

(D) The director of environmental protection, upon the 56639
request of the tax commissioner, shall certify whether a facility 56640
is a compliance facility. In the case of a compliance facility 56641
owned by an electric company, the public utilities commission 56642
shall certify to the tax commissioner the cost of the facility as 56643
of the date it was placed in service. In the case of a compliance 56644
facility owned by a person other than an electric company, the tax 56645
commissioner shall determine the cost of the facility as of the 56646
date it was placed in service. If the owner of such a facility 56647
fails to furnish the information necessary to make that 56648
determination, no credit shall be allowed. 56649

Sec. 5733.40. As used in sections 5733.40 and 5733.41 and 56650
Chapter 5747. of the Revised Code: 56651

(A)(1) "Adjusted qualifying amount" means either of the 56652
following: 56653

(a) The sum of a each qualifying investor's distributive 56654
share of the income, gain, expense, or loss of a qualifying 56655
pass-through entity for the qualifying taxable year of the 56656

qualifying pass-through entity multiplied by the apportionment 56657
fraction defined in division (B) of this section, subject to 56658
section 5733.401 of the Revised Code and divisions (A)(2) to (7) 56659
of this section; 56660

(b) The sum of a each qualifying beneficiary's share of the 56661
qualifying net income and qualifying net gain distributed by a 56662
qualifying trust for the qualifying taxable year of the qualifying 56663
trust multiplied by the apportionment fraction defined in division 56664
(B) of this section, subject to section 5733.401 of the Revised 56665
Code and divisions (A)(2) to ~~(6)~~(7) of this section. 56666

(2) The sum shall exclude any amount which, pursuant to the 56667
Constitution of the United States, the Constitution of Ohio, or 56668
any federal law is not subject to a tax on or measured by net 56669
income. 56670

(3) ~~The sum shall be increased by~~ For the purposes of 56671
Chapters 5733. and 5747. of the Revised Code, the profit or net 56672
income of the qualifying entity shall be increased by disallowing 56673
all amounts representing expenses, other than amounts described in 56674
division (A)(7) of this section, that the qualifying entity paid 56675
to or incurred with respect to direct or indirect transactions 56676
with one or more related members, excluding the cost of goods sold 56677
calculated in accordance with section 263A of the Internal Revenue 56678
Code and United States department of the treasury regulations 56679
issued thereunder. Nothing in division (A)(3) of this section 56680
shall be construed to limit solely to this chapter the application 56681
of section 263A of the Internal Revenue Code and United States 56682
department of the treasury regulations issued thereunder. 56683

(4) ~~The sum shall be increased by~~ For the purposes of 56684
Chapters 5733. and 5747. of the Revised Code, the profit or net 56685
income of the qualifying entity shall be increased by disallowing 56686
all recognized losses, other than losses from sales of inventory 56687
the cost of which is calculated in accordance with section 263A of 56688

the Internal Revenue Code and United States department of the 56689
treasury regulations issued thereunder, with respect to all direct 56690
or indirect transactions with one or more related members. ~~Losses~~ 56691
For the purposes of Chapters 5733. and 5747. of the Revised Code, 56692
losses from the sales of ~~such~~ inventory shall be allowed only to 56693
the extent calculated in accordance with section 482 of the 56694
Internal Revenue Code and United States department of the treasury 56695
regulations issued thereunder. Nothing in division (A)(4) of this 56696
section shall be construed to limit solely to this section the 56697
application of section 263A and section 482 of the Internal 56698
Revenue Code and United States department of the treasury 56699
regulations issued thereunder. 56700

(5) The sum shall be increased or decreased by an amount 56701
equal to the qualifying investor's or qualifying beneficiary's 56702
distributive or proportionate share of the amount that the 56703
qualifying entity would be required to add or deduct under 56704
divisions (A)(20) and (21) of section 5747.01 of the Revised Code 56705
if the qualifying entity were a taxpayer for the purposes of 56706
Chapter 5747. of the Revised Code. 56707

(6) The sum shall be computed without regard to section 56708
5733.051 or division (D) of section 5733.052 of the Revised Code. 56709

(7) For the purposes of Chapters 5733. and 5747. of the 56710
Revised Code, guaranteed payments or compensation paid to 56711
investors by a qualifying entity that is not subject to the tax 56712
imposed by section 5733.06 of the Revised Code shall be considered 56713
a distributive share of income of the qualifying entity. Division 56714
(A)(7) of this section applies only to such payments or such 56715
compensation paid to an investor who at any time during the 56716
qualifying entity's taxable year holds at least a twenty per cent 56717
direct or indirect interest in the profits or capital of the 56718
qualifying entity. 56719

(B) "Apportionment fraction" means: 56720

(1) With respect to a qualifying pass-through entity other than a financial institution, the fraction calculated pursuant to division (B)(2) of section 5733.05 of the Revised Code as if the qualifying pass-through entity were a corporation subject to the tax imposed by section 5733.06 of the Revised Code;

(2) With respect to a qualifying pass-through entity that is a financial institution, the fraction calculated pursuant to division (C) of section 5733.056 of the Revised Code as if the qualifying pass-through entity were a financial institution subject to the tax imposed by section 5733.06 of the Revised Code.

(3) With respect to a qualifying trust, the fraction calculated pursuant to division (B)(2) of section 5733.05 of the Revised Code as if the qualifying trust were a corporation subject to the tax imposed by section 5733.06 of the Revised Code, except that the property, payroll, and sales fractions shall be calculated by including in the numerator and denominator of the fractions only the property, payroll, and sales, respectively, directly related to the production of income or gain from acquisition, ownership, use, maintenance, management, or disposition of tangible personal property located in this state at any time during the qualifying trust's qualifying taxable year or of real property located in this state.

(C) "Qualifying beneficiary" means any individual that, during the qualifying taxable year of a qualifying trust, is a beneficiary of that trust, but does not include an individual who is a resident taxpayer for the purposes of Chapter 5747. of the Revised Code for the entire qualifying taxable year of the qualifying trust.

(D) "Fiscal year" means an accounting period ending on any day other than the thirty-first day of December.

(E) "Individual" means a natural person.

(F) "Month" means a calendar month. 56752

(G) "Partnership" has the same meaning as in section 5747.01 of the Revised Code. 56753
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(H) "Investor" means any person that, during any portion of a taxable year of a qualifying pass-through entity, is a partner, member, shareholder, or investor in that qualifying pass-through entity. 56755
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(I) Except as otherwise provided in section 5733.402 or 5747.401 of the Revised Code, "qualifying investor" means any investor except those described in divisions (I)(1) to (9) of this section. 56759
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(1) An investor satisfying one of the descriptions under section 501(a) or (c) of the Internal Revenue Code, a partnership with equity securities registered with the United States securities and exchange commission under section 12 of the "Securities Exchange Act of 1934," as amended, or an investor described in division (F) of section 3334.01, or division (A) or (C) of section 5733.09 of the Revised Code for the entire qualifying taxable year of the qualifying pass-through entity. 56763
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(2) An investor who is either an individual or an estate and is a resident taxpayer for the purposes of section 5747.01 of the Revised Code for the entire qualifying taxable year of the qualifying pass-through entity. 56771
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(3) An investor who is an individual for whom the qualifying pass-through entity makes a good faith and reasonable effort to comply fully and timely with the filing and payment requirements set forth in division (D) of section 5747.08 of the Revised Code and section 5747.09 of the Revised Code with respect to the individual's adjusted qualifying amount for the entire qualifying taxable year of the qualifying pass-through entity. 56775
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(4) An investor that is another qualifying pass-through entity having only investors described in division (I)(1), (2), (3), or (6) of this section during the three-year period beginning twelve months prior to the first day of the qualifying taxable year of the qualifying pass-through entity. 56782
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(5) An investor that is another pass-through entity having no investors other than individuals and estates during the qualifying taxable year of the qualifying pass-through entity in which it is an investor, and that makes a good faith and reasonable effort to comply fully and timely with the filing and payment requirements set forth in division (D) of section 5747.08 of the Revised Code and section 5747.09 of the Revised Code with respect to investors that are not resident taxpayers of this state for the purposes of Chapter 5747. of the Revised Code for the entire qualifying taxable year of the qualifying pass-through entity in which it is an investor. 56787
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(6) An investor that is a financial institution required to calculate the tax in accordance with division (D) of section 5733.06 of the Revised Code on the first day of January of the calendar year immediately following the last day of the financial institution's calendar or fiscal year in which ends the taxpayer's taxable year. 56798
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(7) An investor other than an individual that satisfies all the following: 56804
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(a) The investor submits a written statement to the qualifying pass-through entity stating that the investor irrevocably agrees that the investor has nexus with this state under the Constitution of the United States and is subject to and liable for the tax calculated under division (B) of section 5733.06 of the Revised Code with respect to the investor's adjusted qualifying amount for the entire qualifying taxable year 56806
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of the qualifying pass-through entity. The statement is subject to 56813
the penalties of perjury, shall be retained by the qualifying 56814
pass-through entity for no fewer than seven years, and shall be 56815
delivered to the tax commissioner upon request. 56816

(b) The investor makes a good faith and reasonable effort to 56817
comply timely and fully with all the reporting and payment 56818
requirements set forth in Chapter 5733. of the Revised Code with 56819
respect to the investor's adjusted qualifying amount for the 56820
entire qualifying taxable year of the qualifying pass-through 56821
entity. 56822

(c) Neither the investor nor the qualifying pass-through 56823
entity in which it is an investor, before, during, or after the 56824
qualifying pass-through entity's qualifying taxable year, carries 56825
out any transaction or transactions with one or more related 56826
members of the investor or the qualifying pass-through entity 56827
resulting in a reduction or deferral of tax imposed by Chapter 56828
5733. of the Revised Code with respect to all or any portion of 56829
the investor's adjusted qualifying amount for the qualifying 56830
pass-through entity's taxable year, or that constitute a sham, 56831
lack economic reality, or are part of a series of transactions the 56832
form of which constitutes a step transaction or transactions or 56833
does not reflect the substance of those transactions. 56834

(8) Any other investor that the tax commissioner may 56835
designate by rule. The tax commissioner may adopt rules including 56836
a rule defining "qualifying investor" or "qualifying beneficiary" 56837
and governing the imposition of the withholding tax imposed by 56838
section 5747.41 of the Revised Code with respect to an individual 56839
who is a resident taxpayer for the purposes of Chapter 5747. of 56840
the Revised Code for only a portion of the qualifying taxable year 56841
of the qualifying entity. 56842

(9) An investor that is a trust or fund the beneficiaries of 56843
which, during the qualifying taxable year of the qualifying 56844

pass-through entity, are limited to the following: 56845

(a) A person that is or may be the beneficiary of a trust 56846
subject to Subchapter D of Chapter 1 of Subtitle A of the Internal 56847
Revenue Code. 56848

(b) A person that is or may be the beneficiary of or the 56849
recipient of payments from a trust or fund that is a nuclear 56850
decommissioning reserve fund, a designated settlement fund, or any 56851
other trust or fund established to resolve and satisfy claims that 56852
may otherwise be asserted by the beneficiary or a member of the 56853
beneficiary's family. Sections 267(c)(4), 468A(e), and 468B(d)(2) 56854
of the Internal Revenue Code apply to the determination of whether 56855
such a person satisfies division (I)(9) of this section. 56856

(c) A person who is or may be the beneficiary of a trust 56857
that, under its governing instrument, is not required to 56858
distribute all of its income currently. Division (I)(9)(c) of this 56859
section applies only if the trust, prior to the due date for 56860
filing the qualifying pass-through entity's return for taxes 56861
imposed by section 5733.41 and sections 5747.41 to 5747.453 of the 56862
Revised Code, irrevocably agrees in writing that for the taxable 56863
year during or for which the trust distributes any of its income 56864
to any of its beneficiaries, the trust is a qualifying trust and 56865
will pay the estimated tax, and will withhold and pay the withheld 56866
tax, as required under sections 5747.40 to 5747.453 of the Revised 56867
Code. 56868

For the purposes of division (I)(9) of this section, a trust 56869
or fund shall be considered to have a beneficiary other than 56870
persons described under divisions (I)(9)(a) to (c) of this section 56871
if a beneficiary would not qualify under those divisions under the 56872
doctrines of "economic reality," "sham transaction," "step 56873
doctrine," or "substance over form." A trust or fund described in 56874
division (I)(9) of this section bears the burden of establishing 56875
by a preponderance of the evidence that any transaction giving 56876

rise to the tax benefits provided under division (I)(9) of this 56877
section does not have as a principal purpose a claim of those tax 56878
benefits. Nothing in this section shall be construed to limit 56879
solely to this section the application of the doctrines referred 56880
to in this paragraph. 56881

(J) "Qualifying net gain" means any recognized net gain with 56882
respect to the acquisition, ownership, use, maintenance, 56883
management, or disposition of tangible personal property located 56884
in this state at any time during a trust's qualifying taxable year 56885
or real property located in this state. 56886

(K) "Qualifying net income" means any recognized income, net 56887
of related deductible expenses, other than distributions 56888
deductions with respect to the acquisition, ownership, use, 56889
maintenance, management, or disposition of tangible personal 56890
property located in this state at any time during the trust's 56891
qualifying taxable year or real property located in this state. 56892

(L) "Qualifying entity" means a qualifying pass-through 56893
entity or a qualifying trust. 56894

(M) "Qualifying trust" means a trust subject to subchapter J 56895
of the Internal Revenue Code that, during any portion of the 56896
trust's qualifying taxable year, has income or gain from the 56897
acquisition, management, ownership, use, or disposition of 56898
tangible personal property located in this state at any time 56899
during the trust's qualifying taxable year or real property 56900
located in this state. "Qualifying trust" does not include a 56901
person described in section 501(c) of the Internal Revenue Code or 56902
a person described in division (C) of section 5733.09 of the 56903
Revised Code. 56904

(N) "Qualifying pass-through entity" means a pass-through 56905
entity as defined in section 5733.04 of the Revised Code, 56906
excluding a person described in section 501(c) of the Internal 56907

Revenue Code, a partnership with equity securities registered with 56908
the United States securities and exchange commission under section 56909
12 of the Securities Exchange Act of 1934, as amended, or a person 56910
described in division (C) of section 5733.09 of the Revised Code. 56911

(O) "Quarter" means the first three months, the second three 56912
months, the third three months, or the last three months of a 56913
qualifying entity's qualifying taxable year. 56914

(P) "Related member" has the same meaning as in ~~division~~ 56915
~~(A)(6)~~ of section 5733.042 of the Revised Code without regard to 56916
division (B) of that section. However, for the purposes of 56917
divisions (A)(3) and (4) of this section only, "related member" 56918
has the same meaning as in ~~division (A)(6)~~ of section 5733.042 of 56919
the Revised Code without regard to division (B) of that section, 56920
but shall be applied by substituting "forty per cent" for "twenty 56921
per cent" wherever "twenty per cent" appears in division (A)(3) of 56922
that section. 56923

(Q) "Return" or "report" means the notifications and reports 56924
required to be filed pursuant to sections 5747.42 to 5747.45 of 56925
the Revised Code for the purpose of reporting the tax imposed 56926
under section 5733.41 or 5747.41 of the Revised Code, and included 56927
declarations of estimated tax when so required. 56928

(R) "Qualifying taxable year" means the calendar year or the 56929
qualifying entity's fiscal year ending during the calendar year, 56930
or fractional part thereof, for which the adjusted qualifying 56931
amount is calculated pursuant to sections 5733.40 and 5733.41 or 56932
sections 5747.40 to 5747.453 of the Revised Code. 56933

(S) "Distributive share" includes the sum of the income, 56934
gain, expense, or loss of a disregarded entity or qualified 56935
subchapter S subsidiary. 56936

Sec. 5733.45. (A) For purposes of this section, a "qualifying 56937

dealer in intangibles" is a dealer in intangibles that is a member 56938
of a qualifying controlled group of which a financial institution 56939
is also a member on the first day of the financial institution's 56940
tax year. 56941

(B) For tax years 2002, 2003, and ~~thereafter~~ 2004, there is 56942
hereby allowed to each financial institution a nonrefundable 56943
credit against the tax imposed by section 5733.06 of the Revised 56944
Code. The amount of the credit shall be computed in accordance 56945
with division (C) of this section. The credit shall be claimed in 56946
the order prescribed by section 5733.98 of the Revised Code. The 56947
credit shall not exceed the amount of tax otherwise due under 56948
section 5733.06 of the Revised Code after deducting any other 56949
credits that precede the credit claimed under this section in that 56950
order. 56951

(C) Subject to division (D) of this section, the amount of 56952
the nonrefundable credit is the lesser of the amount described in 56953
division (C)(1) of this section or the amount described in 56954
division (C)(2) of this section. 56955

(1) The amount of tax that a qualifying dealer in intangibles 56956
paid under Chapter 5707. of the Revised Code during the calendar 56957
year immediately preceding the financial institution's tax year. 56958
Such amount shall be reduced, but not below zero, by any refunds 56959
of such tax received by the qualifying dealer in intangibles under 56960
Chapter 5703. of the Revised Code during that calendar year. 56961

(2) The product of the amounts described in division 56962
(C)(2)(a) to (C)(2)(c) of this section. The amount described in 56963
division (C)(2)(a) of this section shall be ascertained on the 56964
last day of the financial institution's taxable year immediately 56965
preceding the tax year. 56966

(a) The cost of the financial institution's direct investment 56967
in the capital stock of the qualifying dealer in intangibles. The 56968

cost does not include any appreciation or goodwill to the extent 56969
those amounts are allowed as an exempted asset on the financial 56970
institution's annual report. 56971

(b) The ratio described in section 5725.15 of the Revised 56972
Code for the calendar year immediately preceding the financial 56973
institution's tax year; 56974

(c) The tax rate imposed under division (D) of section 56975
5707.03 of the Revised Code for the calendar year immediately 56976
preceding the financial institution's tax year. 56977

(D)(1) The principles and concepts set forth in section 56978
5733.057 of the Revised Code shall apply to ascertain if a dealer 56979
in intangibles is a member of a qualifying controlled group of 56980
which the financial institution also is a member and to ascertain 56981
the cost of the financial institution's direct investment in the 56982
capital stock of the qualifying dealer in intangibles. 56983

(2) Notwithstanding section ~~5733.111~~ 5703.56 of the Revised 56984
Code to the contrary, a financial institution claiming the credit 56985
provided by this section has the burden to establish by a 56986
preponderance of the evidence that none of the doctrines referred 56987
to in that section would apply to deny to the financial 56988
institution all or a part of the credit otherwise provided by this 56989
section. 56990

(E) For tax years 2002 and 2003, the credit allowed by this 56991
section applies only if the qualifying dealer in intangibles on 56992
account of which the financial institution is claiming the credit 56993
submits to the ~~Tax Commissioner~~ tax commissioner, not later than 56994
January 15, 2002, a written statement that the qualifying dealer 56995
in intangibles irrevocably agrees that it will not seek a refund 56996
of the tax paid by the dealer under section 5707.03 of the Revised 56997
Code in 2000 and 2001, and irrevocably agrees to continue paying 56998
that tax in 2002, regardless of the amendment of section 5725.26 56999

of the Revised Code by Am. Sub. H.B. 405 of the 124th general assembly. 57000
57001

Sec. 5733.55. (A) As used in this section: 57002

(1) "9-1-1 system" has the same meaning as in section 4931.40 of the Revised Code. 57003
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(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. 57005
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(3) "Eligible nonrecurring 9-1-1 charges" means all nonrecurring 9-1-1 charges for a 9-1-1 system, except: 57009
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(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; 57011
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(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. 57014
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(4) "Telephone company" has the same meaning as in section 5727.01 of the Revised Code. 57017
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(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 in the company's taxable year that covers the period in which the 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 57019
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credit is granted. 57030

(C) After the last day a return, with any extensions, may be 57031
filed by any telephone company that is eligible to claim a credit 57032
under this section, the commissioner shall determine whether the 57033
sum of the credits allowed for all prior tax years plus the sum of 57034
the credits claimed for the current tax year exceeds fifteen 57035
million dollars. If it does, the credits allowed under this 57036
section for the current tax year shall be reduced by a uniform 57037
percentage such that the sum of the credits allowed for the 57038
current tax year do not exceed fifteen million dollars. 57039
Thereafter, no credit shall be granted under this section, except 57040
for the remaining portions of any credits allowed under division 57041
(B) of this section. 57042

(D) A telephone company that is entitled to carry forward a 57043
credit against its public utility excise tax liability under 57044
section 5727.39 of the Revised Code is entitled to carry forward 57045
any amount of that credit remaining after its last public utility 57046
excise tax payment for the period of July 1, 2003, through June 57047
30, 2004, and claim that amount as a credit against its 57048
corporation franchise tax liability under this section. Nothing in 57049
this section authorizes a telephone company to claim a credit 57050
under this section for any eligible nonrecurring 9-1-1 charges for 57051
which it has already claimed as a credit under section 5727.39 of 57052
the Revised Code. 57053

Sec. 5733.56. Beginning in tax year 2005, a telephone company 57054
that provides any telephone service program to aid the 57055
communicatively impaired in accessing the telephone network under 57056
section 4905.79 of the Revised Code is allowed a nonrefundable 57057
credit against the tax imposed by section 5733.06 of the Revised 57058
Code. The amount of the credit is the cost incurred by the company 57059
for providing the telephone service program during its taxable 57060

year, excluding any costs incurred prior to July 1, 2004. If the 57061
tax commissioner determines that the credit claimed under this 57062
section by a telephone company was not correct, the commissioner 57063
shall determine the proper credit. 57064

A telephone company shall claim the credit in the order 57065
required by section 5733.98 of the Revised Code. If the credit 57066
exceeds the total taxes due under section 5733.06 of the Revised 57067
Code for the tax year, the commissioner shall credit the excess 57068
against taxes due under that section for succeeding tax years 57069
until the full amount of the credit is granted. Nothing in this 57070
section authorizes a telephone company to claim a credit under 57071
this section for any costs incurred for providing a telephone 57072
service program for which it is claiming a credit under section 57073
5727.44 of the Revised Code. 57074

Sec. 5733.57. (A) As used in this section: 57075

(1) "Small telephone company" means a telephone company with 57076
twenty-five thousand or fewer access lines as shown on the 57077
company's annual report filed under section 4905.14 of the Revised 57078
Code for the calendar year immediately preceding the tax year, and 57079
is an "incumbent local exchange carrier" under 47 U.S.C. 251(h). 57080

(2) "Gross receipts tax amount" means the product obtained by 57081
multiplying four and three-fourths per cent by the amount of a 57082
small telephone company's taxable gross receipts, excluding the 57083
deduction of twenty-five thousand dollars, that the tax 57084
commissioner would have determined under section 5727.33 of the 57085
Revised Code for that small telephone company for the annual 57086
period ending on the thirtieth day of June of the calendar year 57087
immediately preceding the tax year, as that section applied in the 57088
measurement period from July 1, 2002, to June 30, 2003. 57089

(3) "Applicable percentage" means one hundred per cent for 57090
tax year 2005; sixty-seven per cent for tax year 2006; thirty-four 57091

per cent for tax year 2007; and zero per cent for each subsequent tax year thereafter. 57092
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(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. 57094
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(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. 57099
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(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. 57106
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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: 57109
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(1) The credit for taxes paid by a qualifying pass-through entity allowed under section 5733.0611 of the Revised Code; 57115
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(2) The credit allowed for financial institutions under section 5733.45 of the Revised Code; 57117
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~~(3) The credit for qualifying affiliated groups under section 5733.068 of the Revised Code;~~ 57119
57120

~~(4) The subsidiary corporation credit under section 5733.067~~ 57121

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| of the Revised Code; | 57122 |
| (5) (4) The savings and loan assessment credit under section 5733.063 of the Revised Code; | 57123 57124 |
| (6) The credit for recycling and litter prevention donations under section 5733.064 of the Revised Code; | 57125 57126 |
| (7) The credit for employers that enter into agreements with child day care centers under section 5733.36 of the Revised Code; | 57127 57128 |
| (8) The credit for employers that reimburse employee child day care expenses under section 5733.38 of the Revised Code; | 57129 57130 |
| (9) The credit for maintaining railroad active grade crossing warning devices under section 5733.43 of the Revised Code; | 57131 57132 |
| (10) The credit for purchases of lights and reflectors under section 5733.44 of the Revised Code; | 57133 57134 |
| (11) (5) The job retention credit under division (B) of section 5733.0610 of the Revised Code; | 57135 57136 |
| (12) (6) The credit for losses on loans made under the Ohio venture capital program under sections 150.01 to 150.10 of th <u>the</u> Revised Code if the taxpayer elected a nonrefundable credit under section 150.07 of the Revised Code; | 57137 57138 57139 57140 |
| (13) (7) The credit for purchases of new manufacturing machinery and equipment under section 5733.31 or section 5733.311 of the Revised Code; | 57141 57142 57143 |
| (14) (8) The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code; | 57144 57145 |
| (15) (9) The job training credit under section 5733.42 of the Revised Code; | 57146 57147 |
| (16) (10) The credit for qualified research expenses under section 5733.351 of the Revised Code; | 57148 57149 |
| (17) The enterprise zone credit under section 5709.66 of the | 57150 |

| | |
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| Revised Code; | 57151 |
| (18) <u>(11)</u> The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code; | 57152 57153 |
| (19) <u>(12)</u> The credit for employers that establish on-site child day-care under section 5733.37 of the Revised Code; | 57154 57155 |
| (20) <u>(13)</u> The ethanol plant investment credit under section 5733.46 of the Revised Code; | 57156 57157 |
| (21) The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code; | 57158 57159 |
| (22) <u>(14)</u> The export sales credit under section 5733.069 of the Revised Code; | 57160 57161 |
| (23) <u>(15)</u> The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code; | 57162 57163 57164 |
| (24) The enterprise zone credits under section 5709.65 of the Revised Code; | 57165 57166 |
| (25) <u>(16)</u> <u>The credit for small telephone companies under section 5733.57 of the Revised Code;</u> | 57167 57168 |
| <u>(17)</u> The credit for using Ohio coal under section 5733.39 of the Revised Code; | 57169 57170 |
| (26) <u>(18)</u> <u>The credit for eligible nonrecurring 9-1-1 charges under section 5733.55 of the Revised Code;</u> | 57171 57172 |
| <u>(19)</u> <u>The credit for providing programs to aid the communicatively impaired under section 5733.56 of the Revised Code;</u> | 57173 57174 57175 |
| <u>(20)</u> The refundable jobs creation credit under division (A) of section 5733.0610 of the Revised Code; | 57176 57177 |
| (27) <u>(21)</u> The refundable credit for tax withheld under division (B)(2) of section 5747.062 of the Revised Code; | 57178 57179 |

~~(28)~~(22) The credit for losses on loans made to the Ohio 57180
venture capital program under sections 150.01 to 150.10 of the 57181
Revised Code if the taxpayer elected a refundable credit under 57182
section 150.07 of the Revised Code. 57183

(B) For any credit except the credits enumerated in divisions 57184
(A)~~(26)~~(20), ~~(27)~~(21), and ~~(28)~~(22) of this section, the amount of 57185
the credit for a tax year shall not exceed the tax due after 57186
allowing for any other credit that precedes it in the order 57187
required under this section. Any excess amount of a particular 57188
credit may be carried forward if authorized under the section 57189
creating that credit. 57190

Sec. 5735.05. (A) To provide revenue for maintaining the 57191
state highway system; to widen existing surfaces on such highways; 57192
to resurface such highways; to pay that portion of the 57193
construction cost of a highway project which a county, township, 57194
or municipal corporation normally would be required to pay, but 57195
which the director of transportation, pursuant to division (B) of 57196
section 5531.08 of the Revised Code, determines instead will be 57197
paid from moneys in the highway operating fund; to enable the 57198
counties of the state properly to plan, maintain, and repair their 57199
roads and to pay principal, interest, and charges on bonds and 57200
other obligations issued pursuant to Chapter 133. of the Revised 57201
Code for highway improvements; to enable the municipal 57202
corporations to plan, construct, reconstruct, repave, widen, 57203
maintain, repair, clear, and clean public highways, roads, and 57204
streets, and to pay the principal, interest, and charges on bonds 57205
and other obligations issued pursuant to Chapter 133. of the 57206
Revised Code for highway improvements; to enable the Ohio turnpike 57207
commission to construct, reconstruct, maintain, and repair 57208
turnpike projects; to maintain and repair bridges and viaducts; to 57209
purchase, erect, and maintain street and traffic signs and 57210

markers; to purchase, erect, and maintain traffic lights and 57211
signals; to pay the costs apportioned to the public under sections 57212
4907.47 and 4907.471 of the Revised Code and to supplement revenue 57213
already available for such purposes; to pay the costs incurred by 57214
the public utilities commission in administering sections 4907.47 57215
to 4907.476 of the Revised Code; to distribute equitably among 57216
those persons using the privilege of driving motor vehicles upon 57217
such highways and streets the cost of maintaining and repairing 57218
them; to pay the interest, principal, and charges on highway 57219
capital improvements bonds and other obligations issued pursuant 57220
to Section 2m of Article VIII, Ohio Constitution, and section 57221
151.06 of the Revised Code; to pay the interest, principal, and 57222
charges on highway obligations issued pursuant to Section 2i of 57223
Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 57224
of the Revised Code; ~~and~~ to provide revenue for the purposes of 57225
sections 1547.71 to 1547.78 of the Revised Code; and to pay the 57226
expenses of the department of taxation incident to the 57227
administration of the motor fuel laws, a motor fuel excise tax is 57228
hereby imposed on all motor fuel dealers upon receipt of motor 57229
fuel within this state at the rate of two cents plus the cents per 57230
gallon rate on each gallon so received, to be computed in the 57231
manner set forth in section 5735.06 of the Revised Code; provided 57232
that no tax is hereby imposed upon the following transactions: 57233

(1) The sale of dyed diesel fuel by a licensed motor fuel 57234
dealer from a location other than a retail service station 57235
provided the licensed motor fuel dealer places on the face of the 57236
delivery document or invoice, or both if both are used, a 57237
conspicuous notice stating that the fuel is dyed and is not for 57238
taxable use, and that taxable use of that fuel is subject to a 57239
penalty. The tax commissioner, by rule, may provide that any 57240
notice conforming to rules or regulations issued by the United 57241
States department of the treasury or the Internal Revenue Service 57242
is sufficient notice for the purposes of division (A)(1) of this 57243

section. 57244

(2) The sale of K-1 kerosene to a retail service station, 57245
except when placed directly in the fuel supply tank of a motor 57246
vehicle. Such sale shall be rebuttably presumed to not be 57247
distributed or sold for use or used to generate power for the 57248
operation of motor vehicles upon the public highways or upon the 57249
waters within the boundaries of this state. 57250

(3) The sale of motor fuel by a licensed motor fuel dealer to 57251
another licensed motor fuel dealer; 57252

(4) The exportation of motor fuel by a licensed motor fuel 57253
dealer from this state to any other state or foreign country; 57254

(5) The sale of motor fuel to the United States government or 57255
any of its agencies, except such tax as is permitted by it, where 57256
such sale is evidenced by an exemption certificate, in a form 57257
approved by the tax commissioner, executed by the United States 57258
government or an agency thereof certifying that the motor fuel 57259
therein identified has been purchased for the exclusive use of the 57260
United States government or its agency; 57261

(6) The sale of motor fuel ~~which~~ that is in the process of 57262
transportation in foreign or interstate commerce, except ~~in so far~~ 57263
insofar as it may be taxable under the Constitution and statutes 57264
of the United States, and except as may be agreed upon in writing 57265
by the dealer and the commissioner; 57266

(7) The sale of motor fuel when sold exclusively for use in 57267
the operation of aircraft, where such sale is evidenced by an 57268
exemption certificate prescribed by the commissioner and executed 57269
by the purchaser certifying that the motor fuel purchased has been 57270
purchased for exclusive use in the operation of aircraft; 57271

(8) The sale for exportation of motor fuel by a licensed 57272
motor fuel dealer to a licensed exporter type A; 57273

(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 57305
the motor fuel tax administration fund for the purpose of paying 57306
the expenses of the department of taxation incident to the 57307
administration of the motor fuel laws. After the treasurer of 57308
state credits the tax refund fund out of tax receipts as required 57309
by sections 5735.23, 5735.26, 5735.291, and 5735.30 of the Revised 57310
Code, the treasurer of state shall transfer to the motor fuel tax 57311
administration fund two hundred seventy-five one-thousandths per 57312
cent of the receipts from the taxes levied by sections 5735.05, 57313
5735.25, 5735.29, and 5735.30 of the Revised Code. 57314

Sec. 5735.14. (A) Any person who uses any motor fuel, on 57315
which the tax imposed by this chapter has been paid, for the 57316
purpose of operating stationary gas engines, tractors not used on 57317
public highways, unlicensed motor vehicles used exclusively in 57318
intraplant operations, vessels when used in trade, including 57319
vessels when used in connection with an activity that constitutes 57320
a person's chief business or means of livelihood or any other 57321
vessel used entirely for commercial purposes, vessels used for 57322
commercial fishing, vessels used by the sea scout department of 57323
the boy scouts of America chiefly for training scouts in 57324
seamanship, vessels used or owned by any railroad company, 57325
railroad car ferry company, the United States, this state, or any 57326
political subdivision of this state, or aircraft, or who uses any 57327
such fuel upon which such tax has been paid, for cleaning or for 57328
dyeing, or any purpose other than the operation of motor vehicles 57329
upon highways or upon waters within the boundaries of this state, 57330
shall be reimbursed in the amount of the tax so paid on such motor 57331
fuel as provided in this section; provided, that any person 57332
purchasing motor fuel in this state on which taxes levied under 57333
Title LVII of the Revised Code have been paid shall be reimbursed 57334
for such taxes paid in this state on such fuel used by that person 57335

in another state on which a tax is paid for such usage, except 57336
such tax used as a credit against the tax levied by section 57337
5728.06 of the Revised Code. A person shall not be reimbursed for 57338
taxes paid on fuel that is used while a motor vehicle is idling or 57339
used to provide comfort or safety in the operation of a motor 57340
vehicle. Sales of motor fuel, on which the tax imposed by this 57341
chapter has been paid, from one person to another do not 57342
constitute use of the fuel and are not subject to a refund under 57343
this section. 57344

Such (B) Any person who uses in this state any motor fuel 57345
with water intentionally added to the fuel, on which the taxes 57346
imposed by this chapter or Chapter 5728. of the Revised Code have 57347
been paid, shall be reimbursed in the amount of the taxes so paid 57348
on ninety-five per cent of the water. This division applies only 57349
to motor fuel that contains at least nine per cent water, by 57350
volume. 57351

(C) A person claiming reimbursement under this section shall 57352
file with the tax commissioner an application for refund within 57353
one year from the date of purchase, stating the quantity of fuel 57354
used for the refundable purposes other than the operation of motor 57355
vehicles in division (A) or (B) of this section, except that no 57356
person shall file a claim for the tax on fewer than one hundred 57357
gallons of motor fuel. An application for refund filed for the 57358
purpose of division (B) of this section also shall state the 57359
quantity of water intentionally added to the motor fuel. No person 57360
shall claim reimbursement under that division on fewer than one 57361
hundred gallons of water. The application shall be accompanied by 57362
the statement described in section 5735.15 of the Revised Code 57363
showing such purchase, together with evidence of payment thereof. 57364

(D) After consideration of the application and statement, the 57365
commissioner shall determine the amount of refund to which the 57366
applicant is entitled. If the amount is not less than that 57367

claimed, the commissioner shall certify the amount to the director 57368
of budget and management and treasurer of state for payment from 57369
the tax refund fund created by section 5703.052 of the Revised 57370
Code. If the amount is less than that claimed, the commissioner 57371
shall proceed in accordance with section 5703.70 of the Revised 57372
Code. 57373

No refund shall be authorized or paid under this section on a 57374
single claim for tax on fewer than one hundred gallons of motor 57375
fuel. And, when water has been intentionally added to fuel, no 57376
refund shall be authorized or paid under this section on a single 57377
claim for tax on fewer than one hundred gallons of water. The 57378
commissioner may require that the application be supported by the 57379
affidavit of the claimant. 57380

The refund authorized by this section or section 5703.70 of 57381
the Revised Code shall be reduced by the cents per gallon amount 57382
of any qualified fuel credit received under section 5735.145 of 57383
the Revised Code, as determined by the commissioner, for each 57384
gallon of qualified fuel included in the total gallonage of motor 57385
fuel upon which the refund is computed. 57386

(E) The right to receive any refund under this section or 57387
section 5703.70 of the Revised Code is not assignable. The payment 57388
of this refund shall not be made to any person other than the 57389
person originally entitled thereto who used the motor fuel upon 57390
which the claim for refund is based, except that such refunds, 57391
when allowed and certified as provided in this section, 57392
may be paid to the executor, ~~the~~ administrator, ~~the~~ receiver, ~~the~~ trustee 57393
in bankruptcy, or ~~the~~ assignee in insolvency proceedings of such 57394
person. 57395

Sec. 5735.15. When motor fuel is sold to a person who claims 57396
to be entitled to a refund under section 5735.14 or 5735.142 of 57397
the Revised Code, the seller of such motor fuel shall ~~make out in~~ 57398

~~duplicate on forms prescribed and supplied by the tax~~ 57399
~~commissioner, which forms shall have printed thereon~~ provide to 57400
the person documentation that indicates that the liability to the 57401
state for the excise tax imposed under the motor fuel laws of this 57402
state on such motor fuel has been assumed by the seller, and that 57403
said excise tax has already been paid or will be paid by the 57404
seller when the same becomes payable, ~~a statement setting.~~ The 57405
documentation also shall set forth the name and address of the 57406
purchaser, the number of gallons of motor fuel sold, the price 57407
paid for or the price per gallon of the motor fuel sold, the 57408
proposed use for which such motor fuel is purchased, and such 57409
other information as the commissioner requires. When motor fuel is 57410
sold to a person who claims to be entitled to reimbursement under 57411
division (B) of section 5735.14 of the Revised Code, the 57412
documentation also shall state the number of gallons of water 57413
intentionally added to the motor fuel. The ~~original of such~~ 57414
~~statement~~ documentation shall be given to the purchaser, and ~~the~~ 57415
~~duplicate~~ a copy shall be retained by the seller. 57416

Sec. 5735.19. (A) The tax commissioner may examine, during 57417
the usual business hours of the day, the records, books, ~~and~~ 57418
~~papers~~ invoices, storage tanks, and any other equipment of any 57419
motor fuel dealer, retail dealer, exporter, terminal operator, 57420
purchaser, or common carrier pertaining to motor fuel received, 57421
sold, shipped, or delivered, to determine whether the taxes 57422
imposed by this chapter have been paid and to verify the truth and 57423
accuracy of any statement, report, or return. ~~The~~ 57424

(B) The tax commissioner may, in the enforcement of the motor 57425
fuel laws of this state, hold hearings, take the testimony of any 57426
person, issue subpoenas and compel the attendance of witnesses, 57427
and conduct such investigations as the commissioner deems 57428
necessary, ~~but no person shall disclose the information acquired~~ 57429
~~by the commissioner under this section, except when required to de~~ 57430

~~so in court.~~ Such information or evidence is not privileged when 57431
used by the state or any officer thereof in any proceeding for the 57432
collection of the tax, or any prosecution for violation of the 57433
motor fuel laws. 57434

(C) The commissioner may prescribe all forms upon which 57435
reports shall be made to the commissioner, forms for claims for 57436
refund presented to the commissioner, or forms of records to be 57437
used by motor fuel dealers. 57438

(D)(1) As used in this division, "designated inspection site" 57439
means any state highway inspection station, weigh station, mobile 57440
station, or other similar location designated by the tax 57441
commissioner to be used as a fuel inspection site. 57442

(2) An employee of the department of taxation that is so 57443
authorized by the tax commissioner may physically inspect, 57444
examine, or otherwise search any tank, reservoir, or other 57445
container that can or may be used for the production, storage, or 57446
transportation of fuel, fuel dyes, or fuel markers, and books and 57447
records, if any, that are maintained at the place of inspection 57448
and are kept to determine tax liability under this chapter. 57449
Inspections may be performed at any place at which motor fuel is 57450
or may be produced or stored, or at any designated inspection 57451
site. 57452

(3) An employee of the department of taxation who has been 57453
delegated investigation powers by the commissioner under section 57454
5703.58 of the Revised Code may detain any motor vehicle, train, 57455
barge, ship, or vessel for the purpose of inspecting its fuel 57456
tanks and storage tanks. Detainment shall be on the premises under 57457
inspection or at a designated inspection site. Detainment may 57458
continue for a reasonable period of time as is necessary to 57459
determine the amount and composition of the fuel. 57460

(4) Any employee described in division (D)(2) or (3) of this 57461

section may take and remove samples of fuel in quantities as are 57462
reasonably necessary to determine the composition of the fuel. 57463

(5) No person shall refuse to allow an inspection under 57464
division (D) of this section. Any person who refuses to allow an 57465
inspection shall be subject to revocation or cancellation of any 57466
license or permit issued under Chapter 5728. or 5735. of the 57467
Revised Code. 57468

Sec. 5735.23. (A) Out of receipts from the tax levied by 57469
section 5735.05 of the Revised Code, the treasurer of state shall 57470
place to the credit of the tax refund fund established by section 57471
5703.052 of the Revised Code amounts equal to the refunds 57472
certified by the tax commissioner pursuant to sections 5735.13, 57473
5735.14, 5735.141, 5735.142, and 5735.16 of the Revised Code. The 57474
treasurer of state shall then transfer the amount required by 57475
section 5735.051 of the Revised Code to the waterways safety fund 57476
and, the amount required by section 4907.472 of the Revised Code 57477
to the grade crossing protection fund, and the amount required by 57478
section 5735.053 of the Revised Code to the motor fuel tax 57479
administration fund. 57480

(B) Except as provided in division (D) of this section, each 57481
month the balance of the receipts from the tax levied by section 57482
5735.05 of the Revised Code shall be credited, after receipt by 57483
the treasurer of state of certification from the commissioners of 57484
the sinking fund, as required by section 5528.35 of the Revised 57485
Code, that there are sufficient moneys to the credit of the 57486
highway obligations bond retirement fund to meet in full all 57487
payments of interest, principal, and charges for the retirement of 57488
highway obligations issued pursuant to Section 2i of Article VIII, 57489
Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised 57490
Code due and payable during the current calendar year, as follows: 57491

(1) To the state and local government highway distribution 57492

fund, which is hereby created in the state treasury, an amount 57493
that is the same percentage of the balance to be credited as that 57494
portion of the tax per gallon determined under division (B)(2)(a) 57495
of section 5735.06 of the Revised Code is of the total tax per 57496
gallon determined under divisions (B)(2)(a) and (b) of that 57497
section. 57498

(2) After making the distribution to the state and local 57499
government highway distribution fund, the remainder shall be 57500
credited as follows: 57501

(a) Thirty per cent to the gasoline excise tax fund for 57502
distribution pursuant to division (A)(1) of section 5735.27 of the 57503
Revised Code; 57504

(b) Twenty-five per cent to the gasoline excise tax fund for 57505
distribution pursuant to division (A)(3) of section 5735.27 of the 57506
Revised Code; 57507

(c) Except as provided in division (D) of this section, 57508
forty-five per cent to the highway operating fund for distribution 57509
pursuant to division (B)(1) of section 5735.27 of the Revised 57510
Code. 57511

(C) From the balance in the state and local government 57512
highway distribution fund on the last day of each month there 57513
shall be paid the following amounts: 57514

(1) To the local transportation improvement program fund 57515
created by section 164.14 of the Revised Code, an amount equal to 57516
a fraction of the balance in the state and local government 57517
highway distribution fund, the numerator of which fraction is one 57518
and the denominator of which fraction is that portion of the tax 57519
per gallon determined under division (B)(2)(a) of section 5735.06 57520
of the Revised Code; 57521

(2) An amount equal to five cents multiplied by the number of 57522
gallons of motor fuel sold at stations operated by the Ohio 57523

turnpike commission, such gallonage to be certified by the 57524
commission to the treasurer of state not later than the last day 57525
of the month following. The funds paid to the commission pursuant 57526
to this section shall be expended for the construction, 57527
reconstruction, maintenance, and repair of turnpike projects, 57528
except that the funds may not be expended for the construction of 57529
new interchanges. The funds also may be expended for the 57530
construction, reconstruction, maintenance, and repair of those 57531
portions of connecting public roads that serve existing 57532
interchanges and are determined by the commission and the director 57533
of transportation to be necessary for the safe merging of traffic 57534
between the turnpike and those public roads. 57535

The remainder of the balance shall be distributed as follows 57536
on the fifteenth day of the following month: 57537

(a) Ten and seven-tenths per cent shall be paid to municipal 57538
corporations for distribution pursuant to division (A)(1) of 57539
section 5735.27 of the Revised Code and may be used for any 57540
purpose for which payments received under that division may be 57541
used. 57542

(b) Five per cent shall be paid to townships for distribution 57543
pursuant to division (A)(5) of section 5735.27 of the Revised Code 57544
and may be used for any purpose for which payments received under 57545
that division may be used. 57546

(c) Nine and three-tenths per cent shall be paid to counties 57547
for distribution pursuant to division (A)(3) of section 5735.27 of 57548
the Revised Code and may be used for any purpose for which 57549
payments received under that division may be used. 57550

(d) Except as provided in division (D) of this section, the 57551
balance shall be transferred to the highway operating fund and 57552
used for the purposes set forth in division (B)(1) of section 57553
5735.27 of the Revised Code. 57554

(D) Beginning on the first day of September each fiscal year, 57555
any amounts required to be credited or transferred to the highway 57556
operating fund pursuant to division (B)(2)(c) or (C)(2)(d) of this 57557
section shall be credited or transferred to the highway capital 57558
improvement bond service fund created in section 151.06 of the 57559
Revised Code, until such time as the office of budget and 57560
management receives certification from the treasurer of state or 57561
the treasurer of state's designee that sufficient money has been 57562
credited or transferred to the bond service fund to meet in full 57563
all payments of debt service and financing costs due during the 57564
fiscal year from that fund. 57565

Sec. 5735.26. The treasurer of state shall place to the 57566
credit of the tax refund fund created by section 5703.052 of the 57567
Revised Code, out of receipts from the tax levied by section 57568
5735.25 of the Revised Code, amounts equal to the refunds 57569
certified by the tax commissioner pursuant to sections 5735.142 57570
and 5735.25 of the Revised Code, which shall be paid from such 57571
fund. ~~Receipts from the tax shall be used by the tax commissioner~~ 57572
~~for the maintenance and administration of the motor fuel laws.~~ The 57573
treasurer of state shall then transfer the amount required by 57574
section 5735.051 of the Revised Code to the waterways safety fund 57575
and the amount required by section 5735.053 of the Revised Code to 57576
the motor fuel tax administration fund. 57577

The balance of taxes collected under section 5735.25 of the 57578
Revised Code shall be credited as follows, ~~after the credits to~~ 57579
~~the tax refund fund, and after deduction of the cost of~~ 57580
~~administration of the motor fuel laws, and after the transfer~~ 57581
transfers to the waterways safety fund and motor fuel tax 57582
administration fund, and after receipt by the treasurer of state 57583
of certifications from the commissioners of the sinking fund 57584
certifying, as required by sections 5528.15 and 5528.35 of the 57585

Revised Code, there are sufficient moneys to the credit of the 57586
highway improvement bond retirement fund to meet in full all 57587
payments of interest, principal, and charges for the retirement of 57588
bonds and other obligations issued pursuant to Section 2g of 57589
Article VIII, Ohio Constitution, and sections 5528.10 and 5528.11 57590
of the Revised Code due and payable during the current calendar 57591
year, and that there are sufficient moneys to the credit of the 57592
highway obligations bond retirement fund to meet in full all 57593
payments of interest, principal, and charges for the retirement of 57594
highway obligations issued pursuant to Section 2i of Article VIII, 57595
Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised 57596
Code due and payable during the current calendar year: 57597

(A) Sixty-seven and one-half per cent to the highway 57598
operating fund for distribution pursuant to division (B)(2) of 57599
section 5735.27 of the Revised Code; 57600

(B) Seven and one-half per cent to the gasoline excise tax 57601
fund for distribution pursuant to division (A)(2) of such section; 57602

(C) Seven and one-half per cent to the gasoline excise tax 57603
fund for distribution pursuant to division (A)(4) of such section; 57604

(D) Seventeen and one-half per cent to the gasoline excise 57605
tax fund for distribution pursuant to division (A)(5) of such 57606
section. 57607

Sec. 5735.291. The treasurer of state shall place to the 57608
credit of the tax refund fund created by section 5703.052 of the 57609
Revised Code, out of receipts from the tax levied by section 57610
5735.29 of the Revised Code, amounts equal to the refunds 57611
certified by the tax commissioner pursuant to sections 5735.142 57612
and 5735.29 of the Revised Code. The refunds provided for by 57613
sections 5735.142 and 5735.29 of the Revised Code shall be paid 57614
from such fund. The treasurer of state shall then transfer the 57615
amount required by section 5735.051 of the Revised Code to the 57616

waterways safety fund and the amount required by section 5735.053 57617
of the Revised Code to the motor fuel tax administration fund. ~~The~~ 57618

The balance of taxes collected under section 5735.29 of the 57619
Revised Code after the credits to the tax refund fund, ~~and after~~ 57620
~~the transfer~~ transfers to the waterways safety fund and the motor 57621
fuel tax administration fund, and after receipt by the treasurer 57622
of state of certifications from the commissioners of the sinking 57623
fund certifying, as required by sections 5528.15 and 5528.35 of 57624
the Revised Code, that there are sufficient moneys to the credit 57625
of the highway improvement bond retirement fund created by section 57626
5528.12 of the Revised Code to meet in full all payments of 57627
interest, principal, and charges for the retirement of bonds and 57628
other obligations issued pursuant to Section 2g of Article VIII, 57629
Ohio Constitution, and sections 5528.10 and 5528.11 of the Revised 57630
Code due and payable during the current calendar year, and that 57631
there are sufficient moneys to the credit of the highway 57632
obligations bond retirement fund created by section 5528.32 of the 57633
Revised Code to meet in full all payments of interest, principal, 57634
and charges for the retirement of highway obligations issued 57635
pursuant to Section 2i of Article VIII, Ohio Constitution, and 57636
sections 5528.30 and 5528.31 of the Revised Code due and payable 57637
during the current calendar year, shall be credited to the highway 57638
operating fund, which is hereby created in the state treasury and 57639
shall be used solely for the purposes enumerated in section 57640
5735.29 of the Revised Code. All investment earnings of the fund 57641
shall be credited to the fund. 57642

Sec. 5735.30. (A) For the purpose of providing funds to pay 57643
the state's share of the cost of constructing and reconstructing 57644
highways and eliminating railway grade crossings on the major 57645
thoroughfares of the state highway system and urban extensions 57646
thereof, to pay that portion of the construction cost of a highway 57647
project which a county, township, or municipal corporation 57648

normally would be required to pay, but which the director of 57649
transportation, pursuant to division (B) of section 5531.08 of the 57650
Revised Code, determines instead will be paid from moneys in the 57651
highway operating fund, to pay the interest, principal, and 57652
charges on bonds and other obligations issued pursuant to Section 57653
2g of Article VIII, Ohio Constitution, and sections 5528.10 and 57654
5528.11 of the Revised Code, to pay the interest, principal, and 57655
charges on highway obligations issued pursuant to Section 2i of 57656
Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 57657
of the Revised Code, ~~and~~ to provide revenues for the purposes of 57658
sections 1547.71 to 1547.78 of the Revised Code, and to pay the 57659
expenses of the department of taxation incident to the 57660
administration of the motor fuel laws, a motor fuel excise tax is 57661
hereby imposed on all motor fuel dealers upon their receipt of 57662
motor fuel within the state, at the rate of one cent on each 57663
gallon so received, to be reported, computed, paid, collected, 57664
administered, enforced, refunded, and subject to the same 57665
exemptions and penalties as provided in this chapter of the 57666
Revised Code. 57667

The tax imposed by this section shall be in addition to the 57668
tax imposed by sections 5735.05, 5735.25, and 5735.29 of the 57669
Revised Code. 57670

(B) The treasurer of state shall place to the credit of the 57671
tax refund fund created by section 5703.052 of the Revised Code, 57672
out of receipts from the tax levied by this section, amounts equal 57673
to the refunds certified by the tax commissioner pursuant to this 57674
section. The refund provided for by ~~the first paragraph~~ division 57675
(A) of this section shall be paid from such fund. The treasurer 57676
shall then transfer the amount required by section 5735.051 of the 57677
Revised Code to the waterways safety fund and the amount required 57678
by section 5735.053 of the Revised Code to the motor fuel tax 57679
administration fund. The balance of taxes for which the liability 57680

has become fixed prior to July 1, 1955, under this section, after 57681
the credit to the tax refund fund, shall be credited to the 57682
highway operating fund. 57683

(C)(1) The moneys derived from the tax levied by this 57684
section, after ~~the credit to the tax refund fund and the waterways~~ 57685
~~safety fund as provided~~ and transfers required by division (B) of 57686
this section, shall, during each calendar year, be credited to the 57687
highway improvement bond retirement fund created by section 57688
5528.12 of the Revised Code, until the commissioners of the 57689
sinking fund certify to the treasurer of state, as required by 57690
section 5528.17 of the Revised Code, that there are sufficient 57691
moneys to the credit of the highway improvement bond retirement 57692
fund to meet in full all payments of interest, principal, and 57693
charges for the retirement of bonds and other obligations issued 57694
pursuant to Section 2g of Article VIII, Ohio Constitution, and 57695
sections 5528.10 and 5528.11 of the Revised Code due and payable 57696
during the current calendar year and during the next succeeding 57697
calendar year. From the date of the receipt of the certification 57698
required by section 5528.17 of the Revised Code by the treasurer 57699
of state until the thirty-first day of December of the calendar 57700
year in which such certification is made, all moneys received in 57701
the state treasury from the tax levied by this section, after the 57702
~~credit to the tax refund fund and the waterways safety fund as~~ 57703
~~provided~~ and transfers required by division (B) of this section, 57704
shall be credited to the highway obligations bond retirement fund 57705
created by section 5528.32 of the Revised Code, until the 57706
commissioners of the sinking fund certify to the treasurer of 57707
state, as required by section 5528.38 of the Revised Code, that 57708
there are sufficient moneys to the credit of the highway 57709
obligations bond retirement fund to meet in full all payments of 57710
interest, principal, and charges for the retirement of obligations 57711
issued pursuant to Section 2i of Article VIII, Ohio Constitution, 57712
and sections 5528.30 and 5528.31 of the Revised Code due and 57713

payable during the current calendar year and during the next 57714
succeeding calendar year. ~~From~~ 57715

(2) From the date of the receipt of the certification 57716
required by section 5528.38 of the Revised Code by the treasurer 57717
of state until the thirty-first day of December of the calendar 57718
year in which such certification is made, all moneys received in 57719
the state treasury from the tax levied by this section, after the 57720
~~credit to the tax refund fund and the waterways safety fund as~~ 57721
~~provided~~ and transfers required by division (B) of this section, 57722
shall be credited to the highway operating fund, except as 57723
provided in ~~the next succeeding paragraph~~ division (C)(3) of this 57724
section. 57725

(3) From the date of the receipt by the treasurer of state of 57726
certifications from the commissioners of the sinking fund, as 57727
required by sections 5528.18 and 5528.39 of the Revised Code, 57728
certifying that the moneys to the credit of the highway 57729
improvement bond retirement fund are sufficient to meet in full 57730
all payments of interest, principal, and charges for the 57731
retirement of all bonds and other obligations which may be issued 57732
pursuant to Section 2g of Article VIII, Ohio Constitution, and 57733
sections 5528.10 and 5528.11 of the Revised Code, and to the 57734
credit of the highway obligations bond retirement fund are 57735
sufficient to meet in full all payments of interest, principal, 57736
and charges for the retirement of all obligations issued pursuant 57737
to Section 2i of Article VIII, Ohio Constitution, and sections 57738
5528.30 and 5528.31 of the Revised Code, the moneys derived from 57739
the tax levied by this section, after the ~~credit to the tax refund~~ 57740
~~fund and the waterways safety fund as provided~~ and transfers 57741
required by division (B) of this section, shall be credited to the 57742
highway operating fund. 57743

Sec. 5735.99. (A) Whoever violates division (F) of section 57744

5735.02, division (D) of section 5735.021, division (B) of section 57745
5735.063, division (B) of section 5735.064, or division (A)(2) of 57746
section 5735.20 of the Revised Code is guilty of a misdemeanor of 57747
the first degree. 57748

(B) Whoever violates division (E) of section 5735.06 of the 57749
Revised Code is guilty of a felony of the fourth degree. 57750

(C) Whoever violates section 5735.025 or division (A)(1) of 57751
section 5735.20 of the Revised Code is guilty of a misdemeanor of 57752
the first degree, if the tax owed or the fraudulent refund 57753
received is not greater than five hundred dollars. If the tax owed 57754
or the fraudulent refund received is greater than five hundred 57755
dollars but not greater than ten thousand dollars, the offender is 57756
guilty of a felony of the fourth degree; for each subsequent 57757
offense when the tax owed or the fraudulent refund received is 57758
greater than five hundred dollars but not greater than ten 57759
thousand dollars, the offender is guilty of a felony of the third 57760
degree. If the tax owed or the fraudulent refund received is 57761
greater than ten thousand dollars, the offender is guilty of a 57762
felony of the second degree. 57763

(D) Whoever violates a provision of this chapter for which a 57764
penalty is not otherwise prescribed under this section is guilty 57765
of a misdemeanor of the fourth degree. 57766

(E) Whoever violates division (D)(5) of section 5735.19 of 57767
the Revised Code is guilty of a misdemeanor of the first degree. 57768

Sec. 5739.01. As used in this chapter: 57769

(A) "Person" includes individuals, receivers, assignees, 57770
trustees in bankruptcy, estates, firms, partnerships, 57771
associations, joint-stock companies, joint ventures, clubs, 57772
societies, corporations, limited liability partnerships, limited 57773
liability companies, the state and its political subdivisions, and 57774

combinations of individuals of any form. 57775

(B) "Sale" and "selling" include all of the following 57776
transactions for a consideration in any manner, whether absolutely 57777
or conditionally, whether for a price or rental, in money or by 57778
exchange, and by any means whatsoever: 57779

(1) All transactions by which title or possession, or both, 57780
of tangible personal property, is or is to be transferred, or a 57781
license to use or consume tangible personal property is or is to 57782
be granted; 57783

(2) All transactions by which lodging by a hotel is or is to 57784
be furnished to transient guests; 57785

(3) All transactions by which: 57786

(a) An item of tangible personal property is or is to be 57787
repaired, except property, the purchase of which would not be 57788
subject to the tax imposed by section 5739.02 of the Revised Code; 57789

(b) An item of tangible personal property is or is to be 57790
installed, except property, the purchase of which would not be 57791
subject to the tax imposed by section 5739.02 of the Revised Code 57792
or property that is or is to be incorporated into and will become 57793
a part of a production, transmission, transportation, or 57794
distribution system for the delivery of a public utility service; 57795

(c) The service of washing, cleaning, waxing, polishing, or 57796
painting a motor vehicle is or is to be furnished; 57797

(d) ~~Industrial laundry~~ Laundry and dry cleaning services are 57798
or are to be provided; 57799

(e) Automatic data processing, computer services, or 57800
electronic information services are or are to be provided for use 57801
in business when the true object of the transaction is the receipt 57802
by the consumer of automatic data processing, computer services, 57803
or electronic information services rather than the receipt of 57804

personal or professional services to which automatic data 57805
processing, computer services, or electronic information services 57806
are incidental or supplemental. Notwithstanding any other 57807
provision of this chapter, such transactions that occur between 57808
members of an affiliated group are not sales. An "affiliated 57809
group" means two or more persons related in such a way that one 57810
person owns or controls the business operation of another member 57811
of the group. In the case of corporations with stock, one 57812
corporation owns or controls another if it owns more than fifty 57813
per cent of the other corporation's common stock with voting 57814
rights. 57815

(f) Telecommunications service, other than mobile 57816
telecommunications service after July 31, 2002, is or is to be 57817
provided that originates or terminates in this state and is 57818
charged in the records of the telecommunications service vendor to 57819
the consumer's telephone number or account in this state, or that 57820
both originates and terminates in this state; but does not include 57821
transactions by which telecommunications service is paid for by 57822
using a prepaid authorization number or prepaid telephone calling 57823
card, or by which local telecommunications service is obtained 57824
from a coin-operated telephone and paid for by using coin; 57825

(g) Landscaping and lawn care service is or is to be 57826
provided; 57827

(h) Private investigation and security service is or is to be 57828
provided; 57829

(i) Information services or tangible personal property is 57830
provided or ordered by means of a nine hundred telephone call; 57831

(j) Building maintenance and janitorial service is or is to 57832
be provided; 57833

(k) Employment service is or is to be provided; 57834

(l) Employment placement service is or is to be provided; 57835

- (m) Exterminating service is or is to be provided; 57836
- (n) Physical fitness facility service is or is to be provided; 57837
57838
- (o) Recreation and sports club service is or is to be provided-; 57839
57840
- (p) After July 31, 2002, mobile telecommunications service is 57841
or is to be provided ~~in this state~~ when that service is sitused to 57842
this state pursuant to the "Mobile Telecommunications Sourcing 57843
Act," P- Pub. L. No. 106-252, 114 Stat. 626 to 632 (2000), 4 57844
U.S.C.A. 116 to 126, as amended; 57845
- (q) Cable and satellite television service is or is to be provided; 57846
57847
- (r) 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 a physician, or the cutting, coloring, or styling of an individual's hair. 57848
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- (s) Beginning July 1, 2003, the transportation of persons or property by a water transportation company, as defined in section 5727.01 of the Revised Code, is or is to be provided; 57855
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- (t) The transportation of persons by motor vehicle or aircraft is or is to be provided, when the point of origin and the point of termination are both within this state, except for transportation provided 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; 57858
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57864
- (u) Public relations or lobbying service is or is to be 57865

provided. As used in this division, "lobbying service" means the 57866
services performed by a legislative agent required to be 57867
registered under section 101.72 of the Revised Code, or an 57868
executive agency lobbyist required to be registered under section 57869
121.62 of the Revised Code. 57870

(v) Real estate service is or is to be provided. As used in 57871
this division, "real estate service" means all services related to 57872
the buying, selling, or management of real estate, including real 57873
estate brokerage, real property inspection or appraisal, title 57874
searching, and property management. "Real estate service" does not 57875
include mortgage lending, the provision of title insurance, or any 57876
service that constitutes the practice of law. As used in this 57877
division, "property management" means the service of managing 57878
commercial, industrial, or residential property to maintain its 57879
condition and value for the property owner, and includes showing 57880
property to potential renters, collecting rents, and providing 57881
similar services to generate revenue from the property for the 57882
owner. "Property management" does not include facility management, 57883
as defined in division (D)(3) of this section. 57884

(w) Debt collection service is or is to be provided. As used 57885
in this division, "debt collection" means the use of any 57886
instrumentality of interstate commerce or the mails in the 57887
business of collecting, directly or indirectly, any debts owed or 57888
due, or asserted to be owed or due, another. "Debt collection 57889
service" does not include any service that constitutes the 57890
practice of law. 57891

(x) Interior design service or exterior design service is or 57892
is to be provided. As used in this division, "interior design 57893
service" means providing aesthetic services associated with 57894
interior spaces, and includes the planning, designing, and 57895
administering of projects in interior spaces to meet the physical 57896
and aesthetic needs of individuals using them, taking into 57897

consideration building codes, health and safety regulations, 57898
traffic patterns and floor planning, mechanical and electrical 57899
needs, and interior fittings and furniture. As used in this 57900
division, "exterior design service" means providing aesthetic 57901
services associated with exterior spaces, and includes the 57902
planning, designing, and administering of projects involving land 57903
or buildings, to meet the physical and aesthetic needs of 57904
individuals using them. 57905

(4) All transactions by which printed, imprinted, 57906
overprinted, lithographic, multilithic, blueprinted, photostatic, 57907
or other productions or reproductions of written or graphic matter 57908
are or are to be furnished or transferred; 57909

(5) The production or fabrication of tangible personal 57910
property for a consideration for consumers who furnish either 57911
directly or indirectly the materials used in the production of 57912
fabrication work; and include the furnishing, preparing, or 57913
serving for a consideration of any tangible personal property 57914
consumed on the premises of the person furnishing, preparing, or 57915
serving such tangible personal property. Except as provided in 57916
section 5739.03 of the Revised Code, a construction contract 57917
pursuant to which tangible personal property is or is to be 57918
incorporated into a structure or improvement on and becoming a 57919
part of real property is not a sale of such tangible personal 57920
property. The construction contractor is the consumer of such 57921
tangible personal property, provided that the sale and 57922
installation of carpeting, the sale and installation of 57923
agricultural land tile, the sale and erection or installation of 57924
portable grain bins, or the provision of landscaping and lawn care 57925
service and the transfer of property as part of such service is 57926
never a construction contract. The transfer of copyrighted motion 57927
picture films for exhibition purposes is not a sale, except such 57928
films as are used solely for advertising purposes. ~~Other than as~~ 57929

~~provided in this section, "sale" and "selling" do not include 57930
transfers of interest in leased property where the original lessee 57931
and the terms of the original lease agreement remain unchanged, or 57932
professional, insurance, or personal service transactions that 57933
involve the transfer of tangible personal property as an 57934
inconsequential element, for which no separate charges are made. 57935~~

As used in division (B)(5) of this section: 57936

(a) "Agricultural land tile" means fired clay or concrete 57937
tile, or flexible or rigid perforated plastic pipe or tubing, 57938
incorporated or to be incorporated into a subsurface drainage 57939
system appurtenant to land used or to be used directly in 57940
production by farming, agriculture, horticulture, or floriculture. 57941
The term does not include such materials when they are or are to 57942
be incorporated into a drainage system appurtenant to a building 57943
or structure even if the building or structure is used or to be 57944
used in such production. 57945

(b) "Portable grain bin" means a structure that is used or to 57946
be used by a person engaged in farming or agriculture to shelter 57947
the person's grain and that is designed to be disassembled without 57948
significant damage to its component parts. 57949

(6) All transactions in which all of the shares of stock of a 57950
closely held corporation or all of the ownership interests in a 57951
limited liability company are transferred, if the corporation or 57952
limited liability company is not engaging in business and all or 57953
substantially all of its entire assets consist of boats, planes, 57954
motor vehicles, or other tangible personal property operated 57955
primarily for the use and enjoyment of the shareholders; 57956

(7) All transactions in which a warranty, maintenance or 57957
service contract, or similar agreement by which the vendor of the 57958
warranty, contract, or agreement agrees to repair or maintain the 57959
tangible personal property of the consumer is or is to be 57960

provided; 57961

(8) All transactions by which a prepaid authorization number 57962
or a prepaid telephone calling card is or is to be transferred; 57963

(9) All transactions by which a motor vehicle is or is to be 57964
parked, or by which license to park it, in a space, lot, or garage 57965
is or is to be provided; 57966

(10) All transactions by which tangible personal property is 57967
or is to be stored, except such property that the consumer of the 57968
storage holds for sale in the regular course of business; 57969

(11) All transactions by which admission is or is to be 57970
granted to a theater, auditorium, arena, stadium, or similar 57971
facility to view a motion picture or attend a professional 57972
sporting event, concert, theatrical production, circus, or other 57973
entertainment event where the athletes or performers receive 57974
compensation that qualifies as taxable income under the Internal 57975
Revenue Code for their performances; 57976

(12) All transactions by which admission to a zoo, amusement 57977
park, museum, or similar place of amusement is or is to be 57978
granted. 57979

Except as provided in this section, "sale" and "selling" do 57980
not include transfers of interest in leased property where the 57981
original lessee and the terms of the original lease agreement 57982
remain unchanged, or professional, insurance, or personal service 57983
transactions that involve the transfer of tangible personal 57984
property as an inconsequential element, for which no separate 57985
charges are made. 57986

(C) "Vendor" means the person providing the service or by 57987
whom the transfer effected or license given by a sale is or is to 57988
be made or given and, for sales described in division (B)(3)(i) of 57989
this section, the telecommunications service vendor that provides 57990
the nine hundred telephone service; if two or more persons are 57991

engaged in business at the same place of business under a single 57992
trade name in which all collections on account of sales by each 57993
are made, such persons shall constitute a single vendor. 57994

Physicians, dentists, hospitals, and veterinarians who are 57995
engaged in selling tangible personal property as received from 57996
others, such as eyeglasses, mouthwashes, dentifrices, or similar 57997
articles, are vendors. Veterinarians who are engaged in 57998
transferring to others for a consideration drugs, the dispensing 57999
of which does not require an order of a licensed veterinarian or 58000
physician under federal law, are vendors. 58001

(D)(1) "Consumer" means the person for whom the service is 58002
provided, to whom the transfer effected or license given by a sale 58003
is or is to be made or given, to whom the service described in 58004
division (B)(3)(f) or (i) of this section is charged, or to whom 58005
the admission is granted. 58006

(2) Physicians, dentists, hospitals, and blood banks operated 58007
by nonprofit institutions and persons licensed to practice 58008
veterinary medicine, surgery, and dentistry are consumers of all 58009
tangible personal property and services purchased by them in 58010
connection with the practice of medicine, dentistry, the rendition 58011
of hospital or blood bank service, or the practice of veterinary 58012
medicine, surgery, and dentistry. In addition to being consumers 58013
of drugs administered by them or by their assistants according to 58014
their direction, veterinarians also are consumers of drugs that 58015
under federal law may be dispensed only by or upon the order of a 58016
licensed veterinarian or physician, when transferred by them to 58017
others for a consideration to provide treatment to animals as 58018
directed by the veterinarian. 58019

(3) A person who performs a facility management, or similar 58020
service contract for a contractee is a consumer of all tangible 58021
personal property and services purchased for use in connection 58022
with the performance of such contract, regardless of whether title 58023

to any such property vests in the contractee. The purchase of such 58024
property and services is not subject to the exception for resale 58025
under division (E)(1) of this section. As used in this division, 58026
"facility management" means the management of the operations of a 58027
commercial, industrial, or governmental facility under a contract 58028
or subcontract with the owner of the facility or a contractor of 58029
the owner. 58030

(4)(a) In the case of a person who purchases printed matter 58031
for the purpose of distributing it or having it distributed to the 58032
public or to a designated segment of the public, free of charge, 58033
that person is the consumer of that printed matter, and the 58034
purchase of that printed matter for that purpose is a sale. 58035

(b) In the case of a person who produces, rather than 58036
purchases, printed matter for the purpose of distributing it or 58037
having it distributed to the public or to a designated segment of 58038
the public, free of charge, that person is the consumer of all 58039
tangible personal property and services purchased for use or 58040
consumption in the production of that printed matter. That person 58041
is not entitled to claim exception under division (E)~~(8)~~(7) of 58042
this section for any material incorporated into the printed matter 58043
or any equipment, supplies, or services primarily used to produce 58044
the printed matter. 58045

(c) The distribution of printed matter to the public or to a 58046
designated segment of the public, free of charge, is not a sale to 58047
the members of the public to whom the printed matter is 58048
distributed or to any persons who purchase space in the printed 58049
matter for advertising or other purposes. 58050

(5) A person who makes sales of any of the services listed in 58051
division (B)(3) of this section is the consumer of any tangible 58052
personal property used in performing the service. The purchase of 58053
that property is not subject to the resale exception under 58054
division (E)(1) of this section. 58055

(6)(a) As used in division (D)(6) of this section: 58056

(i) "Qualifying affiliated group member" means a person who 58057
is a member of an affiliated group, as described in division 58058
(B)(3)(e) of this section, or is a related member with respect to 58059
any other person or group of persons. 58060

(ii) "Another qualifying affiliated group member" means 58061
another person within the same qualifying affiliated group or 58062
another person who is a related member to the qualifying 58063
affiliated group member. 58064

(iii) "Related member" has the same meaning as in section 58065
5733.042 of the Revised Code. 58066

(b) A qualifying affiliated group member that purchases 58067
tangible personal property for sale, lease, or rental to another 58068
qualifying affiliated group member for any use by that other 58069
member, other than for resale, re-lease, or re-rental to an 58070
unrelated third party as determined under divisions (D)(6)(c)(i), 58071
(ii), and (iii) of this section, is the consumer of the property 58072
purchased for that sale, lease, or rental and is not entitled to 58073
claim an exception for resale under division (E)(1) of this 58074
section, with respect to that purchase. The consumer may claim any 58075
other exemption or exception that would be available to the 58076
qualifying affiliated group member to whom the property is sold, 58077
leased, or rented, as if that member had purchased, leased, or 58078
rented the property from an unrelated third party. 58079

(c)(i) The original purchase of tangible personal property by 58080
a qualifying affiliated group member and the sale of the property 58081
to another qualifying affiliated group member is a resale to an 58082
unrelated third party if, within ninety days of the original 58083
purchase of the property, the sale to the unrelated third party is 58084
effected and no qualifying affiliated group member directly or 58085
indirectly purchases, acquires, uses, or has possession of the 58086

property for the first seventy-five per cent of the depreciable 58087
life of the property for modified accelerated cost recovery system 58088
purposes under section 168 of the Internal Revenue Code. 58089

(ii) The original purchase of tangible personal property by a 58090
qualifying affiliated group member and the lease of the property 58091
to another qualifying affiliated group member is a re-lease to an 58092
unrelated third party, if the lease to the unrelated third party 58093
is effected within ninety days of the original purchase of the 58094
property by the first qualifying affiliated group member, and the 58095
lease to the unrelated third party provides or cumulatively 58096
provides for recovery of at least two-thirds of the original 58097
purchase price of the property within at least five years of the 58098
original purchase of the property by the first qualifying 58099
affiliated group member. 58100

(iii) The original purchase of tangible personal property by 58101
a qualifying affiliated group member and rental of the property to 58102
another qualifying affiliated group member is a re-rental to an 58103
unrelated third party, if the other qualifying affiliated group 58104
member places the property in an inventory for rental to an 58105
unrelated third party within ninety days of the original purchase 58106
of the property by the first qualifying affiliated group member, 58107
and the property remains in rental inventory for a period of not 58108
less than four years, during which time at least seventy-five per 58109
cent of the rental proceeds and days of rental use of the property 58110
are attributable to rentals to an unrelated third party. 58111

(d) As used in division (D)(6) of this section, "unrelated 58112
third party" does not include any officer or shareholder of a 58113
corporation, any member of a limited liability company, or any 58114
partner in a partnership where the corporation, limited liability 58115
company, or partnership is a qualifying affiliated group member of 58116
the group that includes the qualifying affiliated group member 58117
making the original purchase of the tangible personal property. 58118

(e) The tax commissioner may adopt rules to enforce and administer division (D)(6) of this section and prevent price manipulation. 58119
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(7) A person conducting a food service operation as defined in section 3717.01 of the Revised Code who prepares food for human consumption primarily for immediate sale at retail is the consumer of tangible personal property and services used to serve the food so prepared, including chairs, tables, tableware, linens, and laundry cleaning services. The purchase of such property and services is not subject to the exception for resale under division (E)(1) of this section. 58122
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(E) "Retail sale" and "sales at retail" include all sales, except those in which the purpose of the consumer is: 58130
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(1) 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; 58132
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(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 58135
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be collected upon all meals, drinks, and food for human 58150
consumption sold upon Pullman and railroad coaches. This paragraph 58151
does not exempt or except from "retail sale" or "sales at retail" 58152
the sale of tangible personal property that is to be incorporated 58153
into a structure or improvement to real property. 58154

(3) To hold the thing transferred as security for the 58155
performance of an obligation of the vendor; 58156

~~(4) To use or consume the thing transferred in the process of 58157
reclamation as required by Chapters 1513. and 1514. of the Revised 58158
Code; 58159~~

~~(5) To resell, hold, use, or consume the thing transferred as 58160
evidence of a contract of insurance; 58161~~

~~(6)~~(5) To use or consume the thing directly in commercial 58162
fishing; 58163

~~(7)~~(6) To incorporate the thing transferred as a material or 58164
a part into, or to use or consume the thing transferred directly 58165
in the production of, magazines distributed as controlled 58166
circulation publications; 58167

~~(8)~~(7) To use or consume the thing transferred in the 58168
production and preparation in suitable condition for market and 58169
sale of printed, imprinted, overprinted, lithographic, 58170
multilithic, blueprinted, photostatic, or other productions or 58171
reproductions of written or graphic matter; 58172

~~(9)~~(8) To use the thing transferred, as described in section 58173
5739.011 of the Revised Code, primarily in a manufacturing 58174
operation to produce tangible personal property for sale; 58175

~~(10)~~(9) To use the benefit of a warranty, maintenance or 58176
service contract, or similar agreement, as defined in division 58177
(B)(7) of this section, to repair or maintain tangible personal 58178
property, if all of the property that is the subject of the 58179

warranty, contract, or agreement would be exempt on its purchase 58180
from the tax imposed by section 5739.02 of the Revised Code; 58181

~~(11)~~(10) To use the thing transferred as qualified research 58182
and development equipment; 58183

~~(12)~~(11) To use or consume the thing transferred primarily in 58184
storing, transporting, mailing, or otherwise handling purchased 58185
sales inventory in a warehouse, distribution center, or similar 58186
facility when the inventory is primarily distributed outside this 58187
state to retail stores of the person who owns or controls the 58188
warehouse, distribution center, or similar facility, to retail 58189
stores of an affiliated group of which that person is a member, or 58190
by means of direct marketing. Division (E)~~(12)~~(11) of this section 58191
does not apply to motor vehicles registered for operation on the 58192
public highways. As used in this division ~~(E)(12) of this section~~, 58193
"affiliated group" has the same meaning as in division (B)(3)(e) 58194
of this section and "direct marketing" has the same meaning as in 58195
division (B)~~(36)~~(28) of section 5739.02 of the Revised Code. 58196

~~(13)~~(12) To use or consume the thing transferred to fulfill a 58197
contractual obligation incurred by a warrantor pursuant to a 58198
warranty provided as a part of the price of the tangible personal 58199
property sold or by a vendor of a warranty, maintenance or service 58200
contract, or similar agreement the provision of which is defined 58201
as a sale under division (B)(7) of this section; 58202

~~(14)~~(13) To use or consume the thing transferred in the 58203
production of a newspaper for distribution to the public; 58204

~~(15)~~(14) To use tangible personal property to perform a 58205
service listed in division (B)(3) of this section, if the property 58206
is or is to be permanently transferred to the consumer of the 58207
service as an integral part of the performance of the service. 58208

As used in division (E) of this section, "thing" includes all 58209
transactions included in divisions (B)(3)(a), (b), and (e) of this 58210

section. 58211

Sales conducted through a coin-operated device that activates 58212
vacuum equipment or equipment that dispenses water, whether or not 58213
in combination with soap or other cleaning agents or wax, to the 58214
consumer for the consumer's use on the premises in washing, 58215
cleaning, or waxing a motor vehicle, provided no other personal 58216
property or personal service is provided as part of the 58217
transaction, are not retail sales or sales at retail. 58218

(F) "Business" includes any activity engaged in by any person 58219
with the object of gain, benefit, or advantage, either direct or 58220
indirect. "Business" does not include the activity of a person in 58221
managing and investing the person's own funds. 58222

(G) "Engaging in business" means commencing, conducting, or 58223
continuing in business, and liquidating a business when the 58224
liquidator thereof holds itself out to the public as conducting 58225
such business. Making a casual sale is not engaging in business. 58226

(H)(1) "Price," except as provided in divisions (H)(2) and 58227
(3) of this section, means the aggregate value in money of 58228
anything paid or delivered, or promised to be paid or delivered, 58229
in the complete performance of a retail sale, without any 58230
deduction on account of the cost of the property sold, cost of 58231
materials used, labor or service cost, interest, discount paid or 58232
allowed after the sale is consummated, delivery charges, or any 58233
other expense. If the retail sale consists of the rental or lease 58234
of tangible personal property, "price" means the aggregate value 58235
in money of anything paid or delivered, or promised to be paid or 58236
delivered, in the complete performance of the rental or lease, 58237
without any deduction for tax, interest, labor or service charge, 58238
damage liability waiver, termination or damage charge, discount 58239
paid or allowed after the lease is consummated, delivery charges, 58240
or any other expense. Except as provided in division (H)(4) of 58241
this section, the sales tax shall be calculated and collected by 58242

the lessor on each payment made by the lessee. "Price" does not 58243
include the consideration received as a deposit refundable to the 58244
consumer upon return of a beverage container, the consideration 58245
received as a deposit on a carton or case that is used for such 58246
returnable containers, or the consideration received as a 58247
refundable security deposit for the use of tangible personal 58248
property to the extent that it actually is refunded, if the 58249
consideration for such refundable deposit is separately stated 58250
from the consideration received or to be received for the tangible 58251
personal property transferred in the retail sale. Such separation 58252
must appear in the sales agreement or on the initial invoice or 58253
initial billing rendered by the vendor to the consumer. "~~Price~~" 58254
~~also does not include delivery charges that are separately stated~~ 58255
~~on the initial invoice or initial billing rendered by the vendor.~~ 58256
Price is the amount received inclusive of the tax, provided the 58257
vendor establishes to the satisfaction of the tax commissioner 58258
that the tax was added to the price. When the price includes both 58259
a charge for tangible personal property and a charge for providing 58260
a service and the sale of the property and the charge for the 58261
service are separately taxable, or have a separately determinable 58262
tax status, the price shall be separately stated for each such 58263
charge so the tax can be correctly computed and charged. 58264

The tax collected by the vendor from the consumer under this 58265
chapter is not part of the price, but is a tax collection for the 58266
benefit of the state and of counties levying an additional sales 58267
tax pursuant to section 5739.021 or 5739.026 of the Revised Code 58268
and of transit authorities levying an additional sales tax 58269
pursuant to section 5739.023 of the Revised Code. Except for the 58270
discount authorized in section 5739.12 of the Revised Code and the 58271
effects of any rounding pursuant to section 5703.055 of the 58272
Revised Code, no person other than the state or such a county or 58273
transit authority shall derive any benefit from the collection or 58274
payment of such tax. 58275

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.

(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 one-half of 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 one-half of the credit afforded the consumer by the dealer for the watercraft, watercraft and trailer, or outboard motor received in trade.

(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 58308
amounts are billed to the lessee. In the case of an open-end 58309
lease, the sales tax shall be calculated by the vendor on the 58310
basis of the total amount to be paid during the initial fixed term 58311
of the lease, and then for each subsequent renewal period as it 58312
comes due. In the case of a lease with a renewal clause and a 58313
termination penalty or similar provision that applies if the 58314
renewal clause is not exercised, the tax shall be calculated and 58315
paid by the vendor on the basis of the entire length of the lease 58316
period, including any renewal period, until the termination 58317
penalty or similar provision no longer applies. 58318

(5) In the case of a transaction in which telecommunications 58319
service or mobile telecommunications service is sold in a bundled 58320
transaction with other distinct services for a single price that 58321
is not itemized, the entire price is subject to the taxes levied 58322
under sections 5739.02, 5739.021, 5739.023, and 5739.026 of the 58323
Revised Code, unless the vendor can reasonably identify the 58324
non-taxable portion from its books and records kept in the regular 58325
course of business. The vendor shall advise the consumer, either 58326
in a sales agreement or on the bill for the bundled service, of 58327
the base on which the tax is computed. The burden of proving any 58328
nontaxable charges is on the vendor. 58329

(6) As used in divisions (H)(3) and (4) of this section, 58330
"motor vehicle" has the same meaning as in section 4501.01 of the 58331
Revised Code, and "watercraft" includes an outdrive unit attached 58332
to the watercraft. 58333

(I) "Receipts" means the total amount of the prices of the 58334
sales of vendors, provided that cash discounts allowed and taken 58335
on sales at the time they are consummated are not included, minus 58336
any amount deducted as a bad debt pursuant to section 5739.121 of 58337
the Revised Code. "Receipts" does not include the sale price of 58338
property returned or services rejected by consumers when the full 58339

sale price and tax are refunded either in cash or by credit. 58340

(J) "Place of business" means any location at which a person 58341
engages in business. 58342

(K) "Premises" includes any real property or portion thereof 58343
upon which any person engages in selling tangible personal 58344
property at retail or making retail sales and also includes any 58345
real property or portion thereof designated for, or devoted to, 58346
use in conjunction with the business engaged in by such person. 58347

(L) "Casual sale" means a sale of an item of tangible 58348
personal property that was obtained by the person making the sale, 58349
through purchase or otherwise, for the person's own use and was 58350
previously subject to any state's taxing jurisdiction on its sale 58351
or use, and includes such items acquired for the seller's use that 58352
are sold by an auctioneer employed directly by the person for such 58353
purpose, provided the location of such sales is not the 58354
auctioneer's permanent place of business. As used in this 58355
division, "permanent place of business" includes any location 58356
where such auctioneer has conducted more than two auctions during 58357
the year. 58358

(M) "Hotel" means every establishment kept, used, maintained, 58359
advertised, or held out to the public to be a place where sleeping 58360
accommodations are offered to guests, in which five or more rooms 58361
are used for the accommodation of such guests, whether the rooms 58362
are in one or several structures. 58363

(N) "Transient guests" means persons occupying a room or 58364
rooms for sleeping accommodations for less than thirty consecutive 58365
days. 58366

(O) "Making retail sales" means the effecting of transactions 58367
wherein one party is obligated to pay the price and the other 58368
party is obligated to provide a service or to transfer title to or 58369
possession of the item sold. "Making retail sales" does not 58370

include the preliminary acts of promoting or soliciting the retail 58371
sales, other than the distribution of printed matter which 58372
displays or describes and prices the item offered for sale, nor 58373
does it include delivery of a predetermined quantity of tangible 58374
personal property or transportation of property or personnel to or 58375
from a place where a service is performed, regardless of whether 58376
the vendor is a delivery vendor. 58377

(P) "Used directly in the rendition of a public utility 58378
service" means that property ~~which~~ that is to be incorporated into 58379
and will become a part of the consumer's production, transmission, 58380
transportation, or distribution system and that retains its 58381
classification as tangible personal property after such 58382
incorporation; fuel or power used in the production, transmission, 58383
transportation, or distribution system; and tangible personal 58384
property used in the repair and maintenance of the production, 58385
transmission, transportation, or distribution system, including 58386
only such motor vehicles as are specially designed and equipped 58387
for such use. Tangible personal property and services used 58388
primarily in providing highway transportation for hire are not 58389
used directly in providing the rendition of a public utility 58390
service as defined in this division. Tangible personal property 58391
that is part of, an operating supply for, or a repair or 58392
replacement part for, an air or noise pollution control facility 58393
certified under section 5709.21 of the Revised Code is not used 58394
directly in the rendition of a public utility service. 58395

(Q) "Refining" means removing or separating a desirable 58396
product from raw or contaminated materials by distillation or 58397
physical, mechanical, or chemical processes. 58398

(R) "Assembly" and "assembling" mean attaching or fitting 58399
together parts to form a product, but do not include packaging a 58400
product. 58401

(S) "Manufacturing operation" means a process in which 58402

materials are changed, converted, or transformed into a different 58403
state or form from which they previously existed and includes 58404
refining materials, assembling parts, and preparing raw materials 58405
and parts by mixing, measuring, blending, or otherwise committing 58406
such materials or parts to the manufacturing process. 58407

"Manufacturing operation" does not include packaging; or the 58408
preparation or preservation of food for human consumption 58409
primarily for immediate sale at retail by a person conducting a 58410
food service operation, as defined in section 3717.01 of the 58411
Revised Code. 58412

(T) "Fiscal officer" means, with respect to a regional 58413
transit authority, the secretary-treasurer thereof, and with 58414
respect to a county that is a transit authority, the fiscal 58415
officer of the county transit board if one is appointed pursuant 58416
to section 306.03 of the Revised Code or the county auditor if the 58417
board of county commissioners operates the county transit system. 58418

(U) "Transit authority" means a regional transit authority 58419
created pursuant to section 306.31 of the Revised Code or a county 58420
in which a county transit system is created pursuant to section 58421
306.01 of the Revised Code. For the purposes of this chapter, a 58422
transit authority must extend to at least the entire area of a 58423
single county. A transit authority that includes territory in more 58424
than one county must include all the area of the most populous 58425
county that is a part of such transit authority. County population 58426
shall be measured by the most recent census taken by the United 58427
States census bureau. 58428

(V) "Legislative authority" means, with respect to a regional 58429
transit authority, the board of trustees thereof, and with respect 58430
to a county that is a transit authority, the board of county 58431
commissioners. 58432

(W) "Territory of the transit authority" means all of the 58433
area included within the territorial boundaries of a transit 58434

authority as they from time to time exist. Such territorial 58435
boundaries must at all times include all the area of a single 58436
county or all the area of the most populous county that is a part 58437
of such transit authority. County population shall be measured by 58438
the most recent census taken by the United States census bureau. 58439

(X) "Providing a service" means providing or furnishing 58440
anything described in division (B)(3) of this section for 58441
consideration. 58442

(Y)(1)(a) "Automatic data processing" means processing of 58443
others' data, including keypunching or similar data entry services 58444
together with verification thereof, or providing access to 58445
computer equipment for the purpose of processing data. 58446

(b) "Computer services" means providing services consisting 58447
of specifying computer hardware configurations and evaluating 58448
technical processing characteristics, computer programming, and 58449
training of computer programmers and operators, provided in 58450
conjunction with and to support the sale, lease, or operation of 58451
taxable computer equipment or systems. 58452

(c) "Electronic information services" means providing access 58453
to computer equipment by means of telecommunications equipment for 58454
the purpose of either of the following: 58455

(i) Examining or acquiring data stored in or accessible to 58456
the computer equipment; 58457

(ii) Placing data into the computer equipment to be retrieved 58458
by designated recipients with access to the computer equipment. 58459

(d) "Automatic data processing, computer services, or 58460
electronic information services" shall not include personal or 58461
professional services. 58462

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 58463
section, "personal and professional services" means all services 58464

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| other than automatic data processing, computer services, or | 58465 |
| electronic information services, including but not limited to: | 58466 |
| (a) Accounting and legal services such as advice on tax | 58467 |
| matters, asset management, budgetary matters, quality control, | 58468 |
| information security, and auditing and any other situation where | 58469 |
| the service provider receives data or information and studies, | 58470 |
| alters, analyzes, interprets, or adjusts such material; | 58471 |
| (b) Analyzing business policies and procedures; | 58472 |
| (c) Identifying management information needs; | 58473 |
| (d) Feasibility studies, including economic and technical | 58474 |
| analysis of existing or potential computer hardware or software | 58475 |
| needs and alternatives; | 58476 |
| (e) Designing policies, procedures, and custom software for | 58477 |
| collecting business information, and determining how data should | 58478 |
| be summarized, sequenced, formatted, processed, controlled, and | 58479 |
| reported so that it will be meaningful to management; | 58480 |
| (f) Developing policies and procedures that document how | 58481 |
| business events and transactions are to be authorized, executed, | 58482 |
| and controlled; | 58483 |
| (g) Testing of business procedures; | 58484 |
| (h) Training personnel in business procedure applications; | 58485 |
| (i) Providing credit information to users of such information | 58486 |
| by a consumer reporting agency, as defined in the "Fair Credit | 58487 |
| Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or | 58488 |
| as hereafter amended, including but not limited to gathering, | 58489 |
| organizing, analyzing, recording, and furnishing such information | 58490 |
| by any oral, written, graphic, or electronic medium; | 58491 |
| (j) Providing debt collection services by any oral, written, | 58492 |
| graphic, or electronic means. | 58493 |
| The services listed in divisions (Y)(2)(a) to (j) of this | 58494 |

section are not automatic data processing or computer services. 58495

(Z) "Highway transportation for hire" means the 58496
transportation of personal property belonging to others for 58497
consideration by any of the following: 58498

(1) The holder of a permit or certificate issued by this 58499
state or the United States authorizing the holder to engage in 58500
transportation of personal property belonging to others for 58501
consideration over or on highways, roadways, streets, or any 58502
similar public thoroughfare; 58503

(2) A person who engages in the transportation of personal 58504
property belonging to others for consideration over or on 58505
highways, roadways, streets, or any similar public thoroughfare 58506
but who could not have engaged in such transportation on December 58507
11, 1985, unless the person was the holder of a permit or 58508
certificate of the types described in division (Z)(1) of this 58509
section; 58510

(3) A person who leases a motor vehicle to and operates it 58511
for a person described by division (Z)(1) or (2) of this section. 58512

"Highway transportation for hire" does not include the 58513
transportation of tangible personal property belonging to members 58514
of an affiliated group, as described in division (B)(3)(e) of this 58515
section, by another member of the affiliated group, or the 58516
transporting for disposal of refuse, trash, waste, or scrap, in 58517
which the originator of the material being hauled retains no 58518
continuing legal rights or responsibilities for that material. 58519

(AA) "Telecommunications service" means the transmission of 58520
any interactive, two-way electromagnetic communications, including 58521
voice, image, data, and information, through the use of any medium 58522
such as wires, cables, microwaves, cellular radio, radio waves, 58523
light waves, or any combination of those or similar media. 58524
"Telecommunications service" includes message toll service, even 58525

though the vendor provides the message toll service by means of 58526
wide area transmission type service or private communications 58527
service purchased from another telecommunications service 58528
provider, ~~but~~ and other related fees and ancillary services, 58529
including universal service fees, detailed billing service, 58530
directory assistance, service initiation, voice mail service, and 58531
vertical services, such as caller ID and three-way calling. 58532
"Telecommunications service" does not include any of the 58533
following: 58534

(1) ~~Sales of incoming or outgoing wide area transmission~~ 58535
~~service or wide area transmission type service, including eight~~ 58536
~~hundred or eight hundred type service, to the person contracting~~ 58537
~~for the receipt of that service;~~ 58538

(2) ~~Sales of private communications service to the person~~ 58539
~~contracting for the receipt of that service that entitles the~~ 58540
~~purchaser to exclusive or priority use of a communications channel~~ 58541
~~or group of channels between exchanges;~~ 58542

(3) Sales of telecommunications service that are billed to 58543
persons prior to January 1, 2004, by telephone companies that are 58544
subject to the excise tax imposed by Chapter 5727. of the Revised 58545
Code; 58546

(4)(2) Sales of telecommunications service to a provider of 58547
telecommunications service or of mobile telecommunications 58548
service, including access services, for use in providing 58549
telecommunications service or mobile telecommunications service; 58550

(5)(3) Value-added nonvoice services in which computer 58551
processing applications are used to act on the form, content, 58552
code, or protocol of the information to be transmitted; 58553

(6)(4) Transmission of interactive video programming by a 58554
cable television system as defined in section 505.90 of the 58555
Revised Code; 58556

~~(7)(5)~~ After July 31, 2002, mobile telecommunications service. 58557
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(BB) "~~Industrial laundry~~ Laundry and dry cleaning services" means removing soil or dirt from ~~or supplying~~ towels, linens, ~~or~~ articles of clothing, ~~or other fabric items~~ that belong to others and ~~are used in a trade or business~~ supplying towels, linens, articles of clothing, or other fabric items. "Laundry and dry cleaning services" does not include the provision of self-service facilities for use by consumers to remove soil or dirt from towels, linens, articles of clothing, or other fabric items. 58559
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(CC) "Magazines distributed as controlled circulation publications" means magazines containing at least twenty-four pages, at least twenty-five per cent editorial content, issued at regular intervals four or more times a year, and circulated without charge to the recipient, provided that such magazines are not owned or controlled by individuals or business concerns which conduct such publications as an auxiliary to, and essentially for the advancement of the main business or calling of, those who own or control them. 58567
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(DD) "Landscaping and lawn care service" means the services of planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, fertilizing, and providing similar services to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover, and other flora, or otherwise maintaining a lawn or landscape grown or maintained by the owner for ornamentation or other nonagricultural purpose. However, "landscaping and lawn care service" does not include the providing of such services by a person who has less than five thousand dollars in sales of such services during the calendar year. 58576
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(EE) "Private investigation and security service" means the 58587

performance of any activity for which the provider of such service 58588
is required to be licensed pursuant to Chapter 4749. of the 58589
Revised Code, or would be required to be so licensed in performing 58590
such services in this state, and also includes the services of 58591
conducting polygraph examinations and of monitoring or overseeing 58592
the activities on or in, or the condition of, the consumer's home, 58593
business, or other facility by means of electronic or similar 58594
monitoring devices. "Private investigation and security service" 58595
does not include special duty services provided by off-duty police 58596
officers, deputy sheriffs, and other peace officers regularly 58597
employed by the state or a political subdivision. 58598

(FF) "Information services" means providing conversation, 58599
giving consultation or advice, playing or making a voice or other 58600
recording, making or keeping a record of the number of callers, 58601
and any other service provided to a consumer by means of a nine 58602
hundred telephone call, except when the nine hundred telephone 58603
call is the means by which the consumer makes a contribution to a 58604
recognized charity. 58605

(GG) "Research and development" means designing, creating, or 58606
formulating new or enhanced products, equipment, or manufacturing 58607
processes, and also means conducting scientific or technological 58608
inquiry and experimentation in the physical sciences with the goal 58609
of increasing scientific knowledge which may reveal the bases for 58610
new or enhanced products, equipment, or manufacturing processes. 58611

(HH) "Qualified research and development equipment" means 58612
capitalized tangible personal property, and leased personal 58613
property that would be capitalized if purchased, used by a person 58614
primarily to perform research and development. Tangible personal 58615
property primarily used in testing, as defined in division (A)(4) 58616
of section 5739.011 of the Revised Code, or used for recording or 58617
storing test results, is not qualified research and development 58618
equipment unless such property is primarily used by the consumer 58619

in testing the product, equipment, or manufacturing process being 58620
created, designed, or formulated by the consumer in the research 58621
and development activity or in recording or storing such test 58622
results. 58623

(II) "Building maintenance and janitorial service" means 58624
cleaning the interior or exterior of a building and any tangible 58625
personal property located therein or thereon, including any 58626
services incidental to such cleaning for which no separate charge 58627
is made. However, "building maintenance and janitorial service" 58628
does not include the providing of such service by a person who has 58629
less than five thousand dollars in sales of such service during 58630
the calendar year. 58631

(JJ) "Employment service" means providing or supplying 58632
personnel, on a temporary or long-term basis, to perform work or 58633
labor under the supervision or control of another, when the 58634
personnel so supplied receive their wages, salary, or other 58635
compensation from the provider of the service. "Employment 58636
service" does not include: 58637

(1) Acting as a contractor or subcontractor, where the 58638
personnel performing the work are not under the direct control of 58639
the purchaser. 58640

(2) Medical and health care services. 58641

(3) Supplying personnel to a purchaser pursuant to a contract 58642
of at least one year between the service provider and the 58643
purchaser that specifies that each employee covered under the 58644
contract is assigned to the purchaser on a permanent basis. 58645

(4) Transactions between members of an affiliated group, as 58646
defined in division (B)(3)(e) of this section. 58647

(KK) "Employment placement service" means locating or finding 58648
employment for a person or finding or locating an employee to fill 58649
an available position. 58650

(LL) "Exterminating service" means eradicating or attempting to eradicate vermin infestations from a building or structure, or the area surrounding a building or structure, and includes activities to inspect, detect, or prevent vermin infestation of a building or structure.

(MM) "Physical fitness facility service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a physical fitness facility such as an athletic club, health spa, or gymnasium, which entitles the member to use the facility for physical exercise.

(NN) "Recreation and sports club service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a recreation and sports club, which entitles the member to use the facilities of the organization. "Recreation and sports club" means an organization that has ownership of, or controls or leases on a continuing, long-term basis, the facilities used by its members and includes an aviation club, gun or shooting club, yacht club, card club, swimming club, tennis club, golf club, country club, riding club, amateur sports club, or similar organization.

(OO) "Livestock" means farm animals commonly raised for food or food production, and includes but is not limited to cattle, sheep, goats, swine, and poultry. "Livestock" does not include invertebrates, fish, amphibians, reptiles, horses, domestic pets, animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production.

(PP) "Livestock structure" means a building or structure used exclusively for the housing, raising, feeding, or sheltering of

livestock, and includes feed storage or handling structures and 58682
structures for livestock waste handling. 58683

(QQ) "Horticulture" means the growing, cultivation, and 58684
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 58685
and nursery stock. As used in this division, "nursery stock" has 58686
the same meaning as in section 927.51 of the Revised Code. 58687

(RR) "Horticulture structure" means a building or structure 58688
used exclusively for the commercial growing, raising, or 58689
overwintering of horticultural products, and includes the area 58690
used for stocking, storing, and packing horticultural products 58691
when done in conjunction with the production of those products. 58692

(SS) "Newspaper" means an unbound publication bearing a title 58693
or name that is regularly published, at least as frequently as 58694
biweekly, and distributed from a fixed place of business to the 58695
public in a specific geographic area, and that contains a 58696
substantial amount of news matter of international, national, or 58697
local events of interest to the general public. 58698

~~(TT) "Professional racing team" means a person that employs 58699
at least twenty full time employees for the purpose of conducting 58700
a motor vehicle racing business for profit. The person must 58701
conduct the business with the purpose of racing one or more motor 58702
racing vehicles in at least ten competitive professional racing 58703
events each year that comprise all or part of a motor racing 58704
series sanctioned by one or more motor racing sanctioning 58705
organizations. A "motor racing vehicle" means a vehicle for which 58706
the chassis, engine, and parts are designed exclusively for motor 58707
racing, and does not include a stock or production model vehicle 58708
that may be modified for use in racing. For the purposes of this 58709
division:~~ 58710

~~(1) A "competitive professional racing event" is a motor 58711
vehicle racing event sanctioned by one or more motor racing 58712~~

~~sanctioning organizations, at which aggregate cash prizes in excess of eight hundred thousand dollars are awarded to the competitors.~~ 58713
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~~(2) "Full-time employee" means an individual who is employed for consideration for thirty five or more hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.~~ 58716
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~~(UU)~~(1) "Prepaid authorization number" means a numeric or alphanumeric combination that represents a prepaid account that can be used by the account holder solely to obtain telecommunications service, and includes any renewals or increases in the prepaid account. 58720
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(2) "Prepaid telephone calling card" means a tangible item that contains a prepaid authorization number that can be used solely to obtain telecommunications service, and includes any renewals or increases in the prepaid account. 58725
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~~(VV)~~(UU) "Lease" means any transfer for a consideration of the possession of and right to use, but not title to, tangible personal property for a fixed period of time greater than thirty days or for an open-ended period of time with a minimum fixed period of more than thirty days. 58729
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~~(WW)~~(VV) "Mobile telecommunications service" has the same meaning as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and includes related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling. 58734
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~~(XX)~~(WW) "Certified service provider" has the same meaning as in section 5740.01 of the Revised Code. 58741
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(XX) "Cable and satellite television service" means any 58743

transmission of video or other programming service to consumers 58744
with or without the use of wires, and includes all service and 58745
rental charges, premium channels or other special services, 58746
installation and repair service charges, and any other charges 58747
having any connection with the provision of the cable and 58748
satellite television service. 58749

Sec. 5739.011. (A) As used in this section: 58750

(1) "Manufacturer" means a person who is engaged in 58751
manufacturing, processing, assembling, or refining a product for 58752
sale. 58753

(2) "Manufacturing facility" means a single location where a 58754
manufacturing operation is conducted, including locations 58755
consisting of one or more buildings or structures in a contiguous 58756
area owned or controlled by the manufacturer. 58757

(3) "Materials handling" means the movement of the product 58758
being or to be manufactured, during which movement the product is 58759
not undergoing any substantial change or alteration in its state 58760
or form. 58761

(4) "Testing" means a process or procedure to identify the 58762
properties or assure the quality of a material or product. 58763

(5) "Completed product" means a manufactured item that is in 58764
the form and condition as it will be sold by the manufacturer. An 58765
item is completed when all processes that change or alter its 58766
state or form or enhance its value are finished, even though the 58767
item subsequently will be tested to ensure its quality or be 58768
packaged for storage or shipment. 58769

(6) "Continuous manufacturing operation" means the process in 58770
which raw materials or components are moved through the steps 58771
whereby manufacturing occurs. Materials handling of raw materials 58772
or parts from the point of receipt or preproduction storage or of 58773

a completed product, to or from storage, to or from packaging, or 58774
to the place from which the completed product will be shipped, is 58775
not a part of a continuous manufacturing operation. 58776

(B) For purposes of division (E)~~(9)~~(8) of section 5739.01 of 58777
the Revised Code, the "thing transferred" includes, but is not 58778
limited to, any of the following: 58779

(1) Production machinery and equipment that act upon the 58780
product or machinery and equipment that treat the materials or 58781
parts in preparation for the manufacturing operation; 58782

(2) Materials handling equipment that moves the product 58783
through a continuous manufacturing operation; equipment that 58784
temporarily stores the product during the manufacturing operation; 58785
or, excluding motor vehicles licensed to operate on public 58786
highways, equipment used in intraplant or interplant transfers of 58787
work in process where the plant or plants between which such 58788
transfers occur are manufacturing facilities operated by the same 58789
person; 58790

(3) Catalysts, solvents, water, acids, oil, and similar 58791
consumables that interact with the product and that are an 58792
integral part of the manufacturing operation; 58793

(4) Machinery, equipment, and other tangible personal 58794
property used during the manufacturing operation that control, 58795
physically support, produce power for, lubricate, or are otherwise 58796
necessary for the functioning of production machinery and 58797
equipment and the continuation of the manufacturing operation; 58798

(5) Machinery, equipment, fuel, power, material, parts, and 58799
other tangible personal property used to manufacture machinery, 58800
equipment, or other tangible personal property used in 58801
manufacturing a product for sale; 58802

(6) Machinery, equipment, and other tangible personal 58803
property used by a manufacturer to test raw materials, the product 58804

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| being manufactured, or the completed product; | 58805 |
| (7) Machinery and equipment used to handle or temporarily store scrap that is intended to be reused in the manufacturing operation at the same manufacturing facility; | 58806 58807 58808 |
| (8) Coke, gas, water, steam, and similar substances used in the manufacturing operation; machinery and equipment used for, and fuel consumed in, producing or extracting those substances; machinery, equipment, and other tangible personal property used to treat, filter, pump, or otherwise make the substance suitable for use in the manufacturing operation; and machinery and equipment used for, and fuel consumed in, producing electricity for use in the manufacturing operation; | 58809 58810 58811 58812 58813 58814 58815 58816 |
| (9) Machinery, equipment, and other tangible personal property used to transport or transmit electricity, coke, gas, water, steam, or similar substances used in the manufacturing operation from the point of generation, if produced by the manufacturer, or from the point where the substance enters the manufacturing facility, if purchased by the manufacturer, to the manufacturing operation; | 58817 58818 58819 58820 58821 58822 58823 |
| (10) Machinery, equipment, and other tangible personal property that treats, filters, cools, refines, or otherwise renders water, steam, acid, oil, solvents, or similar substances used in the manufacturing operation reusable, provided that the substances are intended for reuse and not for disposal, sale, or transportation from the manufacturing facility; | 58824 58825 58826 58827 58828 58829 |
| (11) Parts, components, and repair and installation services for items described in division (B) of this section. | 58830 58831 |
| (C) For purposes of division (E) (9) (8) of section 5739.01 of the Revised Code, the "thing transferred" does not include any of the following: | 58832 58833 58834 |
| (1) Tangible personal property used in administrative, | 58835 |

personnel, security, inventory control, record-keeping, ordering, 58836
billing, or similar functions; 58837

(2) Tangible personal property used in storing raw materials 58838
or parts prior to the commencement of the manufacturing operation 58839
or used to handle or store a completed product, including storage 58840
that actively maintains a completed product in a marketable state 58841
or form; 58842

(3) Tangible personal property used to handle or store scrap 58843
or waste intended for disposal, sale, or other disposition, other 58844
than reuse in the manufacturing operation at the same 58845
manufacturing facility; 58846

(4) Tangible personal property that is or is to be 58847
incorporated into realty; 58848

(5) Machinery, equipment, and other tangible personal 58849
property used for ventilation, dust or gas collection, humidity or 58850
temperature regulation, or similar environmental control, except 58851
machinery, equipment, and other tangible personal property that 58852
totally regulates the environment in a special and limited area of 58853
the manufacturing facility where the regulation is essential for 58854
production to occur; 58855

(6) Tangible personal property used for the protection and 58856
safety of workers, unless the property is attached to or 58857
incorporated into machinery and equipment used in a continuous 58858
manufacturing operation; 58859

(7) Tangible personal property used to store fuel, water, 58860
solvents, acid, oil, or similar items consumed in the 58861
manufacturing operation; 58862

(8) Machinery, equipment, and other tangible personal 58863
property used to clean, repair, or maintain real or personal 58864
property in the manufacturing facility; 58865

(9) Motor vehicles registered for operation on public highways; 58866
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(10) Tangible personal property that is part of, an operating supply for, or a repair or replacement part for, an air or noise pollution control facility certified under section 5709.21 of the Revised Code. 58868
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(D) For purposes of division (E)~~(9)~~(8) of section 5739.01 of the Revised Code, if the "thing transferred" is a machine used by a manufacturer in both a taxable and an exempt manner, it shall be totally taxable or totally exempt from taxation based upon its quantified primary use. If the "things transferred" are fungibles, they shall be taxed based upon the proportion of the fungibles used in a taxable manner. 58872
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Sec. 5739.02. For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state. 58879
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(A) The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code. 58889
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The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered. 58891
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In the case of a sale, the price of which consists in whole or in part of rentals for the use of the thing transferred, the tax, as regards those rentals, shall be measured by the 58893
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| installments of those rentals. | 58896 |
| In the case of a sale of a service defined under division (MM) or (NN) of section 5739.01 of the Revised Code, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof. | 58897 58898 58899 58900 58901 |
| (B) The tax does not apply to the following: | 58902 |
| (1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions; | 58903 58904 58905 58906 |
| (2) Sales of food for human consumption off the premises where sold; | 58907 58908 |
| (3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university; | 58909 58910 58911 |
| (4) Sales of newspapers and of magazine subscriptions and sales or transfers of magazines distributed as controlled circulation publications; | 58912 58913 58914 |
| (5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done; | 58915 58916 58917 58918 |
| (6) <u>(5)</u> Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under <u>division (A) of</u> section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax | 58919 58920 58921 58922 58923 58924 58925 |

pursuant to division (A) of section 5735.14 of the Revised Code 58926
and shall cause the amount deducted to be paid into the general 58927
revenue fund of this state; 58928

~~(7)~~(6) Sales of natural gas by a natural gas company, of 58929
water by a water-works company, or of steam by a heating company, 58930
if in each case the thing sold is delivered to consumers through 58931
pipes or conduits, ~~and all sales of communications services by a~~ 58932
~~telephone or telegraph company,~~ all terms as defined in section 58933
5727.01 of the Revised Code; 58934

~~(8)~~(7) Casual sales by a person, or auctioneer employed 58935
directly by the person to conduct such sales, except as to such 58936
sales of motor vehicles, watercraft or outboard motors required to 58937
be titled under section 1548.06 of the Revised Code, watercraft 58938
documented with the United States coast guard, snowmobiles, and 58939
all-purpose vehicles as defined in section 4519.01 of the Revised 58940
Code; 58941

~~(9)~~(8) Sales of services or tangible personal property, other 58942
than motor vehicles, mobile homes, and manufactured homes, by 58943
churches, organizations exempt from taxation under section 58944
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 58945
organizations operated exclusively for charitable purposes as 58946
defined in division (B)~~(12)~~(11) of this section, provided that the 58947
number of days on which such tangible personal property or 58948
services, other than items never subject to the tax, are sold does 58949
not exceed six in any calendar year. If the number of days on 58950
which such sales are made exceeds six in any calendar year, the 58951
church or organization shall be considered to be engaged in 58952
business and all subsequent sales by it shall be subject to the 58953
tax. In counting the number of days, all sales by groups within a 58954
church or within an organization shall be considered to be sales 58955
of that church or organization, except that sales made by separate 58956
student clubs and other groups of students of a primary or 58957

secondary school, and sales made by a parent-teacher association, 58958
booster group, or similar organization that raises money to 58959
support or fund curricular or extracurricular activities of a 58960
primary or secondary school, shall not be considered to be sales 58961
of such school, and sales by each such club, group, association, 58962
or organization shall be counted separately for purposes of the 58963
six-day limitation. This division does not apply to sales by a 58964
noncommercial educational radio or television broadcasting 58965
station. 58966

~~(10)~~(9) Sales not within the taxing power of this state under 58967
the Constitution of the United States; 58968

~~(11)~~The (10) Except for transactions that are sales under 58969
divisions (B)(3)(s) and (t) of section 5739.01 of the Revised 58970
Code, the transportation of persons or property, unless the 58971
transportation is by a private investigation and security service; 58972

~~(12)~~(11) Sales of tangible personal property or services to 58973
churches, to organizations exempt from taxation under section 58974
501(c)(3) of the Internal Revenue Code of 1986, and to any other 58975
nonprofit organizations operated exclusively for charitable 58976
purposes in this state, no part of the net income of which inures 58977
to the benefit of any private shareholder or individual, and no 58978
substantial part of the activities of which consists of carrying 58979
on propaganda or otherwise attempting to influence legislation; 58980
sales to offices administering one or more homes for the aged or 58981
one or more hospital facilities exempt under section 140.08 of the 58982
Revised Code; and sales to organizations described in division (D) 58983
of section 5709.12 of the Revised Code. 58984

"Charitable purposes" means the relief of poverty; the 58985
improvement of health through the alleviation of illness, disease, 58986
or injury; the operation of an organization exclusively for the 58987
provision of professional, laundry, printing, and purchasing 58988
services to hospitals or charitable institutions; the operation of 58989

a home for the aged, as defined in section 5701.13 of the Revised Code; ~~the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station;~~ the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; ~~the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts;~~ or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.

~~(13)~~(12) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or

improvement to real property that are accepted for ownership by 59022
this state or any of its political subdivisions, or by the United 59023
States government or any of its agencies at the time of completion 59024
of the structures or improvements; building and construction 59025
materials sold to construction contractors for incorporation into 59026
a horticulture structure or livestock structure for a person 59027
engaged in the business of horticulture or producing livestock; 59028
building materials and services sold to a construction contractor 59029
for incorporation into a house of public worship or religious 59030
education, or a building used exclusively for charitable purposes 59031
under a construction contract with an organization whose purpose 59032
is as described in division (B)~~(12)~~(11) of this section; building 59033
materials and services sold to a construction contractor for 59034
incorporation into a building under a construction contract with 59035
an organization exempt from taxation under section 501(c)(3) of 59036
the Internal Revenue Code of 1986 when the building is to be used 59037
exclusively for the organization's exempt purposes; building and 59038
construction materials sold for incorporation into the original 59039
construction of a sports facility under section 307.696 of the 59040
Revised Code; and building and construction materials and services 59041
sold to a construction contractor for incorporation into real 59042
property outside this state if such materials and services, when 59043
sold to a construction contractor in the state in which the real 59044
property is located for incorporation into real property in that 59045
state, would be exempt from a tax on sales levied by that state; 59046

~~(14) Sales of ships or vessels or rail rolling stock used or 59047
to be used principally in interstate or foreign commerce, and 59048
repairs, alterations, fuel, and lubricants for such ships or 59049
vessels or rail rolling stock; 59050~~

~~(15)~~(13) Sales to persons engaged in any of the activities 59051
mentioned in division (E)(2) or ~~(9)~~(8) of section 5739.01 of the 59052
Revised Code, to persons engaged in making retail sales, or to 59053

persons who purchase for sale from a manufacturer tangible 59054
personal property that was produced by the manufacturer in 59055
accordance with specific designs provided by the purchaser, of 59056
packages, including material, labels, and parts for packages, and 59057
of machinery, equipment, and material for use primarily in 59058
packaging tangible personal property produced for sale, including 59059
any machinery, equipment, and supplies used to make labels or 59060
packages, to prepare packages or products for labeling, or to 59061
label packages or products, by or on the order of the person doing 59062
the packaging, or sold at retail. "Packages" includes bags, 59063
baskets, cartons, crates, boxes, cans, bottles, bindings, 59064
wrappings, and other similar devices and containers, and 59065
"packaging" means placing therein. 59066

~~(16)~~(14) Sales of food to persons using food stamp benefits 59067
to purchase the food. As used in this division ~~(B)~~(16) ~~of this~~ 59068
~~section~~, "food" has the same meaning as in the "Food Stamp Act of 59069
1977," 91 Stat. 958, 7 U.S.C. 2012, as amended, and federal 59070
regulations adopted pursuant to that act. 59071

~~(17)~~(15) Sales to persons engaged in farming, agriculture, 59072
horticulture, or floriculture, of tangible personal property for 59073
use or consumption directly in the production by farming, 59074
agriculture, horticulture, or floriculture of other tangible 59075
personal property for use or consumption directly in the 59076
production of tangible personal property for sale by farming, 59077
agriculture, horticulture, or floriculture; or material and parts 59078
for incorporation into any such tangible personal property for use 59079
or consumption in production; and of tangible personal property 59080
for such use or consumption in the conditioning or holding of 59081
products produced by and for such use, consumption, or sale by 59082
persons engaged in farming, agriculture, horticulture, or 59083
floriculture, except where such property is incorporated into real 59084
property; 59085

~~(18)~~(16) Sales of drugs dispensed by a licensed pharmacist 59086
upon the order of a licensed health professional authorized to 59087
prescribe drugs to a human being, as the term "licensed health 59088
professional authorized to prescribe drugs" is defined in section 59089
4729.01 of the Revised Code; insulin as recognized in the official 59090
United States pharmacopoeia; urine and blood testing materials 59091
when used by diabetics or persons with hypoglycemia to test for 59092
glucose or acetone; hypodermic syringes and needles when used by 59093
diabetics for insulin injections; epoetin alfa when purchased for 59094
use in the treatment of persons with end-stage renal disease; 59095
hospital beds when purchased for use by persons with medical 59096
problems for medical purposes; and oxygen and oxygen-dispensing 59097
equipment when purchased for use by persons with medical problems 59098
for medical purposes; 59099

~~(19)~~(17)(a) Sales of artificial limbs or portion thereof, 59100
breast prostheses, and other prosthetic devices for humans; braces 59101
or other devices for supporting weakened or nonfunctioning parts 59102
of the human body; crutches or other devices to aid human 59103
perambulation; and items of tangible personal property used to 59104
supplement impaired functions of the human body such as 59105
respiration, hearing, or elimination; 59106

(b) Sales of wheelchairs; items incorporated into or used in 59107
conjunction with a motor vehicle for the purpose of transporting 59108
wheelchairs, other than transportation conducted in connection 59109
with the sale or delivery of wheelchairs; and items incorporated 59110
into or used in conjunction with a motor vehicle that are 59111
specifically designed to assist a person with a disability to 59112
access or operate the motor vehicle. As used in this division, 59113
"person with a disability" means any person who has lost the use 59114
of one or both legs or one or both arms, who is blind, deaf, or 59115
disabled to the extent that the person is unable to move about 59116
without the aid of crutches or a wheelchair, or whose mobility is 59117

restricted by a permanent cardiovascular, pulmonary, or other 59118
disabling condition. 59119

(c) No exemption under this division shall be allowed for 59120
nonprescription drugs, medicines, or remedies; items or devices 59121
used to supplement vision; items or devices whose function is 59122
solely or primarily cosmetic; or physical fitness equipment. This 59123
division does not apply to sales to a physician or medical 59124
facility for use in the treatment of a patient. 59125

~~(20) Sales of emergency and fire protection vehicles and 59126
equipment to nonprofit organizations for use solely in providing 59127
fire protection and emergency services, including trauma care and 59128
emergency medical services, for political subdivisions of the 59129
state;~~ 59130

~~(21) Sales of tangible personal property manufactured in this 59131
state, if sold by the manufacturer in this state to a retailer for 59132
use in the retail business of the retailer outside of this state 59133
and if possession is taken from the manufacturer by the purchaser 59134
within this state for the sole purpose of immediately removing the 59135
same from this state in a vehicle owned by the purchaser;~~ 59136

~~(22)~~(18) Sales of services provided by the state or any of 59137
its political subdivisions, agencies, instrumentalities, 59138
institutions, or authorities, or by governmental entities of the 59139
state or any of its political subdivisions, agencies, 59140
instrumentalities, institutions, or authorities; 59141

~~(23)~~(19) Sales of motor vehicles to nonresidents of this 59142
state upon the presentation of an affidavit executed in this state 59143
by the nonresident purchaser affirming that the purchaser is a 59144
nonresident of this state, that possession of the motor vehicle is 59145
taken in this state for the sole purpose of immediately removing 59146
it from this state, that the motor vehicle will be permanently 59147
titled and registered in another state, and that the motor vehicle 59148

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| will not be used in this state; | 59149 |
| (24) (20) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein. | 59150 59151 59152 59153 59154 59155 59156 59157 59158 59159 59160 59161 59162 59163 59164 |
| (25)(a) Sales of water to a consumer for residential use, except the sale of bottled water, distilled water, mineral water, carbonated water, or ice; | 59165 59166 59167 |
| (b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing. | 59168 59169 59170 59171 |
| (26) (21) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code; | 59172 59173 |
| (27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following: | 59174 59175 59176 59177 |
| (a) To prepare food for human consumption for sale; | 59178 |
| (b) To preserve food that has been or will be prepared for | 59179 |

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| human consumption for sale by the food service operator, not | 59180 |
| including tangible personal property used to display food for | 59181 |
| selection by the consumer; | 59182 |
| (c) To clean tangible personal property used to prepare or | 59183 |
| serve food for human consumption for sale. | 59184 |
| (28) Sales of animals by nonprofit animal adoption services | 59185 |
| or county humane societies; | 59186 |
| (29) <u>(22)</u> Sales of services to a corporation described in | 59187 |
| division (A) of section 5709.72 of the Revised Code, and sales of | 59188 |
| tangible personal property that qualifies for exemption from | 59189 |
| taxation under section 5709.72 of the Revised Code; | 59190 |
| (30) <u>(23)</u> Sales and installation of agricultural land tile, as | 59191 |
| defined in division (B)(5)(a) of section 5739.01 of the Revised | 59192 |
| Code; | 59193 |
| (31) <u>(24)</u> Sales and erection or installation of portable grain | 59194 |
| bins, as defined in division (B)(5)(b) of section 5739.01 of the | 59195 |
| Revised Code; | 59196 |
| (32) <u>(25)</u> The sale, lease, repair, and maintenance of, parts | 59197 |
| for, or items attached to or incorporated in, <u>licensed</u> motor | 59198 |
| vehicles that are primarily used <u>on highways, roadways, streets,</u> | 59199 |
| <u>or any similar public thoroughfares</u> for transporting tangible | 59200 |
| personal property by a person engaged in highway transportation | 59201 |
| for hire; | 59202 |
| (33) Sales to the state headquarters of any veterans' | 59203 |
| organization in this state that is either incorporated and issued | 59204 |
| a charter by the congress of the United States or is recognized by | 59205 |
| the United States veterans administration, for use by the | 59206 |
| headquarters; | 59207 |
| (34) <u>(26)</u> Sales to a telecommunications service, <u>cable and</u> | 59208 |
| <u>satellite television service, or mobile telecommunications service</u> | 59209 |

vendor of tangible personal property and services used directly 59210
and primarily in transmitting, receiving, switching, or recording 59211
any interactive, one- or two-way electromagnetic communications, 59212
including voice, image, data, and information, through the use of 59213
any medium, including, but not limited to, poles, wires, cables, 59214
switching equipment, computers, and record storage devices and 59215
media, and component parts for the tangible personal property. An 59216
exemption under this division cannot be claimed on any tangible 59217
personal property that is part of, an operating supply for, or a 59218
repair or replacement part for, an air or noise pollution control 59219
facility certified under section 5709.21 of the Revised Code. The 59220
exemption provided in this division ~~(B)(34) of this section~~ shall 59221
be in lieu of all other exceptions under division (E)(2) of 59222
section 5739.01 of the Revised Code to which ~~a telecommunications~~ 59223
~~service~~ the vendor may otherwise be entitled, based upon the use 59224
of the thing purchased in providing the telecommunications 59225
service, cable and satellite television service, and mobile 59226
telecommunications service. 59227

~~(35)~~(27) Sales of investment metal bullion and investment 59228
coins. "Investment metal bullion" means any elementary precious 59229
metal that has been put through a process of smelting or refining, 59230
including, but not limited to, gold, silver, platinum, and 59231
palladium, and which is in such state or condition that its value 59232
depends upon its content and not upon its form. "Investment metal 59233
bullion" does not include fabricated precious metal that has been 59234
processed or manufactured for one or more specific and customary 59235
industrial, professional, or artistic uses. "Investment coins" 59236
means numismatic coins or other forms of money and legal tender 59237
manufactured of gold, silver, platinum, palladium, or other metal 59238
under the laws of the United States or any foreign nation with a 59239
fair market value greater than any statutory or nominal value of 59240
such coins. 59241

~~(36)~~(28)(a) Sales where the purpose of the consumer is to use 59242
or consume the things transferred in making retail sales and 59243
consisting of newspaper inserts, catalogues, coupons, flyers, gift 59244
certificates, or other advertising material that prices and 59245
describes tangible personal property offered for retail sale. 59246

(b) Sales to direct marketing vendors of preliminary 59247
materials such as photographs, artwork, and typesetting that will 59248
be used in printing advertising material; of printed matter that 59249
offers free merchandise or chances to win sweepstake prizes and 59250
that is mailed to potential customers with advertising material 59251
described in division (B)~~(36)~~(28)(a) of this section; and of 59252
equipment such as telephones, computers, facsimile machines, and 59253
similar tangible personal property primarily used to accept orders 59254
for direct marketing retail sales. 59255

(c) Sales of automatic food vending machines that preserve 59256
food with a shelf life of forty-five days or less by refrigeration 59257
and dispense it to the consumer. 59258

For purposes of division (B)~~(36)~~(28) of this section, "direct 59259
marketing" means the method of selling where consumers order 59260
tangible personal property by United States mail, delivery 59261
service, or telecommunication and the vendor delivers or ships the 59262
tangible personal property sold to the consumer from a warehouse, 59263
catalogue distribution center, or similar fulfillment facility by 59264
means of the United States mail, delivery service, or common 59265
carrier. 59266

~~(37)~~(29) Sales to a person engaged in the business of 59267
horticulture or producing livestock of materials to be 59268
incorporated into a horticulture structure or livestock structure; 59269

~~(38) The sale of a motor vehicle that is used exclusively for 59270
a vanpool ridesharing arrangement to persons participating in the 59271
vanpool ridesharing arrangement when the vendor is selling the 59272~~

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| vehicle pursuant to a contract between the vendor and the | 59273 |
| department of transportation; | 59274 |
| (39) <u>(30)</u> Sales of personal computers, computer monitors, | 59275 |
| computer keyboards, modems, and other peripheral computer | 59276 |
| equipment to an individual who is licensed or certified to teach | 59277 |
| in an elementary or a secondary school in this state for use by | 59278 |
| that individual in preparation for teaching elementary or | 59279 |
| secondary school students; | 59280 |
| (40) Sales to a professional racing team of any of the | 59281 |
| following; | 59282 |
| (a) Motor racing vehicles; | 59283 |
| (b) Repair services for motor racing vehicles; | 59284 |
| (c) Items of property that are attached to or incorporated in | 59285 |
| motor racing vehicles, including engines, chassis, and all other | 59286 |
| components of the vehicles, and all spare, replacement, and | 59287 |
| rebuilt parts or components of the vehicles; except not including | 59288 |
| tires, consumable fluids, paint, and accessories consisting of | 59289 |
| instrumentation sensors and related items added to the vehicle to | 59290 |
| collect and transmit data by means of telemetry and other forms of | 59291 |
| communication. | 59292 |
| (41) <u>(31)</u> Sales of used manufactured homes and used mobile | 59293 |
| homes, as defined in section 5739.0210 of the Revised Code, made | 59294 |
| on or after January 1, 2000; | 59295 |
| (42) <u>(32)</u> Sales of tangible personal property and services to | 59296 |
| a provider of electricity used or consumed directly and primarily | 59297 |
| in generating, transmitting, or distributing electricity for use | 59298 |
| by others, including property that is or is to be incorporated | 59299 |
| into and will become a part of the consumer's production, | 59300 |
| transmission, or distribution system and that retains its | 59301 |
| classification as tangible personal property after incorporation; | 59302 |
| fuel or power used in the production, transmission, or | 59303 |

distribution of electricity; and tangible personal property and 59304
services used in the repair and maintenance of the production, 59305
transmission, or distribution system, including only those motor 59306
vehicles as are specially designed and equipped for such use. 59307
Tangible personal property that is part of, an operating supply 59308
for, or a repair or replacement part for, an air or noise 59309
pollution control facility certified under section 5709.21 of the 59310
Revised Code is not used or consumed directly and primarily in 59311
generating, transmitting, or distributing electricity. The 59312
exemption provided in this division shall be in lieu of all other 59313
exceptions in division (E)(2) of section 5739.01 of the Revised 59314
Code to which a provider of electricity may otherwise be entitled 59315
based on the use of the tangible personal property or service 59316
purchased in generating, transmitting, or distributing 59317
electricity. 59318

(33) Sales to a person providing services under divisions 59319
(B)(3)(s) and (t) of section 5739.01 of the Revised Code of 59320
tangible personal property and services used directly and 59321
primarily in providing taxable services under that section. An 59322
exemption under this division cannot be claimed on any tangible 59323
personal property that is part of, an operating supply for, or a 59324
repair or replacement part for, an air or noise pollution control 59325
facility certified under section 5709.21 of the Revised Code; 59326

(34) Sales of telecommunications service that is used 59327
directly and primarily to perform the functions of a call center. 59328
As used in this division, "call center" means any physical 59329
location where telephone calls are placed or received in high 59330
volume for the purpose of making sales, marketing, customer 59331
service, technical support, or other specialized business 59332
activity, and that employs at least fifty individuals that engage 59333
in call center activities on a full-time basis, or sufficient 59334
individuals to fill fifty full-time equivalent positions. "Call 59335

center" does not include any location where telephone calls are 59336
primarily placed to or received from the same person, or 59337
affiliates of the same person, that owns or operates the location. 59338

For the purpose of the proper administration of this chapter, 59339
and to prevent the evasion of the tax, it is presumed that all 59340
sales made in this state are subject to the tax until the contrary 59341
is established. 59342

As used in this section, except in division (B)~~(16)~~(14) of 59343
this section, "food" includes cereals and cereal products, milk 59344
and milk products including ice cream, meat and meat products, 59345
fish and fish products, eggs and egg products, vegetables and 59346
vegetable products, fruits, fruit products, and pure fruit juices, 59347
condiments, sugar and sugar products, coffee and coffee 59348
substitutes, tea, and cocoa and cocoa products. It does not 59349
include: spirituous liquors, wine, mixed beverages, or beer; soft 59350
drinks; sodas and beverages that are ordinarily dispensed at or in 59351
connection with bars and soda fountains, other than coffee, tea, 59352
and cocoa; root beer and root beer extracts; malt and malt 59353
extracts; mineral oils, cod liver oils, and halibut liver oil; 59354
medicines, including tonics, vitamin preparations, and other 59355
products sold primarily for their medicinal properties; and water, 59356
including mineral, bottled, and carbonated waters, and ice. 59357

(C) The levy of this tax on retail sales of recreation and 59358
sports club service shall not prevent a municipal corporation from 59359
levying any tax on recreation and sports club dues or on any 59360
income generated by recreation and sports club dues. 59361

Sec. 5739.03. Except as provided in section 5739.05 of the 59362
Revised Code, the tax imposed by or pursuant to section 5739.02, 59363
5739.021, 5739.023, or 5739.026 of the Revised Code shall be paid 59364
by the consumer to the vendor, and each vendor shall collect from 59365
the consumer, as a trustee for the state of Ohio, the full and 59366

exact amount of the tax payable on each taxable sale, in the 59367
manner and at the times provided as follows: 59368

(A) If the price is, at or prior to the provision of the 59369
service or the delivery of possession of the thing sold to the 59370
consumer, paid in currency passed from hand to hand by the 59371
consumer or the consumer's agent to the vendor or the vendor's 59372
agent, the vendor or the vendor's agent shall collect the tax with 59373
and at the same time as the price; 59374

(B) If the price is otherwise paid or to be paid, the vendor 59375
or the vendor's agent shall, at or prior to the provision of the 59376
service or the delivery of possession of the thing sold to the 59377
consumer, charge the tax imposed by or pursuant to section 59378
5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to 59379
the account of the consumer, which amount shall be collected by 59380
the vendor from the consumer in addition to the price. Such sale 59381
shall be reported on and the amount of the tax applicable thereto 59382
shall be remitted with the return for the period in which the sale 59383
is made, and the amount of the tax shall become a legal charge in 59384
favor of the vendor and against the consumer. 59385

If any sale is claimed to be exempt under division (E) of 59386
section 5739.01 of the Revised Code or under section 5739.02 of 59387
the Revised Code, with the exception of divisions (B)(1) to ~~(11)~~ 59388
~~or (28)~~(10) of section 5739.02 of the Revised Code, the consumer 59389
must furnish to the vendor, and the vendor must obtain from the 59390
consumer, a certificate specifying the reason that the sale is not 59391
legally subject to the tax. If the transaction is claimed to be 59392
exempt under division (B)~~(13)~~(12) of section 5739.02 of the 59393
Revised Code, the exemption certificate shall be signed by both 59394
the contractor and the contractee and such contractee shall be 59395
deemed to be the consumer of all items purchased under such claim 59396
of exemption in the event it is subsequently determined that the 59397
exemption is not properly claimed. The certificate shall be in 59398

such form as the tax commissioner by regulation prescribes. If no 59399
certificate is furnished or obtained within the period for filing 59400
the return for the period in which such sale is consummated, it 59401
shall be presumed that the tax applies. ~~The~~ Failure to have so 59402
furnished, or to have so obtained, a certificate shall not prevent 59403
a vendor or consumer from establishing that the sale is not 59404
~~subject~~ subject to the tax within ~~sixty~~ one hundred twenty days of 59405
the giving of notice by the commissioner of intention to levy an 59406
~~assessment~~ assessment, in which event the tax shall not apply. 59407

Certificates need not be obtained nor furnished where the 59408
identity of the consumer is such that the transaction is never 59409
subject to the tax imposed or where the item of tangible personal 59410
property sold or the service provided is never subject to the tax 59411
imposed, regardless of use, or when the sale is in interstate 59412
commerce. 59413

(C) As used in this division, "contractee" means a person who 59414
seeks to enter or enters into a contract or agreement with a 59415
contractor or vendor for the construction of real property or for 59416
the sale and installation onto real property of tangible personal 59417
property. 59418

Any contractor or vendor may request from any contractee a 59419
certification of what portion of the property to be transferred 59420
under such contract or agreement is to be incorporated into the 59421
realty and what portion will retain its status as tangible 59422
personal property after installation is completed. The contractor 59423
or vendor shall request the certification by certified mail 59424
delivered to the contractee, return receipt requested. Upon 59425
receipt of such request and prior to entering into the contract or 59426
agreement, the contractee shall furnish to the contractor or 59427
vendor a certification sufficiently detailed to enable the 59428
contractor or vendor to ascertain the resulting classification of 59429
all materials purchased or fabricated by the contractor or vendor 59430

and transferred to the contractee. This requirement applies to a 59431
contractee regardless of whether the contractee holds a direct 59432
payment permit under section 5739.031 of the Revised Code or 59433
furnishes to the contractor or vendor an exemption certificate as 59434
provided under this section. 59435

For the purposes of the taxes levied by this chapter and 59436
Chapter 5741. of the Revised Code, the contractor or vendor may in 59437
good faith rely on the contractee's certification. Notwithstanding 59438
division (B) of section 5739.01 of the Revised Code, if the tax 59439
commissioner determines that certain property certified by the 59440
contractee as tangible personal property pursuant to this division 59441
is, in fact, real property, the contractee shall be considered to 59442
be the consumer of all materials so incorporated into that real 59443
property and shall be liable for the applicable tax, and the 59444
contractor or vendor shall be excused from any liability on those 59445
materials. 59446

If a contractee fails to provide such certification upon the 59447
request of the contractor or vendor, the contractor or vendor 59448
shall comply with the provisions of this chapter and Chapter 5741. 59449
of the Revised Code without the certification. If the tax 59450
commissioner determines that such compliance has been performed in 59451
good faith and that certain property treated as tangible personal 59452
property by the contractor or vendor is, in fact, real property, 59453
the contractee shall be considered to be the consumer of all 59454
materials so incorporated into that real property and shall be 59455
liable for the applicable tax and the construction contractor or 59456
vendor shall be excused from any liability on those materials. 59457

This division does not apply to any contract or agreement 59458
where the tax commissioner determines as a fact that a 59459
certification under this division was made solely on the decision 59460
or advice of the contractor or vendor. 59461

(D) Notwithstanding division (B) of section 5739.01 of the 59462

Revised Code, whenever the total rate of tax imposed under this 59463
chapter is increased after the date after a construction contract 59464
is entered into, the contractee shall reimburse the construction 59465
contractor for any additional tax paid on tangible property 59466
consumed or services received pursuant to the contract. 59467

(E) A vendor who files a petition for reassessment contesting 59468
the assessment of tax on sales for which the vendor obtained no 59469
valid exemption certificates and for which the vendor failed to 59470
establish that the sales were properly not subject to the tax 59471
during the one-hundred-twenty-day period allowed under division 59472
(B) of this section, may present to the tax commissioner 59473
additional evidence to prove that the sales were properly subject 59474
to a claim of exception or exemption. The vendor shall file such 59475
evidence within ninety days of the receipt by the vendor of the 59476
notice of assessment, except that, upon application and for 59477
reasonable cause, the period for submitting such evidence shall be 59478
extended thirty days. 59479

The commissioner shall consider such additional evidence in 59480
reaching the final determination on the assessment and petition 59481
for reassessment. 59482

(F) Whenever a vendor refunds to the consumer the full price 59483
of an item of tangible personal property on which the tax imposed 59484
under this chapter has been paid, the vendor shall also refund the 59485
full amount of the tax paid. 59486

Sec. 5739.071. (A) The tax commissioner shall refund to a 59487
provider that makes sales of electronic information services 59488
twenty-five per cent of the tax it pays pursuant to this chapter 59489
or Chapter 5741. of the Revised Code on purchases ~~made on or after~~ 59490
~~July 1, 1993,~~ of computers, computer peripherals, software, 59491
telecommunications equipment, and similar tangible personal 59492
property, primarily used to acquire, process, or store information 59493

for use by business customers or to transmit or disseminate such 59494
information to such customers, the services of installing or 59495
repairing such property, and agreements to repair or maintain such 59496
property. Business customers do not include members of an 59497
affiliated group, as described in division (B)(3)(e) of section 59498
5739.01 of the Revised Code, of which the electronic information 59499
service provider is also a member. Applications for a refund shall 59500
be made in the same manner and subject to the same time 59501
limitations as provided in sections 5739.07 and 5741.10 of the 59502
Revised Code. 59503

(B) An electronic information service provider that maintains 59504
direct payment authority under section 5739.031 of the Revised 59505
Code may list on the return and pay tax on seventy-five per cent 59506
of the price of equipment, services, and agreements described 59507
under division (A) of this section, in lieu of seeking a refund as 59508
provided in that division. 59509

Sec. 5739.12. Each (A) Except as provided in division (B) of 59510
this section, each person who has or is required to have a 59511
vendor's license, on or before the twenty-third day of each month, 59512
shall make and file a return for the preceding month, ~~on forms in~~ 59513
an electronic format prescribed by the tax commissioner, and shall 59514
pay electronically, in the manner specified by the commissioner, 59515
the tax shown on the return to be due. ~~The~~ Nothing in this 59516
division shall be construed as affecting section 5739.122 of the 59517
Revised Code, and that section takes precedence over this section. 59518

(B) Unless the commissioner adopts rules under section 59519
5703.054 of the Revised Code that require vendors to file returns 59520
in an electronic format or make payments electronically, a vendor, 59521
on or before the tenth day of each month, shall file a return for 59522
the preceding month on paper forms prescribed by the tax 59523
commissioner and shall pay the tax shown on the return to be due. 59524

(C)(1) The return shall show the amount of tax due from the vendor to the state for the period covered by the return and such other information as the commissioner deems necessary for the proper administration of this chapter. The commissioner may extend the time for making and filing returns and paying the tax, ~~and may require that the return for the last month of any annual or semiannual period, as determined by the commissioner, be a reconciliation return detailing the vendor's sales activity for the preceding annual or semiannual period. The reconciliation return shall be filed by the last day of the month following the last month of the annual or semiannual period.~~ The commissioner may remit all or any part of amounts or penalties ~~which~~ that may become due under this chapter, and may adopt rules relating thereto. ~~Such~~

(2) A paper return filed under division (B) of this section shall be filed by mailing it to the tax commissioner, together with payment of the amount of tax shown to be due thereon after deduction of any discount provided for under this section. Remittance shall be made payable to the treasurer of state. The paper return shall be considered filed when received by the tax commissioner, and ~~the~~ payment shall be considered made when received by the ~~tax~~ commissioner or when credited to an account designated by the treasurer of state or the tax commissioner. ~~If~~

(3) A return filed in an electronic format under division (A) of this section is considered filed when transmitted, as prescribed by the commissioner. A payment made electronically under division (A) of this section is considered made when the payment is received by the treasurer of state or credited to an account designated by the treasurer of state for the receipt of tax payments.

(D)(1) If the return is filed and the amount of tax shown thereon to be due is paid on or before the date such return is

required to be filed, the vendor shall be entitled to a the 59557
following discount ~~of three fourths of one per cent of the amount~~ 59558
~~shown to be due on the return. Amounts:~~ 59559

(a) A vendor that is required to remit sales taxes by 59560
electronic funds transfer under section 5739.122 of the Revised 59561
Code is entitled to a discount of one-half of one per cent of the 59562
amount shown on the return to be due. 59563

(b) A vendor that is not required to remit sales taxes by 59564
electronic funds transfer under section 5739.122 of the Revised 59565
Code is entitled to a discount of one per cent of the amount shown 59566
on the return to be due. 59567

(2) Notwithstanding division (D)(1) of this section, amounts 59568
paid to the clerk of courts pursuant to section 1548.06 or 4505.06 59569
of the Revised Code shall be subject to ~~the three fourths of one~~ 59570
~~per cent~~ a discount of one-half of one per cent. The discount 59571
shall be in consideration for prompt payment to the clerk of 59572
courts and for other services performed by the vendor in the 59573
collection of the tax. 59574

(E) Upon application to the commissioner, a vendor who is 59575
required to file monthly returns may be relieved of the 59576
requirement to report and pay the actual tax due, provided that 59577
the vendor agrees to remit to the tax commissioner payment of not 59578
less than an amount determined by the commissioner to be the 59579
average monthly tax liability of the vendor, based upon a review 59580
of the returns or other information pertaining to such vendor for 59581
a period of not less than six months nor more than two years 59582
immediately preceding the filing of the application. Vendors who 59583
agree to the above conditions shall make and file an annual or 59584
semiannual reconciliation return, as prescribed by the 59585
commissioner. The reconciliation return shall be filed by mailing 59586
or delivering it to the tax commissioner, together with payment of 59587
the amount of tax shown to be due thereon after deduction of any 59588

discount provided in this section. Remittance shall be made 59589
payable to the treasurer of state. Failure of a vendor to comply 59590
with any of the above conditions may result in immediate 59591
reinstatement of the requirement of reporting and paying the 59592
actual tax liability on each monthly return, and the commissioner 59593
may at the commissioner's discretion deny the vendor the right to 59594
report and pay based upon the average monthly liability for a 59595
period not to exceed two years. The amount ascertained by the 59596
commissioner to be the average monthly tax liability of a vendor 59597
may be adjusted, based upon a review of the returns or other 59598
information pertaining to the vendor for a period of not less than 59599
six months nor more than two years preceding such adjustment. 59600

(F) The commissioner may authorize vendors whose tax 59601
liability is not such as to merit monthly returns, as ascertained 59602
by the commissioner upon the basis of administrative costs to the 59603
state, to make and file returns at less frequent intervals. When 59604
returns are filed at less frequent intervals in accordance with 59605
such authorization, the vendor shall be allowed the discount of 59606
three-fourths of one per cent in consideration for prompt payment 59607
with the return, provided the return is filed together with 59608
payment of the amount of tax shown to be due thereon, at the time 59609
specified by the commissioner. 59610

(G) Any vendor who fails to file a return or pay the full 59611
amount of the tax shown on the return to be due under this section 59612
and the rules of the commissioner may, for each such return the 59613
vendor fails to file or each such tax the vendor fails to pay in 59614
full as shown on the return within the period prescribed by this 59615
section and the rules of the commissioner, be required to forfeit 59616
and pay into the state treasury an additional charge not exceeding 59617
fifty dollars or ten per cent of the tax required to be paid for 59618
the reporting period, whichever is greater, as revenue arising 59619
from the tax imposed by this chapter, and such sum may be 59620

collected by assessment in the manner provided in section 5739.13 59621
of the Revised Code. The commissioner may remit all or a portion 59622
of the additional charge and may adopt rules relating to the 59623
imposition and remission of the additional charge. 59624

(H) If the amount required to be collected by a vendor from 59625
consumers is in excess of five per cent of the vendor's receipts 59626
from sales which are taxable under section 5739.02 of the Revised 59627
Code, or in the case of sales subject to a tax levied pursuant to 59628
section 5739.021, 5739.023, or 5739.026 of the Revised Code, in 59629
excess of the percentage equal to the aggregate rate of such taxes 59630
and the tax levied by section 5739.02 of the Revised Code, such 59631
excess shall be remitted along with the remittance of the amount 59632
of tax due under section 5739.10 of the Revised Code. 59633

(I) The commissioner, if the commissioner deems it necessary 59634
in order to insure the payment of the tax imposed by this chapter, 59635
may require returns and payments to be made for other than monthly 59636
periods. The returns shall be signed by the vendor or the vendor's 59637
authorized agent. 59638

(J) Any vendor required to file a return and pay the tax 59639
under this section whose total payment in any year indicated in 59640
division (A) of section 5739.122 of the Revised Code equals or 59641
exceeds the amount shown in that division shall make each payment 59642
required by this section in the second ensuing and each succeeding 59643
year by electronic funds transfer as prescribed by section 59644
5739.122 of the Revised Code, except as otherwise prescribed by 59645
that section. 59646

(K) The commissioner may require any vendor that operates 59647
from multiple locations or has multiple vendor's licenses to 59648
report all tax liability on one consolidated return. 59649

Sec. 5739.17. (A) No person shall engage in making retail 59650
sales subject to a tax imposed by or pursuant to section 5739.02, 59651

5739.021, 5739.023, or 5739.026 of the Revised Code as a business 59652
without having a license therefor, except as otherwise provided in 59653
divisions (A)(1), (2), and (3) of this section. 59654

(1) In the dissolution of a partnership by death, the 59655
surviving partner may operate under the license of the partnership 59656
for a period of sixty days. 59657

(2) The heirs or legal representatives of deceased persons, 59658
and receivers and trustees in bankruptcy, appointed by any 59659
competent authority, may operate under the license of the person 59660
so succeeded in possession. 59661

(3) Two or more persons who are not partners may operate a 59662
single place of business under one license. In such case neither 59663
the retirement of any such person from business at that place of 59664
business, nor the entrance of any person, under an existing 59665
arrangement, shall affect the license or require the issuance of a 59666
new license, unless the person retiring from the business is the 59667
individual named on the vendor's license. 59668

Except as otherwise provided in this section, each applicant 59669
for a license shall make out and deliver to the county auditor of 59670
each county in which the applicant desires to engage in business, 59671
upon a blank to be furnished by such auditor for that purpose, a 59672
statement showing the name of the applicant, each place of 59673
business in the county where the applicant will make retail sales, 59674
the nature of the business, and any other information the tax 59675
commissioner reasonably prescribes in the form of a statement 59676
prescribed by the commissioner. 59677

At the time of making the application, the applicant shall 59678
pay into the county treasury a license fee in the sum of 59679
twenty-five dollars for each fixed place of business in the county 59680
that will be the situs of retail sales. Upon receipt of the 59681
application and exhibition of the county treasurer's receipt, 59682

showing the payment of the license fee, the county auditor shall 59683
issue to the applicant a license for each fixed place of business 59684
designated in the application, authorizing the applicant to engage 59685
in business at that location. If a vendor's identity changes, the 59686
vendor shall apply for a new license. If a vendor wishes to move 59687
an existing fixed place of business to a new location within the 59688
same county, the vendor shall obtain a new vendor's license or 59689
submit a request to the tax commissioner to transfer the existing 59690
vendor's license to the new location. When the new location has 59691
been verified as being within the same county, the commissioner 59692
shall authorize the transfer and notify the county auditor of the 59693
change of location. If a vendor wishes to move an existing fixed 59694
place of business to another county, the vendor's license shall 59695
not transfer and the vendor shall obtain a new vendor's license 59696
from the county in which the business is to be located. The form 59697
of the license shall be prescribed by the commissioner. The fees 59698
collected shall be credited to the general fund of the county. 59699

~~A vendor that makes retail sales subject to tax under Chapter 59700
5739. of the Revised Code pursuant to a permit issued by the 59701
division of liquor control shall obtain a vendor's license in the 59702
identical name and for the identical address as shown on the 59703
permit. 59704~~

Except as otherwise provided in this section, if a vendor has 59705
no fixed place of business and sells from a vehicle, each vehicle 59706
intended to be used within a county constitutes a place of 59707
business for the purpose of this section. 59708

(B) As used in this division, "transient vendor" means any 59709
person who makes sales of tangible personal property from vending 59710
machines located on land owned by others, who leases titled motor 59711
vehicles, titled watercraft, or titled outboard motors, who 59712
effectuates leases that are taxed according to division (H)(4) of 59713
section 5739.01 of the Revised Code, or who, in the usual course 59714

of the person's business, transports inventory, stock of goods, or 59715
similar tangible personal property to a temporary place of 59716
business or temporary exhibition, show, fair, flea market, or 59717
similar event in a county in which the person has no fixed place 59718
of business, for the purpose of making retail sales of such 59719
property. A "temporary place of business" means any public or 59720
quasi-public place including, but not limited to, a hotel, rooming 59721
house, storeroom, building, part of a building, tent, vacant lot, 59722
railroad car, or motor vehicle that is temporarily occupied for 59723
the purpose of making retail sales of goods to the public. A place 59724
of business is not temporary if the same person conducted business 59725
at the place continuously for more than six months or occupied the 59726
premises as the person's permanent residence for more than six 59727
months, or if the person intends it to be a fixed place of 59728
business. 59729

Any transient vendor, in lieu of obtaining a vendor's license 59730
under division (A) of this section for counties in which the 59731
transient vendor has no fixed place of business, may apply to the 59732
tax commissioner, on a form prescribed by the commissioner, for a 59733
transient vendor's license. The transient vendor's license 59734
authorizes the transient vendor to make retail sales in any county 59735
in which the transient vendor does not maintain a fixed place of 59736
business. Any holder of a transient vendor's license shall not be 59737
required to obtain a separate vendor's license from the county 59738
auditor in that county. Upon the commissioner's determination that 59739
an applicant is a transient vendor, the applicant shall pay a 59740
license fee in the amount of twenty-five dollars, at which time 59741
the tax commissioner shall issue the license. The tax commissioner 59742
may require a vendor to be licensed as a transient vendor if, in 59743
the opinion of the commissioner, such licensing is necessary for 59744
the efficient administration of the tax. 59745

Any holder of a valid transient vendor's license may make 59746

retail sales at a temporary place of business or temporary 59747
exhibition, show, fair, flea market, or similar event, held 59748
anywhere in the state without complying with any provision of 59749
section 311.37 of the Revised Code. Any holder of a valid vendor's 59750
license may make retail sales as a transient vendor at a temporary 59751
place of business or temporary exhibition, show, fair, flea 59752
market, or similar event held in any county in which the vendor 59753
maintains a fixed place of business for which the vendor holds a 59754
vendor's license without obtaining a transient vendor's license. 59755

(C) As used in this division, "service vendor" means any 59756
person who, in the usual course of the person's business, sells 59757
services described in division (B)(3)(e), (f), (g), (h), (i), (j), 59758
(k), (l), or (m) of section 5739.01 of the Revised Code. 59759

Every service vendor shall make application to the tax 59760
commissioner for a service vendor's license. Each applicant shall 59761
pay a license fee in the amount of twenty-five dollars. Upon the 59762
commissioner's determination that an applicant is a service vendor 59763
and payment of the fee, the commissioner shall issue the applicant 59764
a service vendor's license. 59765

Only sales described in division (B)(3)(e), (f), (g), (h), 59766
(i), (j), (k), (l), or (m) of section 5739.01 of the Revised Code 59767
may be made under authority of a service vendor's license, and 59768
that license authorizes sales to be made at any place in this 59769
state. Any service vendor who makes sales of other services or 59770
tangible personal property subject to the sales tax also shall be 59771
licensed under division (A), (B), or (D) of this section. 59772

(D) As used in this division, "delivery vendor" means any 59773
vendor who engages in one or more of the activities described in 59774
divisions (D)(1) to (4) of this section, and who maintains no 59775
store, showroom, or similar fixed place of business or other 59776
location where merchandise regularly is offered for sale or 59777
displayed or shown in catalogs for selection or pick-up by 59778

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| consumers, or where consumers bring goods for repair or other service. | 59779 59780 |
| (1) The vendor makes retail sales of tangible personal property; | 59781 59782 |
| (2) The vendor rents or leases, at retail, tangible personal property, except titled motor vehicles, titled watercraft, or titled outboard motors; | 59783 59784 59785 |
| (3) The vendor provides a service, at retail, described in division (B)(3)(a), (b), (c), or (d) of section 5739.01 of the Revised Code; or | 59786 59787 59788 |
| (4) The vendor makes retail sales of warranty, maintenance or service contracts, or similar agreements as described in division (B)(7) of section 5739.01 of the Revised Code. | 59789 59790 59791 |
| A transient vendor or a seller registered pursuant to section 5741.17 of the Revised Code is not a delivery vendor. | 59792 59793 |
| Delivery vendors shall apply to the tax commissioner, on a form prescribed by the commissioner, for a delivery vendor's license. Each applicant shall pay a license fee of twenty-five dollars for each delivery vendor's license, to be credited to the general revenue fund. Upon the commissioner's determination that the applicant is a delivery vendor, the commissioner shall issue the license. A delivery vendor's license authorizes retail sales to be made throughout the state. All sales of the vendor must be reported under the delivery license. The commissioner may require a vendor to be licensed as a delivery vendor if, in the opinion of the commissioner, such licensing is necessary for the efficient administration of the tax. The commissioner shall not issue a delivery vendor license to a vendor who holds a license issued under division (A) of this section. | 59794 59795 59796 59797 59798 59799 59800 59801 59802 59803 59804 59805 59806 59807 |
| (E) Any transient vendor who is issued a license pursuant to this section shall display the license or a copy of it | 59808 59809 |

prominently, in plain view, at every place of business of the 59810
transient vendor. Every owner, organizer, or promoter who operates 59811
a fair, flea market, show, exhibition, convention, or similar 59812
event at which transient vendors are present shall keep a 59813
comprehensive record of all such vendors, listing the vendor's 59814
name, permanent address, vendor's license number, and the type of 59815
goods sold. Such records shall be kept for four years and shall be 59816
open to inspection by the tax commissioner. 59817

(F) A vendor that makes retail sales subject to tax under 59818
Chapter 5739. of the Revised Code pursuant to a permit issued by 59819
the division of liquor control shall obtain a vendor's license in 59820
the identical name and for the identical address as shown on the 59821
permit. 59822

(G)(1) As used in division (G) of this section, "Ohio 59823
business gateway" means the on-line computer network system, 59824
initially created by the department of administrative services 59825
under section 125.30 of the Revised Code that allows private 59826
businesses to electronically file business reply forms with state 59827
agencies. 59828

(2) For applicants required by this section to obtain 59829
licenses from the tax commissioner, the commissioner may provide 59830
them with the opportunity to use, or require the use of, the Ohio 59831
business gateway, or any successor electronic filing and payment 59832
system, to apply for licenses and pay license fees, if any. 59833

(3) Beginning January 1, 2005, the commissioner may provide 59834
any applicant required by this section to obtain a license from 59835
the county auditor with the opportunity to use the Ohio business 59836
gateway, or any successor electronic filing and payment system, to 59837
apply for the license and pay the license fee, if any. An 59838
applicant that files an application in this manner shall not make 59839
application to the county auditor and shall not pay into the 59840
county treasury the license fee. The commissioner shall issue the 59841

appropriate license for which the applicant applied, and the 59842
license shall authorize the applicant to engage in business as is 59843
appropriate under this section for the type of license issued. 59844

Sec. 5739.33. If any corporation, limited liability company, 59845
or business trust required to file returns and to remit tax due to 59846
the state under this chapter, including a holder of a direct 59847
payment permit under section 5739.031 of the Revised Code, fails 59848
for any reason to make the filing or payment, any of its employees 59849
having control or supervision of or charged with the 59850
responsibility of filing returns and making payments, or any of 59851
its officers, members, managers, or trustees who are responsible 59852
for the execution of the corporation's, limited liability 59853
company's, or business trust's fiscal responsibilities, shall be 59854
personally liable for the failure. The dissolution, termination, 59855
or bankruptcy of a corporation, limited liability company, or 59856
business trust shall not discharge a responsible officer's, 59857
member's, manager's, employee's, or trustee's liability for a 59858
failure of the corporation, limited liability company, or business 59859
trust to file returns or remit tax due. The sum due for the 59860
liability may be collected by assessment in the manner provided in 59861
section 5739.13 of the Revised Code. 59862

Sec. 5741.01. As used in this chapter: 59863

(A) "Person" includes individuals, receivers, assignees, 59864
trustees in bankruptcy, estates, firms, partnerships, 59865
associations, joint-stock companies, joint ventures, clubs, 59866
societies, corporations, limited liability partnerships, limited 59867
liability companies, business trusts, governments, and 59868
combinations of individuals of any form. 59869

(B) "Storage" means and includes any keeping or retention in 59870
this state for use or other consumption in this state. 59871

(C) "Use" means and includes the exercise of any right or power incidental to the ownership of the thing used. A thing is also "used" in this state if its consumer gives or otherwise distributes it, without charge, to recipients in this state.

(D) "Purchase" means acquired or received for a consideration, whether such acquisition or receipt was effected by a transfer of title, or of possession, or of both, or a license to use or consume; whether such transfer was absolute or conditional, and by whatever means the transfer was effected; and whether the consideration was money, credit, barter, or exchange. Purchase includes production, even though the article produced was used, stored, or consumed by the producer. The transfer of copyrighted motion picture films for exhibition purposes is not a purchase, except such films as are used solely for advertising purposes.

(E) "Seller" means the person from whom a purchase is made, and includes every person engaged in this state or elsewhere in the business of selling tangible personal property or providing a service for storage, use, or other consumption or benefit in this state; and when, in the opinion of the tax commissioner, it is necessary for the efficient administration of this chapter, to regard any salesman, representative, peddler, or canvasser as the agent of a dealer, distributor, supervisor, or employer under whom the person operates, or from whom the person obtains tangible personal property, sold by the person for storage, use, or other consumption in this state, irrespective of whether or not the person is making such sales on the person's own behalf, or on behalf of such dealer, distributor, supervisor, or employer, the commissioner may regard the person as such agent, and may regard such dealer, distributor, supervisor, or employer as the seller. "Seller" does not include any person to the extent the person provides a communications medium, such as, but not limited to, newspapers, magazines, radio, television, or cable television, by

means of which sellers solicit purchases of their goods or 59904
services. 59905

(F)(1) "Consumer" means any person who has purchased tangible 59906
personal property or has been provided a service for storage, use, 59907
or other consumption or benefit in this state. "Consumer" does not 59908
include a person who receives, without charge, tangible personal 59909
property or a service. 59910

(2) A person who performs a facility management or similar 59911
service contract for a contractee is a consumer of all tangible 59912
personal property and services purchased for use in connection 59913
with the performance of such contract, regardless of whether title 59914
to any such property vests in the contractee. The purchase of such 59915
property and services is not subject to the exception for resale 59916
under division (E)(1) of section 5739.01 of the Revised Code. 59917

(3)(a) As used in division (F)(3) of this section, 59918
"qualifying affiliated group member," "another qualifying 59919
affiliated group member," and "unrelated third party" have the 59920
same meanings as in division (D)(6) of section 5739.01 of the 59921
Revised Code. 59922

(b) A qualifying affiliated group member that purchases 59923
tangible personal property for sale, lease, or rental to another 59924
qualifying affiliated group member for any reason other than that 59925
member's resale, re-lease, or re-rental to an unrelated third 59926
party, as determined under divisions (D)(6)(c)(i), (ii), and (iii) 59927
and (D)(6)(d) of section 5739.01 of the Revised Code, is the 59928
consumer of the property for that sale, lease, or rental and is 59929
not entitled to claim an exception for resale with respect to that 59930
purchase, as otherwise permitted by division (E)(1) of section 59931
5739.01 of the Revised Code, in conjunction with section 5741.02 59932
of the Revised Code. The consumer may claim any other exemption or 59933
exception that would be available to the qualifying affiliated 59934
group member to whom the property is sold, leased, or rented, as 59935

if that member had purchased, leased, or rented that property from 59936
an unrelated third party. 59937

(c) A qualifying affiliated group member that purchases, 59938
leases, or rents tangible personal property from another 59939
qualifying affiliated group member is the consumer of the property 59940
purchased, leased, or rented. 59941

(G)(1) "Price," except in the case of watercraft, outboard 59942
motors, or new motor vehicles, means the aggregate value in money 59943
of anything paid or delivered, or promised to be paid or 59944
delivered, by a consumer to a seller in the complete performance 59945
of the transaction by which tangible personal property has been 59946
purchased or a service has been provided for storage, use, or 59947
other consumption or benefit in this state, without any deduction 59948
or exclusion on account of the cost of the property sold, cost of 59949
materials used, labor or service cost, interest, discount paid or 59950
allowed after the sale is consummated, or any other expense. If 59951
the transaction consists of the rental or lease of tangible 59952
personal property, "price" means the aggregate value in money of 59953
anything paid or delivered, or promised to be paid or delivered by 59954
the lessee to the lessor, in the complete performance of the 59955
rental or lease, without any deduction or exclusion of tax, 59956
interest, labor or service charge, damage liability waiver, 59957
termination or damage charge, discount paid or allowed after the 59958
lease is consummated, or any other expense. Except as provided in 59959
division (G)(6) of this section, the tax shall be calculated and 59960
collected by the lessor on each payment made by the lessee. If a 59961
consumer produces the tangible personal property used by the 59962
consumer, the price is the produced cost of such tangible personal 59963
property. "Price" does not include delivery charges that are 59964
separately stated on the initial invoice or initial billing 59965
rendered by the seller. 59966

The tax collected by the seller from the consumer under this 59967

chapter is not a part of the price, but is a tax collection for 59968
the benefit of the state, and of counties levying an additional 59969
use tax pursuant to section 5741.021 or 5741.023 of the Revised 59970
Code and of transit authorities levying an additional use tax 59971
pursuant to section 5741.022 of the Revised Code and, except for 59972
the discount authorized under section 5741.12 of the Revised Code 59973
and the effects of any rounding pursuant to section 5703.055 of 59974
the Revised Code, no person other than the state or such a county 59975
or transit authority shall derive any benefit from the collection 59976
or payment of such tax. 59977

As used in division (G)(1) of this section, "delivery 59978
charges" means charges by the seller for preparation and delivery 59979
to a location designated by the consumer of tangible personal 59980
property or a service, including transportation, shipping, 59981
postage, handling, crating, and packing. 59982

(2) In the case of watercraft, outboard motors, or new motor 59983
vehicles, "price" has the same meaning as in division (H) of 59984
section 5739.01 of the Revised Code. 59985

(3) In the case of a nonresident business consumer that 59986
purchases and uses tangible personal property outside this state 59987
and subsequently temporarily stores, uses, or otherwise consumes 59988
such tangible personal property in the conduct of business in this 59989
state, the consumer or the tax commissioner may determine the 59990
price based on the value of the temporary storage, use, or other 59991
consumption, in lieu of determining the price pursuant to division 59992
(G)(1) of this section. A price determination made by the consumer 59993
is subject to review and redetermination by the commissioner. 59994

(4) In the case of tangible personal property held in this 59995
state as inventory for sale or lease, and that is temporarily 59996
stored, used, or otherwise consumed in a taxable manner, the price 59997
is the value of the temporary use. A price determination made by 59998
the consumer is subject to review and redetermination by the 59999

commissioner. 60000

(5) In the case of tangible personal property originally 60001
purchased and used by the consumer outside this state, and that 60002
becomes permanently stored, used, or otherwise consumed in this 60003
state more than six months after its acquisition by the consumer, 60004
the consumer or the commissioner may determine the price based on 60005
the current value of such tangible personal property, in lieu of 60006
determining the price pursuant to division (G)(1) of this section. 60007
A price determination made by the consumer is subject to review 60008
and redetermination by the commissioner. 60009

(6) In the case of the purchase or lease of any motor vehicle 60010
designed by the manufacturer to carry a load of not more than one 60011
ton, watercraft, outboard motor, or aircraft, or the lease of any 60012
tangible personal property, other than motor vehicles designed by 60013
the manufacturer to carry a load of more than one ton, to be used 60014
by the lessee primarily for business purposes, the tax shall be 60015
collected by the vendor at the time the lease is consummated and 60016
calculated by the vendor on the basis of the total amount to be 60017
paid by the lessee under the lease agreement. If the total amount 60018
of the consideration for the lease includes amounts that are not 60019
calculated at the time the lease is executed, the tax shall be 60020
calculated and collected by the vendor at the time such amounts 60021
are billed to the lessee. In the case of an open-end lease, the 60022
tax shall be calculated by the vendor on the basis of the total 60023
amount to be paid during the initial fixed term of the lease, and 60024
then for each subsequent renewal period as it comes due. In the 60025
case of a lease with a renewal clause and a termination penalty or 60026
similar provision that applies if the renewal clause is not 60027
exercised, the tax shall be calculated and paid by the vendor on 60028
the basis of the entire length of the lease period, including any 60029
renewal period, until the termination penalty or similar provision 60030
no longer applies. As used in division (G)(6) of this section 60031

only, "motor vehicle" has the same meaning as in section 4501.01 60032
of the Revised Code. 60033

(H) "Nexus with this state" means that the seller engages in 60034
continuous and widespread solicitation of purchases from residents 60035
of this state or otherwise purposefully directs its business 60036
activities at residents of this state. 60037

(I) "Substantial nexus with this state" means that the seller 60038
has sufficient contact with this state, in accordance with Section 60039
8 of Article I of the Constitution of the United States, to allow 60040
the state to require the seller to collect and remit use tax on 60041
sales of tangible personal property or services made to consumers 60042
in this state. "Substantial nexus with this state" exists when the 60043
seller, or another person acting on behalf of the seller, does any 60044
of the following: 60045

(1) Maintains a place of business within this state, whether 60046
operated by employees or agents of the seller, by a member of an 60047
affiliated group, as described in division (B)(3)(e) of section 60048
5739.01 of the Revised Code, of which the seller is a member, or 60049
by a franchisee using a trade name of the seller; 60050

(2) Regularly has employees, ~~agents,~~ representatives, 60051
solicitors, installers, repairmen, salesmen, agents, or other 60052
individuals in this state ~~for the purpose of conducting the~~ 60053
~~business of~~ engaging in any activity that creates, develops, or 60054
maintains a market for the seller; 60055

(3) Uses a person in this state ~~for the purpose of~~ receiving 60056
or processing orders of the seller's goods or services, accepting 60057
returns of merchandise purchased from the seller, or providing 60058
repair or warranty services to the seller's customers; 60059

(4) Makes regular deliveries of tangible personal property 60060
into this state by means other than common carrier, or by common 60061
carrier, if the carrier is a member with the seller in an 60062

affiliated group, as described in division (B)(3)(e) of section 60063
5739.01 of the Revised Code; 60064

(5) Has membership in an affiliated group, as described in 60065
division (B)(3)(e) of section 5739.01 of the Revised Code, at 60066
least one other member of which has substantial nexus with this 60067
state, where the member benefits the seller in any of the 60068
following ways: 60069

(a) Does anything listed in divisions (I)(1) to (8) of this 60070
section on behalf of the seller; 60071

(b) Uses an identical or substantially similar name, trade 60072
name, or trademark, or the seller's goodwill to develop, promote, 60073
or maintain sales; 60074

(c) Shares a common business plan or substantially 60075
coordinates its business plan with the seller; 60076

(6) Owns tangible personal property that is rented or leased 60077
to a consumer in this state, or offers tangible personal property, 60078
on approval, to consumers in this state; 60079

(7) Except as provided in section 5703.65 of the Revised 60080
Code, is registered with the secretary of state to do business in 60081
this state or is registered or licensed by any state agency, 60082
board, or commission to transact business in this state or to make 60083
sales to persons in this state; 60084

(8) Has any other contact with this state that would allow 60085
this state to require the seller to collect and remit use tax 60086
under Section 8 of Article I of the Constitution of the United 60087
States. 60088

(J) "Fiscal officer" means, with respect to a regional 60089
transit authority, the secretary-treasurer thereof, and with 60090
respect to a county which is a transit authority, the fiscal 60091
officer of the county transit board appointed pursuant to section 60092

306.03 of the Revised Code or, if the board of county
commissioners operates the county transit system, the county
auditor.

(K) "Territory of the transit authority" means all of the
area included within the territorial boundaries of a transit
authority as they from time to time exist. Such territorial
boundaries must at all times include all the area of a single
county or all the area of the most populous county which is a part
of such transit authority. County population shall be measured by
the most recent census taken by the United States census bureau.

(L) "Transit authority" means a regional transit authority
created pursuant to section 306.31 of the Revised Code or a county
in which a county transit system is created pursuant to section
306.01 of the Revised Code. For the purposes of this chapter, a
transit authority must extend to at least the entire area of a
single county. A transit authority which includes territory in
more than one county must include all the area of the most
populous county which is a part of such transit authority. County
population shall be measured by the most recent census taken by
the United States census bureau.

(M) "Providing a service" has the same meaning as in division
(X) of section 5739.01 of the Revised Code.

(N) "Other consumption" includes receiving the benefits of a
service.

(O) "Lease" means any transfer for a consideration of the
possession of and right to use, but not title to, tangible
personal property for a fixed period of time greater than thirty
days or for an open-ended period of time with a minimum fixed
period of more than thirty days.

(P) "Certified service provider" has the same meaning as in
section 5740.01 of the Revised Code.

Sec. 5741.02. (A) For the use of the general revenue fund of 60124
the state, an excise tax is hereby levied on the storage, use, or 60125
other consumption in this state of tangible personal property or 60126
the benefit realized in this state of any service provided. The 60127
tax shall be collected pursuant to the schedules in section 60128
5739.025 of the Revised Code. 60129

(B) Each consumer, storing, using, or otherwise consuming in 60130
this state tangible personal property or realizing in this state 60131
the benefit of any service provided, shall be liable for the tax, 60132
and such liability shall not be extinguished until the tax has 60133
been paid to this state; provided, that the consumer shall be 60134
relieved from further liability for the tax if the tax has been 60135
paid to a seller in accordance with section 5741.04 of the Revised 60136
Code or prepaid by the seller in accordance with section 5741.06 60137
of the Revised Code. 60138

(C) The tax does not apply to the storage, use, or 60139
consumption in this state of the following described tangible 60140
personal property or services, nor to the storage, use, or 60141
consumption or benefit in this state of tangible personal property 60142
or services purchased under the following described circumstances: 60143

(1) When the sale of property or service in this state is 60144
subject to the excise tax imposed by sections 5739.01 to 5739.31 60145
of the Revised Code, provided said tax has been paid; 60146

(2) Except as provided in division (D) of this section, 60147
tangible personal property or services, the acquisition of which, 60148
if made in Ohio, would be a sale not subject to the tax imposed by 60149
sections 5739.01 to 5739.31 of the Revised Code; 60150

(3) Property or services, the storage, use, or other 60151
consumption of or benefit from which this state is prohibited from 60152
taxing by the Constitution of the United States, laws of the 60153

United States, or the Constitution of this state. This exemption 60154
shall not exempt from the application of the tax imposed by this 60155
section the storage, use, or consumption of tangible personal 60156
property that was purchased in interstate commerce, but that has 60157
come to rest in this state, provided that fuel to be used or 60158
transported in carrying on interstate commerce that is stopped 60159
within this state pending transfer from one conveyance to another 60160
is exempt from the excise tax imposed by this section and section 60161
5739.02 of the Revised Code; 60162

(4) Transient use of tangible personal property in this state 60163
by a nonresident tourist or vacationer, or a non-business use 60164
within this state by a nonresident of this state, if the property 60165
so used was purchased outside this state for use outside this 60166
state and is not required to be registered or licensed under the 60167
laws of this state; 60168

(5) Tangible personal property or services rendered upon 60169
which taxes have been paid to another jurisdiction to the extent 60170
of the amount of the tax paid to such other jurisdiction. Where 60171
the amount of the tax imposed by this section and imposed pursuant 60172
to section 5741.021, 5741.022, or 5741.023 of the Revised Code 60173
exceeds the amount paid to another jurisdiction, the difference 60174
shall be allocated between the tax imposed by this section and any 60175
tax imposed by a county or a transit authority pursuant to section 60176
5741.021, 5741.022, or 5741.023 of the Revised Code, in proportion 60177
to the respective rates of such taxes. 60178

As used in this subdivision, "taxes paid to another 60179
jurisdiction" means the total amount of retail sales or use tax or 60180
similar tax based upon the sale, purchase, or use of tangible 60181
personal property or services rendered legally, levied by and paid 60182
to another state or political subdivision thereof, or to the 60183
District of Columbia, where the payment of such tax does not 60184
entitle the taxpayer to any refund or credit for such payment. 60185

(6) The transfer of a used manufactured home or used mobile home, as defined by section 5739.0210 of the Revised Code, made on or after January 1, 2000;

(7) Drugs that are or are intended to be distributed free of charge to a practitioner licensed to prescribe, dispense, and administer drugs to a human being in the course of a professional practice and that by law may be dispensed only by or upon the order of such a practitioner.

(D) The tax applies to the storage, use, or other consumption in this state of tangible personal property or services, the acquisition of which at the time of sale was excepted under division (E)(1) of section 5739.01 of the Revised Code from the tax imposed by section 5739.02 of the Revised Code, but which has subsequently been temporarily or permanently stored, used, or otherwise consumed in a taxable manner.

(E) If any transaction is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B)(1) to ~~(11) or (28)~~ (10) of section 5739.02 of the Revised Code, the consumer shall furnish to the seller, and the seller shall obtain from the consumer, a certificate specifying the reason that the transaction is not subject to the tax. If the transaction is claimed to be exempt under division (B)~~(13)~~ (12) of section 5739.02 of the Revised Code, the exemption certificate shall be signed by both the contractor and contractee, and the contractee shall be deemed to be the consumer of all items purchased under the claim of exemption if it is subsequently determined that the exemption is not properly claimed. The certificate shall be in such form as the tax commissioner by rule prescribes. If no certificate is furnished or obtained within the period for filing the return for the period in which the transaction is consummated, it shall be presumed that the tax applies. The failure to have so furnished or

obtained a certificate shall not preclude a seller or consumer 60218
from establishing, within one hundred twenty days of the giving of 60219
notice by the commissioner of intention to levy an assessment, 60220
that the transaction is not subject to the tax. 60221

(F) A seller who files a petition for reassessment contesting 60222
the assessment of tax on transactions for which the seller 60223
obtained no valid exemption certificates and for which the seller 60224
failed to establish that the transactions were not subject to the 60225
tax during the one-hundred-twenty-day period allowed under 60226
division (E) of this section may present to the tax commissioner 60227
additional evidence to prove that the transactions were exempt. 60228
The seller shall file such evidence within ninety days of the 60229
receipt by the seller of the notice of assessment, except that, 60230
upon application and for reasonable cause, the tax commissioner 60231
may extend the period for submitting such evidence thirty days. 60232

(G) For the purpose of the proper administration of sections 60233
5741.01 to 5741.22 of the Revised Code, and to prevent the evasion 60234
of the tax hereby levied, it shall be presumed that any use, 60235
storage, or other consumption of tangible personal property in 60236
this state is subject to the tax until the contrary is 60237
established. 60238

(H)(1) As used in division (H)(2) of this section, 60239
"qualifying affiliated group member" and "another qualifying 60240
affiliated group member" have the same meanings as in division 60241
(D)(6) of section 5739.01 of the Revised Code. 60242

(2) A qualifying affiliated group member that purchases, 60243
leases, or rents tangible personal property from another 60244
qualifying affiliated group member may credit against the tax due 60245
under this section or section 5741.021, 5741.022, or 5741.023 of 60246
the Revised Code, up to the amount of the tax due, any sales, use, 60247
or other similar tax paid to this state or to any other state by 60248
the other qualifying affiliated group member on the purchase, 60249

lease, or rental of the property. 60250

Sec. 5741.25. If any corporation, limited liability company, 60251
or business trust registered or required to be registered under 60252
section 5741.17 of the Revised Code and required to file returns 60253
and remit tax due to the state under this chapter fails for any 60254
reason to make the filing or payment, any of its employees having 60255
control or supervision of or charged with the responsibility of 60256
filing returns and making payments, or any of its officers, 60257
members, managers, or trustees who are responsible for the 60258
execution of the corporation's, limited liability company's, or 60259
business trust's fiscal responsibilities, shall be personally 60260
liable for the failure. The dissolution, termination, or 60261
bankruptcy of a corporation, limited liability company, or 60262
business trust shall not discharge a responsible officer's, 60263
member's, manager's, employee's, or trustee's liability for a 60264
failure of the corporation, limited liability company, or business 60265
trust to file returns or remit tax due. The sum due for the 60266
liability may be collected by assessment in the manner provided in 60267
section 5741.11 or 5741.13 of the Revised Code. 60268

Sec. 5743.02. To provide revenues for the general revenue 60269
fund, an excise tax on sales of cigarettes is hereby levied at the 60270
rate of ~~twenty seven and one half~~ fifty mills on each cigarette. 60271

Only one sale of the same article shall be used in computing 60272
the amount of tax due. 60273

The treasurer of state shall place to the credit of the tax 60274
refund fund created by section 5703.052 of the Revised Code, out 60275
of receipts from the tax levied by this section, amounts equal to 60276
the refunds certified by the tax commissioner pursuant to section 60277
5743.05 of the Revised Code. The balance of taxes collected under 60278
such section, after the credits to the tax refund fund, shall be 60279

paid into the general revenue fund. 60280

Sec. 5743.32. To provide revenue for the general revenue fund 60281
of the state, an excise tax is hereby levied on the use, 60282
consumption, or storage for consumption of cigarettes by consumers 60283
in this state at the rate of ~~twenty seven and one half~~ fifty mills 60284
on each cigarette. The tax shall not apply if the tax levied by 60285
section 5743.02 of the Revised Code has been paid. 60286

The money received into the state treasury from the excise 60287
tax levied by this section shall be credited to the general 60288
revenue fund. 60289

Sec. 5745.01. As used in this chapter: 60290

(A) "Electric company_L" ~~and~~ "combined company_L" and 60291
"telephone company" have the same meanings as in section 5727.01 60292
of the Revised Code. 60293

(B) "Electric light company" has the same meaning as in 60294
section 4928.01 of the Revised Code, and includes the activities 60295
of a combined company as an electric company, but excludes 60296
nonprofit companies and municipal corporations. 60297

(C) "Taxpayer" means ~~an~~ either of the following: 60298

(1) An electric light company subject to taxation by a 60299
municipal corporation in this state for a taxable year, excluding 60300
an electric light company that is not an electric company or a 60301
combined company and for which an election made under section 60302
5745.031 of the Revised Code is not in effect with respect to the 60303
taxable year. If such a company is a qualified subchapter S 60304
subsidiary as defined in section 1361 of the Internal Revenue Code 60305
or a disregarded entity, the company's parent S corporation or 60306
owner is the taxpayer for the purposes of this chapter and is 60307
hereby deemed to have nexus with this state under the Constitution 60308
of the United States for the purposes of this chapter. 60309

(2) A telephone company subject to taxation by a municipal corporation in this state for a taxable year. A telephone company is subject to taxation under this chapter for any taxable year that begins on or after January 1, 2004. A telephone company with a taxable year beginning in 2003 and ending in 2004 shall compute the tax imposed under this chapter by multiplying the tax owed by the number of days in the taxable year that are in 2004, and dividing that result by the total number of days in the taxable year.

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

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

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

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

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

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

(3) If, with respect to a qualifying taxpayer and a qualifying asset there occurs a qualifying taxable event, the qualifying taxpayer shall reduce its federal taxable income, as defined in division (F) of this section, by the amount of the ~~book-tax differential~~ difference for that qualifying asset if the

book-tax ~~differential~~ difference is greater than zero, and shall 60340
increase its federal taxable income by the absolute value of the 60341
amount of the book-tax ~~differential~~ difference for that qualifying 60342
asset if the book-tax ~~differential~~ difference is less than zero. 60343
The adjustments provided in division (G)(3) of this section are 60344
subject to divisions (B)(3), (4), and (5) of section 5733.0510 of 60345
the Revised Code to the extent those divisions apply to the 60346
adjustments in that section for the taxable year. A taxpayer shall 60347
not deduct or add any amount under division (G)(3) of this section 60348
with respect to a qualifying asset the sale, exchange, or other 60349
disposition of which resulted in the recognition of a gain or loss 60350
that the taxpayer deducted or added, respectively, under division 60351
(G)(1) or (2) of this section. 60352

For the purposes of division (G)(3) of this section, "~~net~~ 60353
~~income~~" ~~has the same meaning as in section 5733.04 of the Revised~~ 60354
~~Code, and~~ "book-tax ~~differential~~ difference," "qualifying 60355
taxpayer," "qualifying asset," and "qualifying taxable event" have 60356
the same meanings as in section 5733.0510 of the Revised Code. 60357

(4) Add the amounts described in section 5745.042 of the 60358
Revised Code. 60359

If the taxpayer is not a C corporation or an individual, the 60360
taxpayer shall compute "adjusted federal taxable income" as if the 60361
taxpayer were a C corporation, but with respect to each 60362
owner-employee of the taxpayer, amounts paid or accrued to a 60363
qualified self-employed retirement plan and amounts paid or 60364
accrued to health insurance or life insurance shall not be allowed 60365
as a deduction. Nothing in this division shall be construed as 60366
allowing the taxpayer to deduct any amount more than once. 60367

(H) "Internal Revenue Code" means the "Internal Revenue Code 60368
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as ~~amended~~ it existed on 60369
December 31, 2001. 60370

(I) "Ohio net income" means the amount determined under 60371
division (B) of section 5745.02 of the Revised Code. 60372

Sec. 5745.02. (A) The annual report filed under section 60373
5745.03 of the Revised Code determines a taxpayer's Ohio net 60374
income and the portion of Ohio net income to be apportioned to a 60375
municipal corporation. 60376

(B) A taxpayer's Ohio net income is determined by multiplying 60377
the taxpayer's adjusted federal taxable income by the sum of the 60378
property factor multiplied by one-third, the payroll factor 60379
multiplied by one-third, and the sales factor multiplied by 60380
one-third. If the denominator of one of the factors is zero, the 60381
remaining two factors each shall be multiplied by one-half instead 60382
of one-third; if the denominator of two of the factors is zero, 60383
the remaining factor shall be multiplied by one. The property, 60384
payroll, and sales factors shall be determined in the manner 60385
prescribed by divisions (B)(1), (2), and (3) of this section. 60386

(1) The property factor is a fraction, the numerator of which 60387
is the average value of the taxpayer's real and tangible personal 60388
property owned or rented, and used in business in this state 60389
during the taxable year, and the denominator of which is the 60390
average value of all the taxpayer's real and tangible personal 60391
property owned or rented, and used in business everywhere during 60392
such year. Property owned by the taxpayer is valued at its 60393
original cost. Property rented by the taxpayer is valued at eight 60394
times the net annual rental rate. "Net annual rental rate" means 60395
the annual rental rate paid by the taxpayer less any annual rental 60396
rate received by the taxpayer from subrentals. The average value 60397
of property shall be determined by averaging the values at the 60398
beginning and the end of the taxable year, but the tax 60399
commissioner may require the averaging of monthly values during 60400
the taxable year, if reasonably required to reflect properly the 60401

average value of the taxpayer's property. 60402

(2) The payroll factor is a fraction, the numerator of which 60403
is the total amount paid in this state during the taxable year by 60404
the taxpayer for compensation, and the denominator of which is the 60405
total compensation paid everywhere by the taxpayer during such 60406
year. Compensation means any form of remuneration paid to an 60407
employee for personal services. Compensation is paid in this state 60408
if: (a) the recipient's service is performed entirely within this 60409
state, (b) the recipient's service is performed both within and 60410
without this state, but the service performed without this state 60411
is incidental to the recipient's service within this state, or (c) 60412
some of the service is performed within this state and either the 60413
base of operations, or if there is no base of operations, the 60414
place from which the service is directed or controlled is within 60415
this state, or the base of operations or the place from which the 60416
service is directed or controlled is not in any state in which 60417
some part of the service is performed, but the recipient's 60418
residence is in this state. 60419

(3) The sales factor is a fraction, the numerator of which is 60420
the total sales in this state by the taxpayer during the taxable 60421
year, and the denominator of which is the total sales by the 60422
taxpayer everywhere during such year. Sales of electricity shall 60423
be situated to this state in the manner provided under section 60424
5733.059 of the Revised Code. In determining the numerator and 60425
denominator of the sales factor, receipts from the sale or other 60426
disposal of a capital asset or an asset described in section 1231 60427
of the Internal Revenue Code shall be eliminated. Also, in 60428
determining the numerator and denominator of the sales factor, in 60429
the case of a reporting taxpayer owning at least eighty per cent 60430
of the issued and outstanding common stock of one or more 60431
insurance companies or public utilities, except an electric 60432
company, a combined company, or a telephone company, or owning at 60433

least twenty-five per cent of the issued and outstanding common 60434
stock of one or more financial institutions, receipts received by 60435
the reporting taxpayer from such utilities, insurance companies, 60436
and financial institutions shall be eliminated. 60437

For the purpose of division (B)(3) of this section, sales of 60438
tangible personal property are in this state where such property 60439
is received in this state by the purchaser. In the case of 60440
delivery of tangible personal property by common carrier or by 60441
other means of transportation, the place at which such property is 60442
ultimately received after all transportation has been completed 60443
shall be considered as the place at which such property is 60444
received by the purchaser. Direct delivery in this state, other 60445
than for purposes of transportation, to a person or firm 60446
designated by a purchaser constitutes delivery to the purchaser in 60447
this state, and direct delivery outside this state to a person or 60448
firm designated by a purchaser does not constitute delivery to the 60449
purchaser in this state, regardless of where title passes or other 60450
conditions of sale. 60451

Sales, other than sales of electricity or tangible personal 60452
property, are in this state if either the income-producing 60453
activity is performed solely in this state, or the 60454
income-producing activity is performed both within and without 60455
this state and a greater proportion of the income-producing 60456
activity is performed within this state than in any other state, 60457
based on costs of performance. 60458

(C) The portion of a taxpayer's Ohio net income taxable by 60459
each municipal corporation imposing an income tax shall be 60460
determined by multiplying the taxpayer's Ohio net income by the 60461
sum of the municipal property factor multiplied by one-third, the 60462
municipal payroll factor multiplied by one-third, and the 60463
municipal sales factor multiplied by one-third, and subtracting 60464
from the product so obtained any "municipal net operating loss 60465

carryforward from prior taxable years." If the denominator of one 60466
of the factors is zero, the remaining two factors each shall be 60467
multiplied by one-half instead of one-third; if the denominator of 60468
two of the factors is zero, the remaining factor shall be 60469
multiplied by one. In calculating the "municipal net operating 60470
loss carryforward from prior taxable years" for each municipal 60471
corporation, net operating losses are apportioned in and out of a 60472
municipal corporation for the taxable year in which the net 60473
operating loss occurs in the same manner that positive net income 60474
would have been so apportioned. Any net operating loss for a 60475
municipal corporation may be applied to subsequent net income in 60476
that municipal corporation to reduce that income to zero or until 60477
the net operating loss has been fully used as a deduction. The 60478
unused portion of net operating losses for each taxable year 60479
apportioned to a municipal corporation may only be applied against 60480
the income apportioned to that municipal corporation for five 60481
subsequent taxable years. Net operating losses occurring in 60482
taxable years ending before 2002 may not be subtracted under this 60483
section. 60484

A taxpayer's municipal property, municipal payroll, and 60485
municipal sales factors for a municipal corporation shall be 60486
determined as provided in divisions (C)(1), (2), and (3) of this 60487
section. 60488

(1) The municipal property factor is the quotient obtained by 60489
dividing (a) the average value of real and tangible personal 60490
property owned or rented by the taxpayer and used in business in 60491
the municipal corporation during the taxable year by (b) the 60492
average value of all of the taxpayer's real and tangible personal 60493
property owned or rented and used in business during that taxable 60494
year in this state. The value and average value of such property 60495
shall be determined in the same manner provided in division (B)(1) 60496
of this section. 60497

(2) The municipal payroll factor is the quotient obtained by 60498
dividing (a) the total amount of compensation earned in the 60499
municipal corporation by the taxpayer's employees during the 60500
taxable year for services performed for the taxpayer and that is 60501
subject to income tax withholding by the municipal corporation by 60502
(b) the total amount of compensation paid by the taxpayer to its 60503
employees in this state during the taxable year. Compensation has 60504
the same meaning as in division (B)(2) of this section. 60505

(3) The municipal sales factor is a fraction, the numerator 60506
of which is the taxpayer's total sales in a municipal corporation 60507
during the taxable year, and the denominator of which is the 60508
taxpayer's total sales in this state during such year. 60509

For the purpose of division (C)(3) of this section, sales of 60510
tangible personal property are in the municipal corporation where 60511
such property is received in the municipal corporation by the 60512
purchaser. Sales of electricity directly to the consumer, as 60513
defined in section 5733.059 of the Revised Code, shall be 60514
considered sales of tangible personal property. In the case of the 60515
delivery of tangible personal property by common carrier or by 60516
other means of transportation, the place at which such property 60517
ultimately is received after all transportation has been completed 60518
shall be considered as the place at which the property is received 60519
by the purchaser. Direct delivery in the municipal corporation, 60520
other than for purposes of transportation, to a person or firm 60521
designated by a purchaser constitutes delivery to the purchaser in 60522
that municipal corporation, and direct delivery outside the 60523
municipal corporation to a person or firm designated by a 60524
purchaser does not constitute delivery to the purchaser in that 60525
municipal corporation, regardless of where title passes or other 60526
conditions of sale. Sales, other than sales of tangible personal 60527
property, are in the municipal corporation if either: 60528

(a) The income-producing activity is performed solely in the 60529

municipal corporation; 60530

(b) The income-producing activity is performed both within 60531
and without the municipal corporation and a greater proportion of 60532
the income-producing activity is performed within that municipal 60533
corporation than any other location in this state, based on costs 60534
of performance. 60535

(D) If a taxpayer is a combined company as defined in section 60536
5727.01 of the Revised Code, the municipal property, payroll, and 60537
sales factors under division (C) of this section shall be adjusted 60538
as follows: 60539

(1) The numerator of the municipal property factor shall 60540
include only the value, as determined under division (C)(1) of 60541
this section, of the company's real and tangible property in the 60542
municipal corporation attributed to the company's activity as an 60543
electric company using the same methodology prescribed under 60544
section 5727.03 of the Revised Code for taxable tangible personal 60545
property. 60546

(2) The numerator of the municipal payroll factor shall 60547
include only compensation paid in the municipal corporation by the 60548
company to its employees for personal services rendered in the 60549
company's activity as an electric company. 60550

(3) The numerator of the municipal sales factor shall include 60551
only the sales of tangible personal property and services, as 60552
determined under division (C)(3) of this section, made in the 60553
municipal corporation in the course of the company's activity as 60554
an electric company. 60555

(E)(1) If the provisions for apportioning adjusted federal 60556
taxable income or Ohio net income under ~~division~~ divisions (B), 60557
(C), and (D) of this section do not fairly represent business 60558
activity in this state or among municipal corporations, the tax 60559
commissioner may adopt rules for apportioning such income by an 60560

alternative method that fairly represents business activity in 60561
this state or among municipal corporations. 60562

(2) If any of the factors determined under division (B), (C), 60563
or (D) of this section does not fairly represent the extent of a 60564
taxpayer's business activity in this state or among municipal 60565
corporations, the taxpayer may request, or the tax commissioner 60566
may require, that the taxpayer's adjusted federal taxable income 60567
or Ohio net income be determined by an alternative method, 60568
including any of the alternative methods enumerated in division 60569
(B)(2)(d) of section 5733.05 of the Revised Code. A taxpayer 60570
requesting an alternative method shall make the request in writing 60571
to the tax commissioner either with the annual report, a timely 60572
filed amended report, or a timely filed petition for reassessment. 60573
When the tax commissioner requires or permits an alternative 60574
method under division (E)(2) of this section, the tax commissioner 60575
shall cause a written notice to that effect to be delivered to any 60576
municipal corporation that would be affected by application of the 60577
alternative method. Nothing in this division shall be construed to 60578
extend any statute of limitations under this chapter. 60579

(F)(1) The tax commissioner may adopt rules providing for the 60580
combination of adjusted federal taxable incomes of taxpayers 60581
satisfying the ownership or control requirements of section 60582
5733.052 of the Revised Code if the tax commissioner finds that 60583
such combinations are necessary to properly reflect adjusted 60584
federal taxable income, Ohio net income, or the portion of Ohio 60585
net income to be taxable by municipal corporations. 60586

(2) A taxpayer satisfying the ownership or control 60587
requirements of section 5733.052 of the Revised Code with respect 60588
to one or more other taxpayers may not combine their adjusted 60589
federal taxable incomes for the purposes of this section unless 60590
rules are adopted under division (F)(1) of this section allowing 60591
such a combination or the tax commissioner finds that such a 60592

combination is necessary to properly reflect the taxpayers' 60593
adjusted federal taxable incomes, Ohio net incomes, or the portion 60594
of Ohio net incomes to be subject to taxation within a municipal 60595
corporation. 60596

Sec. 5745.04. (A) As used in this section, "combined tax 60597
liability" means the total of a taxpayer's income tax liabilities 60598
to all municipal corporations in this state for a taxable year. 60599

(B) Beginning with its taxable year beginning in 2003, each 60600
taxpayer shall file a declaration of estimated tax report with, 60601
and remit estimated taxes to, the tax commissioner, payable to the 60602
treasurer of state, at the times and in the amounts prescribed in 60603
divisions (B)(1) to (4) of this section. This division also 60604
applies to a taxpayer having a taxable year consisting of fewer 60605
than twelve months, at least one of which is in 2002, that ends 60606
before January 1, 2003. The first taxable year a taxpayer is 60607
subject to this chapter, the estimated taxes the taxpayer is 60608
required to remit under this section shall be based solely on the 60609
current taxable year and not on the liability for the preceding 60610
taxable year. 60611

(1) Not less than twenty-five per cent of the combined tax 60612
liability for the preceding taxable year or twenty per cent of the 60613
combined tax liability for the current taxable year shall have 60614
been remitted not later than the fifteenth day of the fourth month 60615
after the end of the preceding taxable year. 60616

(2) Not less than fifty per cent of the combined tax 60617
liability for the preceding taxable year or forty per cent of the 60618
combined tax liability for the current taxable year shall have 60619
been remitted not later than the fifteenth day of the sixth month 60620
after the end of the preceding taxable year. 60621

(3) Not less than seventy-five per cent of the combined tax 60622
liability for the preceding taxable year or sixty per cent of the 60623

combined tax liability for the current taxable year shall have 60624
been remitted not later than the fifteenth day of the ninth month 60625
after the end of the preceding taxable year. 60626

(4) Not less than one hundred per cent of the combined tax 60627
liability for the preceding taxable year or eighty per cent of the 60628
combined tax liability for the current taxable year shall have 60629
been remitted not later than the fifteenth day of the twelfth 60630
month after the end of the preceding taxable year. 60631

(C) Each taxpayer shall report on the declaration of 60632
estimated tax report the portion of the remittance that the 60633
taxpayer estimates that it owes to each municipal corporation for 60634
the taxable year. 60635

(D) Upon receiving a declaration of estimated tax report and 60636
remittance of estimated taxes under this section, the tax 60637
commissioner shall immediately forward to the treasurer of state 60638
such remittance. The treasurer of state shall credit ninety-eight 60639
and one-half per cent of the remittance to the municipal income 60640
tax fund and credit the remainder to the municipal income tax 60641
administrative fund. 60642

(E) If any remittance of estimated taxes is for one thousand 60643
dollars or more, the taxpayer shall make the remittance by 60644
electronic funds transfer as prescribed by section 5745.04 of the 60645
Revised Code. 60646

(F) Notwithstanding section 5745.08 or 5745.09 of the Revised 60647
Code, no penalty or interest shall be imposed on a taxpayer if the 60648
declaration of estimated tax report is properly filed, and the 60649
estimated tax is paid, within the time prescribed by division (B) 60650
of this section. 60651

Sec. 5745.042. (A) As used in this section: 60652

(1) "Intangible expenses and costs" means expenses, losses, 60653

and costs for, related to, or in connection with, the direct or 60654
indirect acquisition, use, maintenance, management, ownership, 60655
sale, exchange, or any other direct or indirect disposition of 60656
intangible property to the extent such amounts are allowed as 60657
deductions or costs in determining taxable income before operating 60658
loss deduction and special deductions for the taxable year under 60659
the Internal Revenue Code. Such expenses and costs include losses 60660
related to, or incurred in connection with, factoring 60661
transactions, discounting transactions, royalty, patent, 60662
technical, copyright, and licensing fees, and other similar 60663
expenses and costs. 60664

(2) "Interest expenses and costs" include amounts directly or 60665
indirectly allowed as deductions under section 163 of the Internal 60666
Revenue Code for purposes of determining taxable income. 60667

(3) "Related member" has the same meaning as in section 60668
5733.042 of the Revised Code. 60669

(B) Except as otherwise provided in section 5745.044 of the 60670
Revised Code, for taxable years beginning on or after January 1, 60671
2004, in computing adjusted federal taxable income under division 60672
(H)(4) of section 5745.01 of the Revised Code, a taxpayer shall 60673
add interest expenses and costs and intangible expenses and costs 60674
directly or indirectly paid, accrued, or incurred to, or in 60675
connection with, one or more direct or indirect transactions with 60676
one or more related members. The taxpayer shall make the 60677
adjustment required under this division in accordance with the 60678
principles and concepts set forth in section 5733.057 of the 60679
Revised Code. 60680

(C)(1) Division (B) of this section does not apply to any 60681
portion of interest expenses and costs and intangible expenses and 60682
costs for which the taxpayer can establish by a preponderance of 60683
the evidence that: 60684

(a) The related member during the same taxable year directly or indirectly paid, accrued, or incurred such portion to a person who is not a related member, and during the six-year period commencing three years prior to the first day of the taxpayer's taxable year the person or the person's related member did not pay, accrue, or incur all or any portion, amount, or similar portion of such expenses or costs to the taxpayer or to any related member of the taxpayer; and 60685
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(b) The transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the taxpayer and the related member did not have as a principal purpose the avoidance of any portion of the tax due by the taxpayer. 60693
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(2) A taxpayer shall not be required to make any adjustment required under division (B) of this section if the increased tax, if any, attributable to such adjustment would have been avoided had the taxpayer, the related member, and any other related members to whom the taxpayer's related member pays, accrues, or incurs the expenses and costs had filed a consolidated municipal income tax return. 60697
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(D) If a taxpayer required to make an adjustment under division (B) of this section fails to make the adjustment and pay the additional tax, if any, attributable to such adjustment within one year after the taxpayer files the municipal income tax report, a penalty shall be imposed equal to twice the interest charged under section 5745.07 of the Revised Code. The penalty imposed under this division is in addition to all other interest, penalties, and other charges imposed under this chapter. 60704
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(E) The tax commissioner may waive, abate, modify, or refund, with interest, all or any portion of a penalty imposed under division (D) of this section if the taxpayer establishes beyond a reasonable doubt that any failure to fully comply with this 60712
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section was not an attempt to avoid any portion of the tax due 60716
under this chapter. 60717

(F)(1) As used in this division, "tax difference" means the 60718
difference between the tax imposed on a taxpayer under section 60719
5733.06 of the Revised Code and the amount of tax attributable to 60720
the adjustment required under division (B) of this section that 60721
the taxpayer pays within one year from the date prescribed for 60722
payment. 60723

(2) The penalty created under division (D) of this section 60724
does not apply if the tax difference: 60725

(a) Is less than ten per cent of the tax imposed under this 60726
chapter; and 60727

(b) Is less than fifty thousand dollars. 60728

(G) Nothing in this section shall be construed as requiring a 60729
taxpayer to add interest expenses and costs and intangible 60730
expenses and costs to federal taxable income more than once in any 60731
taxable year. 60732

Sec. 5745.044. (A)(1) As used in this section, "federal 60733
income tax return" does not include any return filed for purposes 60734
of reporting withholding taxes, providing information rather than 60735
reporting income tax liability, or claiming the benefits of a tax 60736
treaty between the United States and another government. 60737

(2) "Federal income tax" does not include withholding taxes. 60738

(3) "Related member" has the same meaning as in section 60739
5733.042 of the Revised Code. 60740

(B) The adjustments required under division (B) of section 60741
5745.042 of the Revised Code for interest expenses and costs and 60742
intangible expenses and costs paid to a related member do not 60743
apply to a C corporation for the taxable year if the C corporation 60744
establishes all of the following by clear and convincing evidence: 60745

(1) The corporation paid the expenses and costs to the related member either directly or through a related member that did not charge the corporation a fee; 60746
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(2) The expenses and costs were paid to a related member that, for the six-year period beginning three years prior to the payment, was not subject to federal income tax with respect to the payment and was not required to file a federal income tax return with the internal revenue service for purposes of reporting the payment; 60749
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(3) During the six-year period beginning three years prior to the payment, the related member did not directly or indirectly remit any portion of the payment to any other related member that during any portion of the six-year period was subject to federal income tax with respect to the payment and was required to file a federal income tax return with the internal revenue service for purposes of reporting the payment; 60755
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(4) In calculating its federal income tax for the taxable year in which the payment occurred, the corporation is allowed to deduct the payment under an advanced pricing agreement between the corporation and the internal revenue service, it has satisfied the documentation requirements of sections 482 and 6662(e) of the Internal Revenue Code, or it has complied with section 482 of the Internal Revenue Code; and 60762
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(5) The transaction giving rise to the payment did not have as a principal purpose the avoidance of any portion of the tax due under this chapter. 60769
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(C) A corporation claiming that the adjustments required under division (B) of section 5745.042 of the Revised Code do not apply to it must refute by clear and convincing evidence any reasonable conclusion of the tax commissioner that any of the doctrines set forth in section 5703.56 of the Revised Code should 60772
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apply. 60777

(D) If a corporation makes a payment to a related member and the payment is processed or paid through another related member as described in division (B)(1) of this section, this section applies only to the corporation's pro rata share of the total payments made by all such related members during the taxable year, unless the corporation establishes by clear and convincing evidence that its actual payment to the related member was more than its pro rata share. 60778
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(E) Any adjustments made by the internal revenue service with respect to any related member of the corporation under an advanced pricing agreement or section 482 of the Internal Revenue Code shall be presumed to be adjustments properly attributed to the corporation, unless the corporation establishes by clear and convincing evidence that the adjustment should be attributed, in whole or in part, to another person. 60786
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(F) If any corporation claims the benefit provided under division (B) of this section and is not entitled to such benefit, any adjustment required by section 5745.042 of the Revised Code shall be increased by an amount equal to twice the amount of the adjustment, unless the adjustment was made under an advanced pricing agreement. 60793
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Sec. 5747.01. Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter has the same meaning as when used in a comparable context in the Internal Revenue Code, and all other statutes of the United States relating to federal income taxes. 60799
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As used in this chapter: 60804

(A) "Adjusted gross income" or "Ohio adjusted gross income" means federal adjusted gross income, as defined and used in the 60805
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Internal Revenue Code, adjusted as provided in this section: 60807

(1) Add interest or dividends on obligations or securities of 60808
any state or of any political subdivision or authority of any 60809
state, other than this state and its subdivisions and authorities. 60810

(2) Add interest or dividends on obligations of any 60811
authority, commission, instrumentality, territory, or possession 60812
of the United States to the extent that the interest or dividends 60813
are exempt from federal income taxes but not from state income 60814
taxes. 60815

(3) Deduct interest or dividends on obligations of the United 60816
States and its territories and possessions or of any authority, 60817
commission, or instrumentality of the United States to the extent 60818
that the interest or dividends are included in federal adjusted 60819
gross income but exempt from state income taxes under the laws of 60820
the United States. 60821

(4) Deduct disability and survivor's benefits to the extent 60822
included in federal adjusted gross income. 60823

(5) Deduct benefits under Title II of the Social Security Act 60824
and tier 1 railroad retirement benefits to the extent included in 60825
federal adjusted gross income under section 86 of the Internal 60826
Revenue Code. 60827

(6) In the case of a taxpayer who is a beneficiary of a trust 60828
that makes an accumulation distribution as defined in section 665 60829
of the Internal Revenue Code, add, for the beneficiary's taxable 60830
years beginning before 2002 ~~or after 2004~~, the portion, if any, of 60831
such distribution that does not exceed the undistributed net 60832
income of the trust for the three taxable years preceding the 60833
taxable year in which the distribution is made to the extent that 60834
the portion was not included in the trust's taxable income for any 60835
of the trust's taxable years beginning in or after 2002, ~~2003, or~~ 60836
~~2004~~. "Undistributed net income of a trust" means the taxable 60837

income of the trust increased by (a)(i) the additions to adjusted 60838
gross income required under division (A) of this section and (ii) 60839
the personal exemptions allowed to the trust pursuant to section 60840
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 60841
deductions to adjusted gross income required under division (A) of 60842
this section, (ii) the amount of federal income taxes attributable 60843
to such income, and (iii) the amount of taxable income that has 60844
been included in the adjusted gross income of a beneficiary by 60845
reason of a prior accumulation distribution. Any undistributed net 60846
income included in the adjusted gross income of a beneficiary 60847
shall reduce the undistributed net income of the trust commencing 60848
with the earliest years of the accumulation period. 60849

(7) Deduct the amount of wages and salaries, if any, not 60850
otherwise allowable as a deduction but that would have been 60851
allowable as a deduction in computing federal adjusted gross 60852
income for the taxable year, had the targeted jobs credit allowed 60853
and determined under sections 38, 51, and 52 of the Internal 60854
Revenue Code not been in effect. 60855

(8) Deduct any interest or interest equivalent on public 60856
obligations and purchase obligations to the extent that the 60857
interest or interest equivalent is included in federal adjusted 60858
gross income. 60859

(9) Add any loss or deduct any gain resulting from the sale, 60860
exchange, or other disposition of public obligations to the extent 60861
that the loss has been deducted or the gain has been included in 60862
computing federal adjusted gross income. 60863

(10) Deduct or add amounts, as provided under section 5747.70 60864
of the Revised Code, related to contributions to variable college 60865
savings program accounts made or tuition credits purchased 60866
pursuant to Chapter 3334. of the Revised Code. 60867

(11)(a) Deduct, to the extent not otherwise allowable as a 60868

deduction or exclusion in computing federal or Ohio adjusted gross 60869
income for the taxable year, the amount the taxpayer paid during 60870
the taxable year for medical care insurance and qualified 60871
long-term care insurance for the taxpayer, the taxpayer's spouse, 60872
and dependents. No deduction for medical care insurance under 60873
division (A)(11) of this section shall be allowed either to any 60874
taxpayer who is eligible to participate in any subsidized health 60875
plan maintained by any employer of the taxpayer or of the 60876
taxpayer's spouse, or to any taxpayer who is entitled to, or on 60877
application would be entitled to, benefits under part A of Title 60878
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 60879
301, as amended. For the purposes of division (A)(11)(a) of this 60880
section, "subsidized health plan" means a health plan for which 60881
the employer pays any portion of the plan's cost. The deduction 60882
allowed under division (A)(11)(a) of this section shall be the net 60883
of any related premium refunds, related premium reimbursements, or 60884
related insurance premium dividends received during the taxable 60885
year. 60886

(b) Deduct, to the extent not otherwise deducted or excluded 60887
in computing federal or Ohio adjusted gross income during the 60888
taxable year, the amount the taxpayer paid during the taxable 60889
year, not compensated for by any insurance or otherwise, for 60890
medical care of the taxpayer, the taxpayer's spouse, and 60891
dependents, to the extent the expenses exceed seven and one-half 60892
per cent of the taxpayer's federal adjusted gross income. 60893

(c) For purposes of division (A)(11) of this section, 60894
"medical care" has the meaning given in section 213 of the 60895
Internal Revenue Code, subject to the special rules, limitations, 60896
and exclusions set forth therein, and "qualified long-term care" 60897
has the same meaning given in section 7702(B)(b) of the Internal 60898
Revenue Code. 60899

(12)(a) Deduct any amount included in federal adjusted gross 60900

income solely because the amount represents a reimbursement or 60901
refund of expenses that in any year the taxpayer had deducted as 60902
an itemized deduction pursuant to section 63 of the Internal 60903
Revenue Code and applicable United States department of the 60904
treasury regulations. The deduction otherwise allowed under 60905
division (A)(12)(a) of this section shall be reduced to the extent 60906
the reimbursement is attributable to an amount the taxpayer 60907
deducted under this section in any taxable year. 60908

(b) Add any amount not otherwise included in Ohio adjusted 60909
gross income for any taxable year to the extent that the amount is 60910
attributable to the recovery during the taxable year of any amount 60911
deducted or excluded in computing federal or Ohio adjusted gross 60912
income in any taxable year. 60913

(13) Deduct any portion of the deduction described in section 60914
1341(a)(2) of the Internal Revenue Code, for repaying previously 60915
reported income received under a claim of right, that meets both 60916
of the following requirements: 60917

(a) It is allowable for repayment of an item that was 60918
included in the taxpayer's adjusted gross income for a prior 60919
taxable year and did not qualify for a credit under division (A) 60920
or (B) of section 5747.05 of the Revised Code for that year; 60921

(b) It does not otherwise reduce the taxpayer's adjusted 60922
gross income for the current or any other taxable year. 60923

(14) Deduct an amount equal to the deposits made to, and net 60924
investment earnings of, a medical savings account during the 60925
taxable year, in accordance with section 3924.66 of the Revised 60926
Code. The deduction allowed by division (A)(14) of this section 60927
does not apply to medical savings account deposits and earnings 60928
otherwise deducted or excluded for the current or any other 60929
taxable year from the taxpayer's federal adjusted gross income. 60930

(15)(a) Add an amount equal to the funds withdrawn from a 60931

medical savings account during the taxable year, and the net 60932
investment earnings on those funds, when the funds withdrawn were 60933
used for any purpose other than to reimburse an account holder 60934
for, or to pay, eligible medical expenses, in accordance with 60935
section 3924.66 of the Revised Code; 60936

(b) Add the amounts distributed from a medical savings 60937
account under division (A)(2) of section 3924.68 of the Revised 60938
Code during the taxable year. 60939

(16) Add any amount claimed as a credit under section 60940
5747.059 of the Revised Code to the extent that such amount 60941
satisfies either of the following: 60942

(a) The amount was deducted or excluded from the computation 60943
of the taxpayer's federal adjusted gross income as required to be 60944
reported for the taxpayer's taxable year under the Internal 60945
Revenue Code; 60946

(b) The amount resulted in a reduction of the taxpayer's 60947
federal adjusted gross income as required to be reported for any 60948
of the taxpayer's taxable years under the Internal Revenue Code. 60949

(17) Deduct the amount contributed by the taxpayer to an 60950
individual development account program established by a county 60951
department of job and family services pursuant to sections 329.11 60952
to 329.14 of the Revised Code for the purpose of matching funds 60953
deposited by program participants. On request of the tax 60954
commissioner, the taxpayer shall provide any information that, in 60955
the tax commissioner's opinion, is necessary to establish the 60956
amount deducted under division (A)(17) of this section. 60957

(18) Beginning in taxable year 2001, if the taxpayer is 60958
married and files a joint return and the combined federal adjusted 60959
gross income of the taxpayer and the taxpayer's spouse for the 60960
taxable year does not exceed one hundred thousand dollars, or if 60961
the taxpayer is single and has a federal adjusted gross income for 60962

the taxable year not exceeding fifty thousand dollars, deduct 60963
amounts paid during the taxable year for qualified tuition and 60964
fees paid to an eligible institution for the taxpayer, the 60965
taxpayer's spouse, or any dependent of the taxpayer, who is a 60966
resident of this state and is enrolled in or attending a program 60967
that culminates in a degree or diploma at an eligible institution. 60968
The deduction may be claimed only to the extent that qualified 60969
tuition and fees are not otherwise deducted or excluded for any 60970
taxable year from federal or Ohio adjusted gross income. The 60971
deduction may not be claimed for educational expenses for which 60972
the taxpayer claims a credit under section 5747.27 of the Revised 60973
Code. 60974

(19) Add any reimbursement received during the taxable year 60975
of any amount the taxpayer deducted under division (A)(18) of this 60976
section in any previous taxable year to the extent the amount is 60977
not otherwise included in Ohio adjusted gross income. 60978

(20)(a) Add five-sixths of the amount of depreciation expense 60979
allowed by subsection (k) of section 168 of the Internal Revenue 60980
Code, including the taxpayer's proportionate or distributive share 60981
of the amount of depreciation expense allowed by that subsection 60982
to a pass-through entity in which the taxpayer has a direct or 60983
indirect ownership interest. The tax commissioner, under 60984
procedures established by the commissioner, may waive the add-back 60985
related to a pass-through entity if the taxpayer owns, directly or 60986
indirectly, less than five per cent of the pass-through entity. 60987

(b) Nothing in division (A)(20) of this section shall be 60988
construed to adjust or modify the adjusted basis of any asset. 60989

(c) To the extent the add-back required under division 60990
(A)(20)(a) of this section is attributable to property generating 60991
nonbusiness income or loss allocated under section 5747.20 of the 60992
Revised Code, the add-back shall be situated to the same location 60993
as the nonbusiness income or loss generated by the property for 60994

the purpose of determining the credit under division (A) of 60995
section 5747.05 of the Revised Code. Otherwise, the add-back shall 60996
be apportioned, subject to one or more of the four alternative 60997
methods of apportionment enumerated in section 5747.21 of the 60998
Revised Code. 60999

(21)(a) If the taxpayer was required to add an amount under 61000
division (A)(20)(a) of this section for a taxable year, deduct 61001
one-fifth of the amount so added for each of the five succeeding 61002
taxable years. 61003

(b) If the amount deducted under division (A)(21)(a) of this 61004
section is attributable to an add-back allocated under division 61005
(A)(20)(c) of this section, the amount deducted shall be sitused 61006
to the same location. Otherwise, the add-back shall be apportioned 61007
using the apportionment factors for the taxable year in which the 61008
deduction is taken, subject to one or more of the four alternative 61009
methods of apportionment enumerated in section 5747.21 of the 61010
Revised Code. 61011

(B) "Business income" means income, including gain or loss, 61012
arising from transactions, activities, and sources in the regular 61013
course of a trade or business and includes income, gain, or loss 61014
from real property, tangible property, and intangible property if 61015
the acquisition, rental, management, and disposition of the 61016
property constitute integral parts of the regular course of a 61017
trade or business operation. "Business income" includes income, 61018
including gain or loss, from a partial or complete liquidation of 61019
a business, including, but not limited to, gain or loss from the 61020
sale or other disposition of goodwill. 61021

(C) "Nonbusiness income" means all income other than business 61022
income and may include, but is not limited to, compensation, rents 61023
and royalties from real or tangible personal property, capital 61024
gains, interest, dividends and distributions, patent or copyright 61025
royalties, or lottery winnings, prizes, and awards. 61026

(D) "Compensation" means any form of remuneration paid to an employee for personal services. 61027
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(E) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any other person acting in any fiduciary capacity for any individual, trust, or estate. 61029
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(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December. 61032
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(G) "Individual" means any natural person. 61034

(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 61035
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(I) "Resident" means any of the following, provided that division (I)(3) of this section applies only to taxable years of a trust beginning in or after 2002, ~~2003, or 2004~~: 61037
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(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code; 61040
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(2) The estate of a decedent who at the time of death, or of a debtor who at the time of commencement of a bankruptcy proceeding, was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code and any election under section 5747.25 of the Revised Code are not controlling for purposes of division (I)(2) of this section. 61042
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(3) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part. 61048
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For the purposes of division (I)(3) of this section: 61051

(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I)(3)(d) of this section, that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred, or caused to be transferred, directly or 61052
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indirectly, to the trust by any of the following: 61057

(i) ~~A person, a court, or a governmental entity or instrumentality on account of the death of a decedent, but only if the trust is described in division (I)(3)(c)(i) or (ii) of this section~~ The will of an individual who was domiciled in this state at the time of the individual's death for purposes of the taxes levied under Chapter 5731. of the Revised Code, if the trust is a testamentary trust; 61058
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(ii) ~~A person who was~~ lifetime transfer by an individual domiciled in this state for the purposes of this chapter ~~when the person directly or indirectly transferred assets to an irrevocable trust, but only if~~ at the time of transfer to a trust that was irrevocable at the time of transfer, and at least one of the trust's qualifying beneficiaries is domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year; 61065
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(iii) ~~A person who was~~ lifetime transfer by an individual domiciled in this state for the purposes of this chapter ~~when~~ at the time the trust document or instrument or part of the trust document or instrument became irrevocable, but only if to a trust that was not irrevocable at the time of transfer, and at least one of the trust's qualifying beneficiaries is ~~a resident~~ domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year. 61073
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(iv) A lifetime transfer by an individual domiciled in this state for the purposes of this chapter at the time of the transfer if all of the following three conditions are met: (I) the trust is an inter vivos trust that became irrevocable only upon the death of the individual, and the individual was domiciled in this state at the time of death for purposes of the taxes levied under Chapter 5731. of the Revised Code; (II) the assets were transferred to the trust by will or by any other means including, 61081
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but not limited to, lifetime gift, beneficiary designation, or any 61089
other contractual arrangement taking effect during the 61090
individual's life or at the individual's death; and (III) at least 61091
one of the trust's qualifying beneficiaries is domiciled in this 61092
state for purposes of this chapter during all or some portion of 61093
the trust's current taxable year; 61094

(v) A person, a court, or a governmental entity or 61095
instrumentality on account of the death of a decedent domiciled in 61096
this state at the time of death for purposes of the taxes levied 61097
under Chapter 5731. of the Revised Code and at least one of the 61098
trust's qualifying beneficiaries is domiciled in this state for 61099
purposes of this chapter during all or some portion of the trust's 61100
current taxable year. 61101

For purposes of division (I)(3) of this section, a transfer 61102
by a court or other governmental entity or by any other person on 61103
behalf of or for any individual is a transfer by that individual, 61104
and "contractual arrangements" includes life insurance policies, 61105
annuities, and retirement plan arrangements. 61106

(b) A trust is irrevocable to the extent that the transferor 61107
is not considered to be the owner of the net assets of the trust 61108
under sections 671 to 678 of the Internal Revenue Code. 61109

(c) With respect to a trust other than a charitable lead 61110
trust, "qualifying beneficiary" has the same meaning as "potential 61111
current beneficiary" as defined in section 1361(e)(2) of the 61112
Internal Revenue Code, and with respect to a charitable lead trust 61113
"qualifying beneficiary" is any current, future, or contingent 61114
beneficiary, but with respect to any trust "qualifying 61115
beneficiary" excludes a person or a governmental entity or 61116
instrumentality to any of which a contribution would qualify for 61117
the charitable deduction under section 170 of the Internal Revenue 61118
Code. 61119

(d) For the purposes of division (I)(3)(a) of this section, 61120
the extent to which a trust consists directly or indirectly, in 61121
whole or in part, of assets, net of any related liabilities, that 61122
were transferred directly or indirectly, in whole or part, to the 61123
trust by any of the sources enumerated in that division shall be 61124
ascertained by multiplying the fair market value of the trust's 61125
assets, net of related liabilities, by the qualifying ratio, which 61126
shall be computed as follows: 61127

(i) The first time the trust receives assets, the numerator 61128
of the qualifying ratio is the fair market value of those assets 61129
at that time, net of any related liabilities, from sources 61130
enumerated in division (I)(3)(a) of this section. The denominator 61131
of the qualifying ratio is the fair market value of all the 61132
trust's assets at that time, net of any related liabilities. 61133

(ii) Each subsequent time the trust receives assets, a 61134
revised qualifying ratio shall be computed. The numerator of the 61135
revised qualifying ratio is the sum of (1) the fair market value 61136
of the trust's assets immediately prior to the subsequent 61137
transfer, net of any related liabilities, multiplied by the 61138
qualifying ratio last computed without regard to the subsequent 61139
transfer, and (2) the fair market value of the subsequently 61140
transferred assets at the time transferred, net of any related 61141
liabilities, from sources enumerated in division (I)(3)(a) of this 61142
section. The denominator of the revised qualifying ratio is the 61143
fair market value of all the trust's assets immediately after the 61144
subsequent transfer, net of any related liabilities. 61145

~~(e) For the purposes of division (I)(3)(a)(i) of this 61146
section:~~ 61147

~~(i) A trust is described in division (I)(3)(e)(i) of this 61148
section if the trust is a testamentary trust and the testator of 61149
that testamentary trust was domiciled in this state at the time of 61150~~

~~the testator's death for purposes of the taxes levied under Chapter 5731. of the Revised Code.~~ 61151
61152

~~(ii) A trust is described in division (I)(3)(c)(ii) of this section if the transfer is a qualifying transfer described in any of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an irrevocable inter vivos trust, and at least one of the trust's qualifying beneficiaries is domiciled in this state for purposes of this chapter during all or some portion of the trust's current taxable year.~~ 61153
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~~(f) For the purposes of division (I)(3)(c)(ii) of this section, a "qualifying transfer" is a transfer of assets, net of any related liabilities, directly or indirectly to a trust, if the transfer is described in any of the following:~~ 61160
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~~(i) The transfer is made to a trust, created by the decedent before the decedent's death and while the decedent was domiciled in this state for the purposes of this chapter, and, prior to the death of the decedent, the trust became irrevocable while the decedent was domiciled in this state for the purposes of this chapter.~~ 61164
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~~(ii) The transfer is made to a trust to which the decedent, prior to the decedent's death, had directly or indirectly transferred assets, net of any related liabilities, while the decedent was domiciled in this state for the purposes of this chapter, and prior to the death of the decedent the trust became irrevocable while the decedent was domiciled in this state for the purposes of this chapter.~~ 61170
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~~(iii) The transfer is made on account of a contractual relationship existing directly or indirectly between the transferor and either the decedent or the estate of the decedent at any time prior to the date of the decedent's death, and the decedent was domiciled in this state at the time of death for~~ 61177
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~~purposes of the taxes levied under Chapter 5731. of the Revised Code.~~ 61182
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~~(iv) The transfer is made to a trust on account of a contractual relationship existing directly or indirectly between the transferor and another person who at the time of the decedent's death was domiciled in this state for purposes of this chapter.~~ 61184
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~~(v) The transfer is made to a trust on account of the will of a testator.~~ 61189
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~~(vi) The transfer is made to a trust created by or caused to be created by a court, and the trust was directly or indirectly created in connection with or as a result of the death of an individual who, for purposes of the taxes levied under Chapter 5731. of the Revised Code, was domiciled in this state at the time of the individual's death.~~ 61191
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~~(g) The tax commissioner may adopt rules to ascertain the part of a trust residing in this state.~~ 61197
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(J) "Nonresident" means an individual or estate that is not a resident. An individual who is a resident for only part of a taxable year is a nonresident for the remainder of that taxable year. 61199
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(K) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code. 61203
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(L) "Return" means the notifications and reports required to be filed pursuant to this chapter for the purpose of reporting the tax due and includes declarations of estimated tax when so required. 61205
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(M) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the adjusted gross income is calculated 61209
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pursuant to this chapter. 61212

(N) "Taxpayer" means any person subject to the tax imposed by 61213
section 5747.02 of the Revised Code or any pass-through entity 61214
that makes the election under division (D) of section 5747.08 of 61215
the Revised Code. 61216

(O) "Dependents" means dependents as defined in the Internal 61217
Revenue Code and as claimed in the taxpayer's federal income tax 61218
return for the taxable year or which the taxpayer would have been 61219
permitted to claim had the taxpayer filed a federal income tax 61220
return. 61221

(P) "Principal county of employment" means, in the case of a 61222
nonresident, the county within the state in which a taxpayer 61223
performs services for an employer or, if those services are 61224
performed in more than one county, the county in which the major 61225
portion of the services are performed. 61226

(Q) As used in sections 5747.50 to 5747.55 of the Revised 61227
Code: 61228

(1) "Subdivision" means any county, municipal corporation, 61229
park district, or township. 61230

(2) "Essential local government purposes" includes all 61231
functions that any subdivision is required by general law to 61232
exercise, including like functions that are exercised under a 61233
charter adopted pursuant to the Ohio Constitution. 61234

(R) "Overpayment" means any amount already paid that exceeds 61235
the figure determined to be the correct amount of the tax. 61236

(S) "Taxable income" or "Ohio taxable income" applies only to 61237
estates and trusts, and means federal taxable income, as defined 61238
and used in the Internal Revenue Code, adjusted as follows: 61239

(1) Add interest or dividends, net of ordinary, necessary, 61240
and reasonable expenses not deducted in computing federal taxable 61241

income, on obligations or securities of any state or of any 61242
political subdivision or authority of any state, other than this 61243
state and its subdivisions and authorities, but only to the extent 61244
that such net amount is not otherwise includible in Ohio taxable 61245
income and is described in either division (S)(1)(a) or (b) of 61246
this section: 61247

(a) The net amount is not attributable to the S portion of an 61248
electing small business trust and has not been distributed to 61249
beneficiaries for the taxable year; 61250

(b) The net amount is attributable to the S portion of an 61251
electing small business trust for the taxable year. 61252

(2) Add interest or dividends, net of ordinary, necessary, 61253
and reasonable expenses not deducted in computing federal taxable 61254
income, on obligations of any authority, commission, 61255
instrumentality, territory, or possession of the United States to 61256
the extent that the interest or dividends are exempt from federal 61257
income taxes but not from state income taxes, but only to the 61258
extent that such net amount is not otherwise includible in Ohio 61259
taxable income and is described in either division (S)(1)(a) or 61260
(b) of this section; 61261

(3) Add the amount of personal exemption allowed to the 61262
estate pursuant to section 642(b) of the Internal Revenue Code; 61263

(4) Deduct interest or dividends, net of related expenses 61264
deducted in computing federal taxable income, on obligations of 61265
the United States and its territories and possessions or of any 61266
authority, commission, or instrumentality of the United States to 61267
the extent that the interest or dividends are exempt from state 61268
taxes under the laws of the United States, but only to the extent 61269
that such amount is included in federal taxable income and is 61270
described in either division (S)(1)(a) or (b) of this section; 61271

(5) Deduct the amount of wages and salaries, if any, not 61272

otherwise allowable as a deduction but that would have been 61273
allowable as a deduction in computing federal taxable income for 61274
the taxable year, had the targeted jobs credit allowed under 61275
sections 38, 51, and 52 of the Internal Revenue Code not been in 61276
effect, but only to the extent such amount relates either to 61277
income included in federal taxable income for the taxable year or 61278
to income of the S portion of an electing small business trust for 61279
the taxable year; 61280

(6) Deduct any interest or interest equivalent, net of 61281
related expenses deducted in computing federal taxable income, on 61282
public obligations and purchase obligations, but only to the 61283
extent that such net amount relates either to income included in 61284
federal taxable income for the taxable year or to income of the S 61285
portion of an electing small business trust for the taxable year; 61286

(7) Add any loss or deduct any gain resulting from sale, 61287
exchange, or other disposition of public obligations to the extent 61288
that such loss has been deducted or such gain has been included in 61289
computing either federal taxable income or income of the S portion 61290
of an electing small business trust for the taxable year; 61291

(8) Except in the case of the final return of an estate, add 61292
any amount deducted by the taxpayer on both its Ohio estate tax 61293
return pursuant to section 5731.14 of the Revised Code, and on its 61294
federal income tax return in determining federal taxable income; 61295

(9)(a) Deduct any amount included in federal taxable income 61296
solely because the amount represents a reimbursement or refund of 61297
expenses that in a previous year the decedent had deducted as an 61298
itemized deduction pursuant to section 63 of the Internal Revenue 61299
Code and applicable treasury regulations. The deduction otherwise 61300
allowed under division (S)(9)(a) of this section shall be reduced 61301
to the extent the reimbursement is attributable to an amount the 61302
taxpayer or decedent deducted under this section in any taxable 61303
year. 61304

(b) Add any amount not otherwise included in Ohio taxable income for any taxable year to the extent that the amount is attributable to the recovery during the taxable year of any amount deducted or excluded in computing federal or Ohio taxable income in any taxable year, but only to the extent such amount has not been distributed to beneficiaries for the taxable year.

(10) Deduct any portion of the deduction described in section 1341(a)(2) of the Internal Revenue Code, for repaying previously reported income received under a claim of right, that meets both of the following requirements:

(a) It is allowable for repayment of an item that was included in the taxpayer's taxable income or the decedent's adjusted gross income for a prior taxable year and did not qualify for a credit under division (A) or (B) of section 5747.05 of the Revised Code for that year.

(b) It does not otherwise reduce the taxpayer's taxable income or the decedent's adjusted gross income for the current or any other taxable year.

(11) Add any amount claimed as a credit under section 5747.059 of the Revised Code to the extent that the amount satisfies either of the following:

(a) The amount was deducted or excluded from the computation of the taxpayer's federal taxable income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;

(b) The amount resulted in a reduction in the taxpayer's federal taxable income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.

(12) Deduct any amount, net of related expenses deducted in computing federal taxable income, that a trust is required to

report as farm income on its federal income tax return, but only 61335
if the assets of the trust include at least ten acres of land 61336
satisfying the definition of "land devoted exclusively to 61337
agricultural use" under section 5713.30 of the Revised Code, 61338
regardless of whether the land is valued for tax purposes as such 61339
land under sections 5713.30 to 5713.38 of the Revised Code. If the 61340
trust is a pass-through entity investor, section 5747.231 of the 61341
Revised Code applies in ascertaining if the trust is eligible to 61342
claim the deduction provided by division (S)(12) of this section 61343
in connection with the pass-through entity's farm income. 61344

Except for farm income attributable to the S portion of an 61345
electing small business trust, the deduction provided by division 61346
(S)(12) of this section is allowed only to the extent that the 61347
trust has not distributed such farm income. Division (S)(12) of 61348
this section applies only to taxable years of a trust beginning in 61349
or after 2002, 2003, or 2004. 61350

(13) Add the net amount of income described in section 641(c) 61351
of the Internal Revenue Code to the extent that amount is not 61352
included in federal taxable income. 61353

(14) Add or deduct the amount the taxpayer would be required 61354
to add or deduct under division (A)(20) or (21) of this section if 61355
the taxpayer's Ohio taxable income were computed in the same 61356
manner as an individual's Ohio adjusted gross income is computed 61357
under this section. In the case of a trust, division (S)(14) of 61358
this section applies only to any of the trust's taxable years 61359
beginning in or after 2002, 2003, or 2004. 61360

(T) "School district income" and "school district income tax" 61361
have the same meanings as in section 5748.01 of the Revised Code. 61362

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 61363
of this section, "public obligations," "purchase obligations," and 61364
"interest or interest equivalent" have the same meanings as in 61365

section 5709.76 of the Revised Code. 61366

(V) "Limited liability company" means any limited liability 61367
company formed under Chapter 1705. of the Revised Code or under 61368
the laws of any other state. 61369

(W) "Pass-through entity investor" means any person who, 61370
during any portion of a taxable year of a pass-through entity, is 61371
a partner, member, shareholder, or equity investor in that 61372
pass-through entity. 61373

(X) "Banking day" has the same meaning as in section 1304.01 61374
of the Revised Code. 61375

(Y) "Month" means a calendar month. 61376

(Z) "Quarter" means the first three months, the second three 61377
months, the third three months, or the last three months of the 61378
taxpayer's taxable year. 61379

(AA)(1) "Eligible institution" means a state university or 61380
state institution of higher education as defined in section 61381
3345.011 of the Revised Code, or a private, nonprofit college, 61382
university, or other post-secondary institution located in this 61383
state that possesses a certificate of authorization issued by the 61384
Ohio board of regents pursuant to Chapter 1713. of the Revised 61385
Code or a certificate of registration issued by the state board of 61386
proprietary school registration under Chapter 3332. of the Revised 61387
Code. 61388

(2) "Qualified tuition and fees" means tuition and fees 61389
imposed by an eligible institution as a condition of enrollment or 61390
attendance, not exceeding two thousand five hundred dollars in 61391
each of the individual's first two years of post-secondary 61392
education. If the individual is a part-time student, "qualified 61393
tuition and fees" includes tuition and fees paid for the academic 61394
equivalent of the first two years of post-secondary education 61395
during a maximum of five taxable years, not exceeding a total of 61396

five thousand dollars. "Qualified tuition and fees" does not
include:

(a) Expenses for any course or activity involving sports,
games, or hobbies unless the course or activity is part of the
individual's degree or diploma program;

(b) The cost of books, room and board, student activity fees,
athletic fees, insurance expenses, or other expenses unrelated to
the individual's academic course of instruction;

(c) Tuition, fees, or other expenses paid or reimbursed
through an employer, scholarship, grant in aid, or other
educational benefit program.

(BB)(1) "Modified business income" means the business income
included in a trust's Ohio taxable income after such taxable
income is first reduced by the qualifying trust amount, if any.

(2) "Qualifying trust amount" of a trust means capital gains
and losses from the sale, exchange, or other disposition of equity
or ownership interests in, or debt obligations of, a qualifying
investee to the extent included in the trust's Ohio taxable
income, but only if the following requirements are satisfied:

(a) The book value of the qualifying investee's physical
assets in this state and everywhere, as of the last day of the
qualifying investee's fiscal or calendar year ending immediately
prior to the date on which the trust recognizes the gain or loss,
is available to the trust.

(b) The requirements of section 5747.011 of the Revised Code
are satisfied for the trust's taxable year in which the trust
recognizes the gain or loss.

Any gain or loss that is not a qualifying trust amount is
modified business income, qualifying investment income, or
modified nonbusiness income, as the case may be.

(3) "Modified nonbusiness income" means a trust's Ohio taxable income other than modified business income, other than the qualifying trust amount, and other than qualifying investment income, as defined in section 5747.012 of the Revised Code, to the extent such qualifying investment income is not otherwise part of modified business income.

(4) "Modified Ohio taxable income" applies only to trusts, and means the sum of the amounts described in divisions (BB)(4)(a) to (c) of this section:

(a) The fraction, calculated under division (B)(2) of section 5733.05, and applying section 5733.057 of the Revised Code, as if the trust were a corporation subject to the tax imposed by section 5733.06 of the Revised Code, multiplied by the sum of the following amounts:

(i) The trust's modified business income;

(ii) The trust's qualifying investment income, as defined in section 5747.012 of the Revised Code, but only to the extent the qualifying investment income does not otherwise constitute modified business income and does not otherwise constitute a qualifying trust amount.

(b) The qualifying trust amount multiplied by a fraction, the numerator of which is the sum of the book value of the qualifying investee's physical assets in this state on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the qualifying trust amount, and the denominator of which is the sum of the book value of the qualifying investee's total physical assets everywhere on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the qualifying trust amount. If, for a taxable year, the trust recognizes a qualifying trust amount with respect

to more than one qualifying investee, the amount described in 61458
division (BB)(4)(b) of this section shall equal the sum of the 61459
products so computed for each such qualifying investee. 61460

(c)(i) With respect to a trust or portion of a trust that is 61461
a resident as ascertained in accordance with division (I)(3)(d) of 61462
this section, its modified nonbusiness income. 61463

(ii) With respect to a trust or portion of a trust that is 61464
not a resident as ascertained in accordance with division 61465
(I)(3)(d) of this section, the amount of its modified nonbusiness 61466
income satisfying the descriptions in divisions (B)(2) to (5) of 61467
section 5747.20 of the Revised Code. 61468

If the allocation and apportionment of a trust's income under 61469
divisions (BB)(4)(a) and (c) of this section do not fairly 61470
represent the modified Ohio taxable income of the trust in this 61471
state, the alternative methods described in division (C) of 61472
section 5747.21 of the Revised Code may be applied in the manner 61473
and to the same extent provided in that section. 61474

(5)(a) Except as set forth in division (BB)(5)(b) of this 61475
section, "qualifying investee" means a person in which a trust has 61476
an equity or ownership interest, or a person or unit of government 61477
the debt obligations of either of which are owned by a trust. For 61478
the purposes of division (BB)(2)(a) of this section and for the 61479
purpose of computing the fraction described in division (BB)(4)(b) 61480
of this section, all of the following apply: 61481

(i) If the qualifying investee is a member of a qualifying 61482
controlled group on the last day of the qualifying investee's 61483
fiscal or calendar year ending immediately prior to the date on 61484
which the trust recognizes the gain or loss, then "qualifying 61485
investee" includes all persons in the qualifying controlled group 61486
on such last day. 61487

(ii) If the qualifying investee, or if the qualifying 61488

investee and any members of the qualifying controlled group of 61489
which the qualifying investee is a member on the last day of the 61490
qualifying investee's fiscal or calendar year ending immediately 61491
prior to the date on which the trust recognizes the gain or loss, 61492
separately or cumulatively own, directly or indirectly, on the 61493
last day of the qualifying investee's fiscal or calendar year 61494
ending immediately prior to the date on which the trust recognizes 61495
the qualifying trust amount, more than fifty per cent of the 61496
equity of a pass-through entity, then the qualifying investee and 61497
the other members are deemed to own the proportionate share of the 61498
pass-through entity's physical assets which the pass-through 61499
entity directly or indirectly owns on the last day of the 61500
pass-through entity's calendar or fiscal year ending within or 61501
with the last day of the qualifying investee's fiscal or calendar 61502
year ending immediately prior to the date on which the trust 61503
recognizes the qualifying trust amount. 61504

(iii) For the purposes of division (BB)(5)(a)(iii) of this 61505
section, "upper level pass-through entity" means a pass-through 61506
entity directly or indirectly owning any equity of another 61507
pass-through entity, and "lower level pass-through entity" means 61508
that other pass-through entity. 61509

An upper level pass-through entity, whether or not it is also 61510
a qualifying investee, is deemed to own, on the last day of the 61511
upper level pass-through entity's calendar or fiscal year, the 61512
proportionate share of the lower level pass-through entity's 61513
physical assets that the lower level pass-through entity directly 61514
or indirectly owns on the last day of the lower level pass-through 61515
entity's calendar or fiscal year ending within or with the last 61516
day of the upper level pass-through entity's fiscal or calendar 61517
year. If the upper level pass-through entity directly and 61518
indirectly owns less than fifty per cent of the equity of the 61519
lower level pass-through entity on each day of the upper level 61520

pass-through entity's calendar or fiscal year in which or with 61521
which ends the calendar or fiscal year of the lower level 61522
pass-through entity and if, based upon clear and convincing 61523
evidence, complete information about the location and cost of the 61524
physical assets of the lower pass-through entity is not available 61525
to the upper level pass-through entity, then solely for purposes 61526
of ascertaining if a gain or loss constitutes a qualifying trust 61527
amount, the upper level pass-through entity shall be deemed as 61528
owning no equity of the lower level pass-through entity for each 61529
day during the upper level pass-through entity's calendar or 61530
fiscal year in which or with which ends the lower level 61531
pass-through entity's calendar or fiscal year. Nothing in division 61532
(BB)(5)(a)(iii) of this section shall be construed to provide for 61533
any deduction or exclusion in computing any trust's Ohio taxable 61534
income. 61535

(b) With respect to a trust that is not a resident for the 61536
taxable year and with respect to a part of a trust that is not a 61537
resident for the taxable year, "qualifying investee" for that 61538
taxable year does not include a C corporation if both of the 61539
following apply: 61540

(i) During the taxable year the trust or part of the trust 61541
recognizes a gain or loss from the sale, exchange, or other 61542
disposition of equity or ownership interests in, or debt 61543
obligations of, the C corporation. 61544

(ii) Such gain or loss constitutes nonbusiness income. 61545

(6) "Available" means information is such that a person is 61546
able to learn of the information by the due date plus extensions, 61547
if any, for filing the return for the taxable year in which the 61548
trust recognizes the gain or loss. 61549

(CC) "Qualifying controlled group" has the same meaning as in 61550
section 5733.04 of the Revised Code. 61551

(DD) "Related member" has the same meaning as in section 61552
5733.042 of the Revised Code. 61553

(EE) Any term used in this chapter that is not otherwise 61554
defined in this section and that is not used in a comparable 61555
context in the Internal Revenue Code and other statutes of the 61556
United States relating to federal income taxes has the same 61557
meaning as in section 5733.40 of the Revised Code. 61558

Sec. 5747.02. (A) For the purpose of providing revenue for 61559
the support of schools and local government functions, to provide 61560
relief to property taxpayers, to provide revenue for the general 61561
revenue fund, and to meet the expenses of administering the tax 61562
levied by this chapter, there is hereby levied on every 61563
individual, trust, and estate residing in or earning or receiving 61564
income in this state, on every individual, trust, and estate 61565
earning or receiving lottery winnings, prizes, or awards pursuant 61566
to Chapter 3770. of the Revised Code, and on every individual, 61567
trust, and estate otherwise having nexus with or in this state 61568
under the Constitution of the United States, an annual tax 61569
measured in the case of individuals by Ohio adjusted gross income 61570
less an exemption for the taxpayer, the taxpayer's spouse, and 61571
each dependent as provided in section 5747.025 of the Revised 61572
Code; measured in the case of trusts by modified Ohio taxable 61573
income under division (D) of this section; and measured in the 61574
case of estates by Ohio taxable income. The tax imposed by this 61575
section on the balance thus obtained is hereby levied as follows: 61576

OHIO ADJUSTED GROSS INCOME LESS 61577

EXEMPTIONS (INDIVIDUALS)

OR 61578

MODIFIED OHIO 61579

TAXABLE INCOME (TRUSTS) 61580

OR 61581

| | | |
|--|--|--|
| OHIO TAXABLE INCOME (ESTATES) | TAX | 61582 |
| <u>For taxable years beginning before January 1, 2005:</u> | | 61583 |
| \$5,000 or less | .743% | 61584 |
| More than \$5,000 but not more than \$10,000 | \$37.15 plus 1.486% of the amount in excess of \$5,000 | 61585 |
| More than \$10,000 but not more than \$15,000 | \$111.45 plus 2.972% of the amount in excess of \$10,000 | 61586 |
| More than \$15,000 but not more than \$20,000 | \$260.05 plus 3.715% of the amount in excess of \$15,000 | 61587 |
| More than \$20,000 but not more than \$40,000 | \$445.80 plus 4.457% of the amount in excess of \$20,000 | 61588 |
| More than \$40,000 but not more than \$80,000 | \$1,337.20 plus 5.201% of the amount in excess of \$40,000 | 61589 |
| More than \$80,000 but not more than \$100,000 | \$3,417.60 plus 5.943% of the amount in excess of \$80,000 | 61590 |
| More than \$100,000 but not more than \$200,000 | \$4,606.20 plus 6.9% of the amount in excess of \$100,000 | 61591 |
| More than \$200,000 | \$11,506.20 plus 7.5% of the amount in excess of \$200,000 | 61592 |
| In July of each year, beginning in 2005, the tax commissioner shall adjust the income amounts prescribed in this division by multiplying the percentage increase in the gross domestic product deflator computed that year under section 5747.025 of the Revised Code by each of the income amounts resulting from the adjustment under this division in the preceding year, adding the resulting product to the corresponding income amount resulting from the adjustment in the preceding year, and rounding the resulting sum to the nearest multiple of fifty dollars. The tax commissioner also shall recompute each of the tax dollar amounts to the extent necessary to reflect the adjustment of the income amounts. The rates of taxation shall not be adjusted. | | 61593 61594 61595 61596 61597 61598 61599 61600 61601 61602 61603 61604 |
| The adjusted amounts apply to taxable years beginning in the | | 61605 |

~~ealendar year in which the adjustments are made. The tax 61606
commissioner shall not make such adjustments in any year in which 61607
the amount resulting from the adjustment would be less than the 61608
amount resulting from the adjustment in the preceding year. 61609~~

For taxable years beginning in 2005: 61610

\$5,000 or less .7% 61611

More than \$5,000 but not more \$35.00 plus 1.4% of the amount 61612
than \$10,000 in excess of \$5,000

More than \$10,000 but not more \$105.00 plus 2.9% of the amount 61613
than \$15,000 in excess of \$10,000

More than \$15,000 but not more \$250.00 plus 3.7% of the amount 61614
than \$20,000 in excess of \$15,000

More than \$20,000 but not more \$435.00 plus 4.4% of the amount 61615
than \$40,000 in excess of \$20,000

More than \$40,000 but not more \$1,315.00 plus 5.2% of the 61616
than \$80,000 amount in excess of \$40,000

More than \$80,000 but not more \$3,395.00 plus 5.9% of the 61617
than \$100,000 amount in excess of \$80,000

More than \$100,000 but not more \$4,575.00 plus 6.9% of the 61618
than \$200,000 amount in excess of \$100,000

More than \$200,000 \$11,475.00 plus 7.5% of the 61619
amount in excess of \$200,000

OHIO ADJUSTED GROSS INCOME 61620

(INDIVIDUALS)

OR 61621

MODIFIED OHIO 61622

TAXABLE INCOME (TRUSTS) 61623

OR 61624

OHIO TAXABLE INCOME (ESTATES) TAX 61625

For taxable years beginning in 2006: 61626

\$5,000 or less .7% 61627

More than \$5,000 but not more \$35.00 plus 1.4% of the amount 61628

| | | |
|--|---|-------|
| <u>than \$10,000</u> | <u>in excess of \$5,000</u> | |
| <u>More than \$10,000 but not more than \$15,000</u> | <u>\$105.00 plus 2.9% of the amount in excess of \$10,000</u> | 61629 |
| <u>More than \$15,000 but not more than \$20,000</u> | <u>\$250.00 plus 3.7% of the amount in excess of \$15,000</u> | 61630 |
| <u>More than \$20,000 but not more than \$40,000</u> | <u>\$435.00 plus 4.4% of the amount in excess of \$20,000</u> | 61631 |
| <u>More than \$40,000 but not more than \$80,000</u> | <u>\$1,315.00 plus 5.2% of the amount in excess of \$40,000</u> | 61632 |
| <u>More than \$80,000 but not more than \$100,000</u> | <u>\$3,395.00 plus 5.9% of the amount in excess of \$80,000</u> | 61633 |
| <u>More than \$100,000 but not more than \$200,000</u> | <u>\$4,575.00 plus 6.9% of the amount in excess of \$100,000</u> | 61634 |
| <u>More than \$200,000</u> | <u>\$11,475.00 plus 7.3% of the amount in excess of \$200,000</u> | 61635 |
| <u>For taxable years beginning in 2007:</u> | | 61636 |
| <u>\$5,000 or less</u> | <u>.7%</u> | 61637 |
| <u>More than \$5,000 but not more than \$10,000</u> | <u>\$35.00 plus 1.4% of the amount in excess of \$5,000</u> | 61638 |
| <u>More than \$10,000 but not more than \$15,000</u> | <u>\$105.00 plus 2.9% of the amount in excess of \$10,000</u> | 61639 |
| <u>More than \$15,000 but not more than \$20,000</u> | <u>\$250.00 plus 3.7% of the amount in excess of \$15,000</u> | 61640 |
| <u>More than \$20,000 but not more than \$40,000</u> | <u>\$435.00 plus 4.4% of the amount in excess of \$20,000</u> | 61641 |
| <u>More than \$40,000 but not more than \$80,000</u> | <u>\$1,315.00 plus 5.2% of the amount in excess of \$40,000</u> | 61642 |
| <u>More than \$80,000 but not more than \$100,000</u> | <u>\$3,395.00 plus 5.9% of the amount in excess of \$80,000</u> | 61643 |
| <u>More than \$100,000 but not more than \$200,000</u> | <u>\$4,575.00 plus 6.9% of the amount in excess of \$100,000</u> | 61644 |
| <u>More than \$200,000</u> | <u>\$11,475.00 plus 7.1% of the amount in excess of \$200,000</u> | 61645 |

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|---|--|-------|
| <u>For taxable years beginning after 2007:</u> | | 61646 |
| <u>\$5,000 or less</u> | <u>.7%</u> | 61647 |
| <u>More than \$5,000 but not more than \$10,000</u> | <u>\$35.00 plus 1.4% of the amount in excess of \$5,000</u> | 61648 |
| <u>More than \$10,000 but not more than \$15,000</u> | <u>\$105.00 plus 2.8% of the amount in excess of \$10,000</u> | 61649 |
| <u>More than \$15,000 but not more than \$20,000</u> | <u>\$245.00 plus 3.7% of the amount in excess of \$15,000</u> | 61650 |
| <u>More than \$20,000 but not more than \$40,000</u> | <u>\$430.00 plus 4.4% of the amount in excess of \$20,000</u> | 61651 |
| <u>More than \$40,000 but not more than \$80,000</u> | <u>\$1,310.00 plus 5.2% of the amount in excess of \$40,000</u> | 61652 |
| <u>More than \$80,000 but not more than \$100,000</u> | <u>\$3,390.00 plus 5.9% of the amount in excess of \$80,000</u> | 61653 |
| <u>More than \$100,000</u> | <u>\$4,570.00 plus 6.9% of the amount in excess of \$100,000</u> | 61654 |

(B) If the director of budget and management makes a certification to the tax commissioner under division (B) of section 131.44 of the Revised Code, the amount of tax as determined under division (A) of this section shall be reduced by the percentage prescribed in that certification for taxable years beginning in the calendar year in which that certification is made.

(C) The levy of this tax on income does not prevent a municipal corporation, a joint economic development zone created under section 715.691, or a joint economic development district created under section 715.70 or 715.71 or sections 715.72 to 715.81 of the Revised Code from levying a tax on income.

(D) This division applies only to taxable years of a trust beginning in or after 2002, 2003, or 2004.

(1) The tax imposed by this section on a trust shall be

computed by multiplying the Ohio modified taxable income of the trust by the rates prescribed by division (A) of this section.

(2) A credit is allowed against the tax computed under division (D) of this section equal to the lesser of (1) the tax paid to another state or the District of Columbia on the trust's modified nonbusiness income, other than the portion of the trust's nonbusiness income that is qualifying investment income as defined in section 5747.012 of the Revised Code, or (2) the effective tax rate, based on modified Ohio taxable income, multiplied by the trust's modified nonbusiness income other than the portion of trust's nonbusiness income that is qualifying investment income. The credit applies before any other applicable credits.

(3) The credits enumerated in divisions (A)(1) to ~~(13)~~(14) of section 5747.98 of the Revised Code do not apply to a trust subject to this division. Any credits enumerated in other divisions of section 5747.98 of the Revised Code apply to a trust subject to this division. To the extent that the trust distributes income for the taxable year for which a credit is available to the trust, the credit shall be shared by the trust and its beneficiaries. The tax commissioner and the trust shall be guided by applicable regulations of the United States treasury regarding the sharing of credits.

(E) For the purposes of this section, "trust" means any trust described in Subchapter J of Chapter 1 of the Internal Revenue Code, excluding trusts that are not irrevocable as defined in division (I)(3)(b) of section 5747.01 of the Revised Code and that have no modified Ohio taxable income for the taxable year, charitable remainder trusts, qualified funeral trusts, endowment and perpetual care trusts, qualified settlement trusts and funds, designated settlement trusts and funds, and trusts exempted from taxation under section 501(a) of the Internal Revenue Code.

Sec. 5747.022. An (A)(1) For taxable years beginning before 61701
January 1, 2006, an individual subject to the tax imposed by 61702
section 5747.02 of the Revised Code may claim a credit equal to 61703
twenty dollars times the number of exemptions allowed for the 61704
taxpayer, his the taxpayer's spouse, and each dependent under 61705
section 5747.02 of the Revised Code. The credit 61706

(2) For taxable years beginning after 2005, an individual 61707
subject to the tax imposed by section 5747.02 of the Revised Code 61708
may claim a nonrefundable credit equal to eighty dollars for each 61709
dependent. In the case of a joint return, neither spouse shall be 61710
considered to be a dependent of the other spouse. In the case of a 61711
return other than a joint return, a taxpayer's spouse shall be 61712
considered to be a dependent of the taxpayer for purposes of 61713
division (A)(2) of this section if: 61714

(a) The taxpayer's spouse has no Ohio adjusted gross income; 61715

(b) The taxpayer's spouse is not a dependent of another; and 61716

(c) The taxpayer is entitled to two personal exemptions on 61717
the taxpayer's federal income tax return. 61718

(B) For taxable years beginning after 2005, an individual 61719
subject to the tax imposed by section 5747.02 of the Revised Code 61720
who files a return other than a joint return may claim a 61721
nonrefundable credit equal to the lesser of the following amounts: 61722

(1) One hundred five dollars, as adjusted by division (E) of 61723
this section. 61724

(2) The product of the amount described in division (B)(1) of 61725
this section, as adjusted by division (E) of this section, times 61726
the "qualifying percentage" described in divisions (B)(2)(a) and 61727
(b) of this section. 61728

(a) For a taxpayer with an Ohio adjusted gross income of one 61729
hundred thousand dollars or less, the "qualifying percentage" is 61730

one hundred per cent. 61731

(b) For a taxpayer with an Ohio adjusted gross income greater than one hundred thousand dollars, the "qualifying percentage" is one hundred per cent minus the percentage ratio of a fraction the numerator of which is the lesser of fifty thousand dollars or the excess of the taxpayer's Ohio adjusted gross income over one hundred thousand dollars and the denominator of which is fifty thousand dollars. 61732
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(C) For taxable years beginning after 2005, an individual subject to the tax imposed by section 5747.02 of the Revised Code may claim, in the case of a joint return, a nonrefundable credit that is equal to the lesser of the following amounts: 61739
61740
61741
61742

(1) Two hundred ten dollars, as adjusted by division (E) of this section; 61743
61744

(2) The product of the amount described in division (C)(1) of this section, as adjusted by division (E) of this section, times the "qualifying percentage" described in divisions (C)(2)(a) and (b) of this section: 61745
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61748

(a) For a taxpayer with an Ohio adjusted gross income of two hundred thousand dollars or less, the "qualifying percentage" is one hundred per cent. 61749
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61751

(b) For a taxpayer with an Ohio adjusted gross income greater than two hundred thousand dollars, the "qualifying percentage" is one hundred per cent minus the percentage ratio of a fraction the numerator of which is the lesser of one hundred thousand dollars or the excess of the taxpayer's Ohio adjusted gross income over two hundred thousand dollars and the denominator of which is one hundred thousand dollars. 61752
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(D) The credits under this section shall be claimed in the order required under section 5747.98 of the Revised Code. The credit shall not be considered in determining the taxes required 61759
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61761

to be withheld under section 5747.06 of the Revised Code or the 61762
estimated taxes required to be paid under section 5747.09 of the 61763
Revised Code. 61764

(E) In September of each year, beginning in 2007, the tax 61765
commissioner shall determine the percentage increase in the gross 61766
domestic product deflator determined by the bureau of economic 61767
analysis of the United States department of commerce from the 61768
first day of January of the preceding calendar year to the last 61769
day of December of the preceding calendar year, and adjust the 61770
credit amounts described in divisions (A)(2), (B)(1), and (C)(1) 61771
of this section for taxable years beginning in the current 61772
calendar year by multiplying those amounts by the percentage 61773
increase in the gross domestic product deflator for that period; 61774
adding the resulting product to the credit amounts for taxable 61775
years beginning in the preceding calendar year; and rounding the 61776
resulting sum upward to the nearest multiple of ten dollars. The 61777
commissioner shall not make such an adjustment in any calendar 61778
year in which the amount resulting from the adjustment would be 61779
less than the amount resulting from the adjustment in the 61780
preceding calendar year. 61781

Sec. 5747.025. (A) Except for the purposes of Chapter 5748. 61782
of the Revised Code, this section does not apply to taxable years 61783
beginning after 2005. 61784

(A) The personal exemption for the taxpayer and the 61785
taxpayer's spouse shall be seven hundred fifty dollars each for 61786
the taxable year beginning in 1996, eight hundred fifty dollars 61787
each for the taxable year beginning in 1997, nine hundred fifty 61788
dollars each for the taxable year beginning in 1998, and one 61789
thousand fifty dollars each for the taxable year beginning in 1999 61790
and taxable years beginning after 1999 and before 2006. The 61791
personal exemption amount prescribed in this division for taxable 61792

years beginning after 1999 and before 2006 shall be adjusted each 61793
year in the manner prescribed in division (C) of this section. 61794

(B) The personal exemption for each dependent shall be eight 61795
hundred fifty dollars for the taxable year beginning in 1996, and 61796
one thousand fifty dollars for the taxable year beginning in 1997 61797
and taxable years beginning after 1997 and before 2006. The 61798
personal exemption amount prescribed in this division for taxable 61799
years beginning after 1999 and before 2006 shall be adjusted each 61800
year in the manner prescribed in division (C) of this section. 61801

(C) In September of each year, beginning in 2000, the tax 61802
commissioner shall determine the percentage increase in the gross 61803
domestic product deflator determined by the bureau of economic 61804
analysis of the United States department of commerce from the 61805
first day of January of the preceding calendar year to the last 61806
day of December of the preceding year, and adjust the personal 61807
exemption amount for taxable years beginning in the current 61808
calendar year by multiplying that amount by the percentage 61809
increase in the gross domestic product deflator for that period; 61810
adding the resulting product to the personal exemption amount for 61811
taxable years beginning in the preceding calendar year; and 61812
rounding the resulting sum upward to the nearest multiple of fifty 61813
dollars. The commissioner shall not make such an adjustment in any 61814
calendar year in which the amount resulting from the adjustment 61815
would be less than the amount resulting from the adjustment in the 61816
preceding calendar year. 61817

Sec. 5747.05. As used in this section, "income tax" includes 61818
both a tax on net income and a tax measured by net income. 61819

The following credits shall be allowed against the income tax 61820
imposed by section 5747.02 of the Revised Code on individuals and 61821
estates: 61822

(A)(1) The amount of tax otherwise due under section 5747.02 61823

of the Revised Code on such portion of the adjusted gross income 61824
of any nonresident taxpayer that is not allocable to this state 61825
pursuant to sections 5747.20 to 5747.23 of the Revised Code; 61826

(2) The credit provided under this division shall not exceed 61827
the portion of the total tax due under section 5747.02 of the 61828
Revised Code that the amount of the nonresident taxpayer's 61829
adjusted gross income not allocated to this state pursuant to 61830
sections 5747.20 to 5747.23 of the Revised Code bears to the total 61831
adjusted gross income of the nonresident taxpayer derived from all 61832
sources everywhere. 61833

(3) The tax commissioner may enter into an agreement with the 61834
taxing authorities of any state or of the District of Columbia 61835
that imposes an income tax to provide that compensation paid in 61836
this state to a nonresident taxpayer shall not be subject to the 61837
tax levied in section 5747.02 of the Revised Code so long as 61838
compensation paid in such other state or in the District of 61839
Columbia to a resident taxpayer shall likewise not be subject to 61840
the income tax of such other state or of the District of Columbia. 61841
No such agreement, including any existing agreements that the 61842
commissioner may have entered into pursuant to division (A)(3) of 61843
this section, shall apply for taxable years beginning in 2004, 61844
2005, 2006, 2007, or 2008, and the taxes imposed under this 61845
chapter shall apply to nonresidents for those taxable years. 61846

(B) The lesser of division (B)(1) or (2) of this section: 61847

(1) The amount of tax otherwise due under section 5747.02 of 61848
the Revised Code on such portion of the adjusted gross income of a 61849
resident taxpayer that in another state or in the District of 61850
Columbia is subjected to an income tax. The credit provided under 61851
division (B)(1) of this section shall not exceed the portion of 61852
the total tax due under section 5747.02 of the Revised Code that 61853
the amount of the resident taxpayer's adjusted gross income 61854
subjected to an income tax in the other state or in the District 61855

of Columbia bears to the total adjusted gross income of the 61856
resident taxpayer derived from all sources everywhere. 61857

(2) The amount of income tax liability to another state or 61858
the District of Columbia on the portion of the adjusted gross 61859
income of a resident taxpayer that in another state or in the 61860
District of Columbia is subjected to an income tax. The credit 61861
provided under division (B)(2) of this section shall not exceed 61862
the amount of tax otherwise due under section 5747.02 of the 61863
Revised Code. 61864

(3) No credit shall be allowed under division (B) of this 61865
section to the extent that for any taxable year the taxpayer has 61866
directly or indirectly deducted, or was required to directly or 61867
indirectly deduct, the amount of income tax liability to another 61868
state or the District of Columbia. 61869

(4) If the credit provided under division (B) of this section 61870
is affected by a change in either the portion of adjusted gross 61871
income of a resident taxpayer subjected to an income tax in 61872
another state or the District of Columbia or the amount of income 61873
tax liability that has been paid to another state or the District 61874
of Columbia, the taxpayer shall report the change to the tax 61875
commissioner within sixty days of the change in such form as the 61876
commissioner requires. 61877

(a) In the case of an underpayment, the report shall be 61878
accompanied by payment of any additional tax due as a result of 61879
the reduction in credit together with interest on the additional 61880
tax and is a return subject to assessment under section 5747.13 of 61881
the Revised Code solely for the purpose of assessing any 61882
additional tax due under this division, together with any 61883
applicable penalty and interest. It shall not reopen the 61884
computation of the taxpayer's tax liability under this chapter 61885
from a previously filed return no longer subject to assessment 61886
except to the extent that such liability is affected by an 61887

adjustment to the credit allowed by division (B) of this section. 61888

(b) In the case of an overpayment, an application for refund 61889
may be filed under this division within the sixty day period 61890
prescribed for filing the report even if it is beyond the period 61891
prescribed in section 5747.11 of the Revised Code if it otherwise 61892
conforms to the requirements of such section. An application filed 61893
under this division shall only claim refund of overpayments 61894
resulting from an adjustment to the credit allowed by division (B) 61895
of this section unless it is also filed within the time prescribed 61896
in section 5747.11 of the Revised Code. It shall not reopen the 61897
computation of the taxpayer's tax liability except to the extent 61898
that such liability is affected by an adjustment to the credit 61899
allowed by division (B) of this section. 61900

(C) For a taxpayer sixty-five years of age or older during 61901
the taxable year, a credit for such year equal to fifty dollars 61902
for each return required to be filed under section 5747.08 of the 61903
Revised Code. 61904

(D) A taxpayer sixty-five years of age or older during the 61905
taxable year who has received a lump-sum distribution from a 61906
pension, retirement, or profit-sharing plan in the taxable year 61907
may elect to receive a credit under this division in lieu of the 61908
credit to which the taxpayer is entitled under division (C) of 61909
this section. A taxpayer making such election shall receive a 61910
credit for the taxable year equal to fifty dollars times the 61911
taxpayer's expected remaining life as shown by annuity tables 61912
issued under the provisions of the Internal Revenue Code and in 61913
effect for the calendar year which includes the last day of the 61914
taxable year. A taxpayer making an election under this division is 61915
not entitled to the credit authorized under division (C) of this 61916
section in subsequent taxable years except that if such election 61917
was made prior to July 1, 1983, the taxpayer is entitled to 61918
one-half the credit authorized under such division in subsequent 61919