

Ohio IT 2023

Instructions for Allocating and Apportioning Income Solely for Purposes of Computing the Nonresident Credit and the Part-Year Resident Credit for Individuals and Estates

**Ohio form IT 2023 is solely for use in determining the numerator of the fraction used to calculate the nonresident or part-year resident tax credit available for individuals and estates.
See Ohio Revised Code sections (R.C.) 5747.20 through 5747.231.**

Do not use this form to compute Ohio adjusted gross income. The form and instructions apply to nonresidents who have business and/or nonbusiness income within and without Ohio. Use Ohio form IT 2023 solely for determining the numerator of the fraction used to calculate the nonresident tax credit. **If your only source of Ohio income is wages paid by an unrelated employer, you do not have to use this form.**

If you are participating in the filing of Ohio form IT 4708 and if you are not filing Ohio form IT 1040 or Ohio form IT 1041, you do not need to complete this form. If you are an investor in a pass-through entity that is a financial institution (as defined in R.C. 5725.01) (see "Special Rule for Investments in Financial Institutions" on page 4.)

Important: This form assumes that the taxpayer has either (i) a distributive share of income/gain from only one pass-through entity or (ii) distributive shares of income/gain from more than one pass-through entity that are unitary with each other (under Ohio law, pass-through entities include sole proprietorships). For taxpayers other than those described above, see "Part-Year and Full-Year Nonresidents Having an Equity Interest in More Than One Pass-Through Entity" on page 2.

Trusts should not use this form. Instead, trusts should complete Schedules F, G, H and I on Ohio form IT 1041.

Definitions

Business Income and Nonbusiness Income

"Business income" means income, including gain or loss, arising from transactions, activities and sources in the regular course of a trade or business and includes income from real, tangible, and intangible property if the acquisition, rental, management and disposition of the property constitute integral parts of the regular course of a trade or business operation. Also, "business income" consists of income, including gain or loss, from a partial or complete liquidation of a business, including, but not limited to, gain or loss from the sale or other disposition of goodwill. R.C. 5747.01(B)

In general, income, deductions, gains and losses recognized by a sole proprietorship or a pass-through entity are items of business income that the nonresident and part-year resident taxpayer must apportion (rather than allocate) using Part II on page 2 of Ohio form IT 2023.

"Nonbusiness income" means all income other than business income and may include, but is not limited to, compensation, rents and royalties from real or tangible personal property, capital gains, interest, dividends, distributions, patent or copyright royalties, and lottery winnings, prizes and awards, R.C. 5747.01(C). Show nonbusiness income, if any, in Part IV on page 3 of Ohio form IT 2023.

R.C. 5747.20, .21 and .221

Allocation of Nonbusiness Income or Deduction; Apportionment of Business Income or Deductions; and Items and Deductions Not to Be Allocated or Apportioned for Purposes of the Nonresident Tax Credit

The amount of **business income and deductions** apportioned to Ohio is determined by multiplying the net business income by an Ohio apportionment ratio, which is the sum of the property, payroll and sales factors (please refer to the Part III business income worksheet on page 2 of Ohio form IT 2023). Please note that the net business income consists only of those items of income and deduction included in Ohio adjusted gross income (Ohio form IT 1040, line 3) or Ohio taxable income (Ohio form IT 1041, line 3).

Each factor is weighted: The property and payroll factors are weighted at 20% each and the sales factor at 60%, for a total of 100%. If any factor has a denominator (total everywhere figure) of zero, the weight given to the other factors must be proportionately increased so that the total weight given to the combined factors is 100%. For example: If the business entity has no payroll everywhere, then the property and sales factors are weighted at 25% and 75%, respectively, to total 100%.

Nonbusiness income and deductions, if any, are allocable only as provided by R.C. 5747.20 and 5747.221. However, in general, all pass-through entity income and gain is business income, which, in accordance with R.C. 5747.21, is apportioned rather than allocated.

R.C. 5747.22(B) and (C)

Apportionment and Allocation of Income and Deductions of Pass-Through Entities

Apportionment of Pass-Through Entity Business Income and Deductions for Purposes of the Nonresident Credit and the Part-Year Resident Credit

With respect to a pass-through entity where one or more of the nonresident or part-year resident investors are subject to the Ohio income tax, the business income and deductions of the pass-through entity shall be apportioned to Ohio in the hands of the pass-through entity according to the instructions for apportioning business income. Such business income and deductions thus apportioned to Ohio are then allocated to the investors in proportion to their right to share in such business income.

Allocation of Pass-Through Entity Nonbusiness Income and Deductions for Purposes of the Nonresident Credit and the Part-Year Resident Credit

With respect to a pass-through entity where one or more of the nonresident or part-year resident investors are subject to the Ohio income tax, the nonbusiness income and deductions

of the pass-through entity shall be allocated to the investors in proportion to their right to share in such nonbusiness income. Then such pass-through entity shares of nonbusiness income shall be allocated within and without this state in the hands of the investors according to the instructions, below, for allocating nonbusiness income by individuals.

R.C. 5747.23(A) and (B)

Taxation of Trust Income Received by Beneficiaries for Purposes of the Nonresident Credit

Apportionment of Trust Business Income and Deductions

With respect to each estate and each trust where one or more of the beneficiaries are subject to the Ohio income tax, the trust's business income (net of deductions) received by such beneficiaries shall be apportioned to Ohio in the hands of the trust according to the above instructions for apportioning business income by individuals. Such trust business income and deductions shall then be allocated to such beneficiaries in proportion to their right to share in the business income of such trust to the extent of the distribution made to such beneficiary.

Allocation of Trust Nonbusiness Income and Deductions for Purposes of the Nonresident Credit

With respect to each estate and each trust where one or more of the nonresident or part-year resident beneficiaries are subject to the Ohio income tax, the trust's nonbusiness income (net of deductions) received by such beneficiaries shall be allocated to such beneficiaries in proportion to their right to share in such income (net of deductions) of the trust. Then the share of nonbusiness income shall be allocated to Ohio in the hands of such beneficiary pursuant to R.C. 5747.20. The beneficiary is subject to Ohio income tax for the taxable year in which such beneficiary recognizes income with respect to trust distributions.

Part-year Residents

For the portion of the taxable year that the taxpayer was not a resident of Ohio, the taxpayer should allocate entirely outside Ohio the taxpayer's non-Ohio wages paid either (i) by any unrelated party or (ii) by a related party C corporation. For purposes of this form, "non-Ohio wages" are those wages which the taxpayer earned and received for services performed outside Ohio while a nonresident.

For the portion of the taxable year that the taxpayer was not a resident of Ohio, the taxpayer should also allocate entirely outside Ohio (i) items of nonbusiness income (defined below) not allocated to Ohio and (ii) all items of income, gain, expenses and losses if such items do **not** represent items of business income (defined at right) which are apportioned in and out of Ohio.

Examples of nonbusiness income amounts entirely allocated outside Ohio for the portion of the year during which the taxpayer was a nonresident include the following: interest income, dividend income, and gains (losses) from the sale, exchange, or other disposition of assets not having an Ohio

situs. Examples of nonbusiness income that the individual must entirely allocate to Ohio – even for the portion of the year during which the individual was not a resident of Ohio – include the following: (i) gain (loss) from the sale, exchange or other disposition of Ohio real estate and prizes and (ii) awards that the individual receives from the Ohio Lottery Commission.

Examples of business income amounts that a part-year resident must apportion in and out of the state – even for the portion of the year during which the individual was not a resident of Ohio – include the following: (i) wages and guaranteed payments that the taxpayer receives from a related member pass-through entity having nexus with Ohio (see Ohio form IT 2023, page 2, Part II, A, line 1), (ii) distributive shares of income from each pass-through entity having nexus with Ohio, and (iii) the profit from a sole proprietorship having nexus with Ohio.

Part-Year and Full-Year Nonresidents Having an Equity Interest in More Than One Pass-Through Entity

Each part-year nonresident, with respect to the portion of the taxable year during which the taxpayer is not a resident of Ohio, and each full-year nonresident having an equity interest in more than one pass-through entity must treat all unitary pass-through entities as one pass-through entity for purposes of apportioning the amount of distributive shares of income, gain, expenses, and losses from the unitary pass-through entities. If a part-year nonresident or a full-year nonresident invests in more than one pass-through entity and if these pass-through entities are not unitary with each other, then the taxpayer must calculate the part-year/full-year nonresident credit based upon those separate unitary groups. The following example illustrates the application of this requirement.

Assume a full-year nonresident owns 100% of the stock of each of the following S corporations:

- Sherman S Corporation, a shoe store retailer conducting operations solely in Ohio,
- Warner S Corporation, a shoe store retailer conducting operations solely in Pennsylvania, and
- Sylvan S Corporation, a real estate management company having operations in several states, including Ohio.

Further assume that the taxpayer recognizes a gain on the taxpayer's sale of publicly traded securities. The taxpayer did not use the securities in the conduct of either the retail shoe business or the real estate management business, and income/gain with respect to these securities is not unitary with the other business operations of any of the companies.

In computing the nonresident credit, the taxpayer would do the following:

- Treat Sherman S Corporation and Warner S Corporation as one, single pass-through entity. As such, the taxpayer would use the "single" entity's combined property, payroll and sales to apportion the "single" entity's combined income, gain, expenses and losses.

- Separately apportion the real estate management company's income, gain, expenses and losses.
- Entirely allocate outside Ohio the gain from the sale of the publicly traded securities not used in either business.

In the above example, the taxpayer would have to modify Part II on page 2 of Ohio form IT 2023 in order to apportion separately the business income from each of the two nonunitary pass-through entities' business operations.

Pro-rating Amounts Recognized by a Part-Year Resident

Part-year nonresidents and full-year nonresidents use the same methods to apportion and allocate within and without Ohio the following: (i) those items of nonbusiness income, gain, expenses, and losses situated to Ohio and (ii) those items of business income, gain, expenses, and losses from pass-through entities having nexus with Ohio (with respect to items not described above, the taxpayer should apportion/allocate entirely outside Ohio those amounts recognized or incurred during the year or during the portion of the year that the taxpayer was a nonresident).

For ease of administration, part-year resident taxpayers investing in pass-through entities having no nexus with Ohio can, for the portion of the taxable year during which the individual was **not** an Ohio resident, apportion/allocate outside Ohio such items by using a daily or monthly pro-rata factor. If the tax commissioner examines the tax return and determines that an "actual, year-to-date" method more accurately reflects the tax due and, if as a result of that determination, the taxpayer owes more tax (and interest on the tax) the tax commissioner will not impose any failure to pay penalty or interest penalty with respect to that increased tax.

The following example illustrates the application of this requirement:

A taxpayer is a resident of Ohio for only the last five months of the taxable year. During the entire taxable year the taxpayer was an equity investor in a pass-through entity having no nexus with Ohio. The pass-through entity's business operations result in a significant portion of the profit being earned during November and December of each year. The individual's distributive share of profit from the pass-through entity was \$12,000 for the taxable year.

For ease of tax compliance, the taxpayer can compute the part-year credit by assuming that \$7,000 of the taxpayer's distributive share of income was earned during the seven-month period prior to the taxpayer becoming a resident of Ohio: $7/12 \times \$12,000$. Upon examination of the taxpayer's tax return, the tax commissioner ascertains that \$9,600 of the taxpayer's \$12,000 distributive share was earned on and after Aug. 1, the date on which the taxpayer became a resident of Ohio. As such, the tax commissioner will recompute and reduce the nonresident credit by allocating outside Ohio only \$2,400 (recall that the pass-through entity has no nexus

with Ohio). As a result, the taxpayer will owe additional Ohio income tax and related interest, but the tax commissioner will not impose any failure-to-pay penalty on that tax due or related interest penalty.

Business Income (Part II, Part A)

Line 1 – Compensation Received from a Pass-Through Entity

With respect to the guaranteed payments and/or compensation received by pass-through entities (S corporations, partnerships, limited liability companies treated as partnerships for income tax purposes, etc.) the **"reciprocity agreements" between Ohio and neighboring states do not apply to those nonresidents directly or indirectly owning at least 20% of the stock or other equity of the pass-through entity.** That is, these nonresidents cannot use the "reciprocity agreements" in order to deduct, as non-Ohio income, any guaranteed payments or compensation received from such pass-through entities. Rather, the guaranteed payments or compensation are included in Ohio taxable income and are treated as business income which is subject to apportionment for purposes of computing the individual's nonresident credit. R.C. 5733.40(A)(7)

Line 2 – Related Member Add-back

R.C. 5733.042(A)(6) and 5733.04(P) disallow expenses and losses incurred in connection with all direct and indirect transactions between each pass-through entity and its related members. As such, you must add back on Part II, line 1 your distributive/proportionate share of such expenses and losses. However, do not add (i) amounts shown on line 1 or (ii) expenses or losses incurred in connection with sales of inventory to the extent that the cost of the inventory and the loss incurred were calculated in accordance with Internal Revenue Code sections (I.R.C.) 263A and 482.

Line 6 – Depreciation Adjustments

Add 5/6 of the I.R.C. 168(k) bonus depreciation allowed under the I.R.C. in effect on Oct. 16, 2009. Also add 5/6 of the excess of the I.R.C. 179 depreciation expense allowed under the I.R.C. effect on Oct. 16, 2009 over the amount of the I.R.C. 179 depreciation expense that would have been allowed based upon I.R.C. 179 in effect on Dec. 31, 2002. See the department's July 31, 2002 information release regarding the Ohio bonus depreciation adjustments on our Web site at tax.ohio.gov.

Under I.R.C. 179, as that section existed on Dec. 31, 2002, the maximum amount that could be expensed was \$25,000, and the phase-out began once the cost of purchases of I.R.C. 179 property during the year exceeded \$200,000. So, under the prior law the taxpayer could not claim any I.R.C. 179 expense if the taxpayer's purchases during the year of I.R.C. 179 property, as defined on Dec. 31, 2002, were \$225,000 or more.

This “add-back and subsequent deduction” law also covers (i) depreciable assets acquired by the taxpayer’s disregarded entities and (ii) depreciable assets that are owned by pass-through entities in which the taxpayer directly or indirectly owns at least 5% (see R.C. 5747.01(A)(20)(a)).

In addition, the pass-through entity can defer making all or some of the add-back under the following circumstances:

- (i) the pass-through equity is an equity investor in another pass-through entity that has generated I.R.C. 168(k) bonus depreciation and/or I.R.C. 179 depreciation and
- (ii) because of either the federal passive activity loss limitation rules or the federal at-risk limitation rules, this investor pass-through entity is unable to deduct fully a loss passing through from the other pass-through entity to this investor pass-through entity

In such circumstances, to the extent that this investor pass-through entity does not deduct the loss passing through, this investor pass-through entity can defer making the “5/6 add-back” until the taxable year or years for which this investor pass-through entity does deduct the investee pass-through entity’s loss and does receive a federal tax benefit from the bonus depreciation amount and/or the I.R.C. 179 amount generated by the investee pass-through entity. Of course, this investor pass-through entity cannot begin claiming the related five-subsequent-years deduction until the first taxable year immediately following the taxable year for which this investor pass-through entity makes the 5/6 add-back.

For detailed information and examples regarding this adjustment, see the department’s information release entitled “Recently Enacted Ohio Legislation Affects Depreciation Deductions for Taxable Years Ending 2001 and Thereafter” by visiting tax.ohio.gov. The department posted this release on July 31, 2002, and revised the release in July 2005.

Line 7 – Miscellaneous Federal Income Tax Adjustments

Enter on this line (i) any income or gain amount that was not included in your federal adjusted gross income (line 1 of Ohio form IT 1040) solely because of post-Oct. 16, 2009 amendments to the Internal Revenue Code and (ii) any amount you deducted in arriving at federal adjusted gross income solely because of post-Oct. 16, 2009 amendments to the Internal Revenue Code. For example, you must add back 100% of (i) total depreciation (I.R.C. 167, 168 and 179) and allowed over (ii) the total depreciation that you would have been able to claim under the Internal Revenue Code as it existed on Oct. 16, 2009. See R.C. 5701.11.

Note: At the time of the printing of these instructions, there were no federal tax adjustments.

Deductions From Business Income (Part II, Part B)

Line 9b – Depreciation Adjustments

Deduct 1/5 of the I.R.C. 168(k) and 179 depreciation adjustments you added back on each of your last five years’ Ohio

income tax returns. You can take this deduction even if you no longer directly or indirectly own the asset. See on our Web site at tax.ohio.gov the department’s July 31, 2002 information release regarding the Ohio bonus depreciation deductions.

Line 9d – Miscellaneous Federal Income Tax Adjustments

Enter on this line (i) any income or gain amount that was included in your federal adjusted gross income (line 1 of Ohio form IT 1040) solely because of post-Oct. 16, 2009 amendments to the Internal Revenue Code and (ii) any amount you were not able to deduct in arriving at federal adjusted gross income but you would have been able to deduct under the Internal Revenue Code in effect on Oct. 16, 2009. See R.C. 5701.11.

Note: At the time of the printing of these instructions, there were no federal tax adjustments.

Net Business Income, Apportionment (Part II, Part C)

Line 11 – Gain Described in R.C. 5747.212

Each nonresident taxpayer who sells, exchanges or otherwise disposes of his/her direct or indirect interest in a closely held business having property, payroll and/or sales in Ohio must situs to Ohio a portion of the gain (loss) recognized from that sale, exchange or other disposition. For additional information, see R.C. 5747.212.

Apportionment Formula for Business Income (Part III)

Note: When calculating the fraction used to compute the nonresident credit, a taxpayer who has invested in a partnership, an S corporation or a limited liability company treated as a partnership for federal income tax purposes must apply the “aggregate” (conduit) theory of taxation. That is, the character of all income and deductions (and adjustments to income and deductions) realized by a pass-through entity in which the taxpayer has invested retains that character when recognized by the taxpayer. Furthermore, the taxpayer’s factors must include the proportionate share of each lower-tiered pass-through entity’s property, payroll and sales. See R.C. 5733.057 and 5747.231.

Special Rule for Investments in Financial Institutions

With respect to distributive shares of income and gain that the nonresident taxpayer recognizes on account of the nonresident taxpayer’s direct or indirect equity investment in a financial institution, as defined in R.C. 5725.01, do not use the standard apportionment formula to apportion such income/gain. Instead, apportion such income/gain by using the apportionment schedule set forth in the Ohio form FT 1120FI, Ohio Corporation Franchise Report for Financial Institutions. This form is available on our Web site at tax.ohio.gov.

Property Factor

The property factor is a fraction the numerator of which is the average value of the sole proprietor’s or pass-through

entity's includable real and tangible personal property owned or rented, and used in the trade or business in this state during the taxable year, and the denominator of which is the average value of all the sole proprietor's or pass-through entity's includable real and tangible personal property owned or rented, and used in the trade or business everywhere during such year.

Ohio law includes in the property factor real property and tangible personal property that the sole proprietor or pass-through entity rents, subrents, leases or subleases to others if the income or loss from such rentals, subrentals, leases or subleases is business income. Ohio law specifically excludes from the factor all property relating to, or used in connection with, the production of nonbusiness income allocated under R.C. 5733.051. Generally, all sole proprietorship and pass-through entity income and gain is business income.

Property owned by the sole proprietor or pass-through entity is valued at its original cost average value. Average value is determined by adding the cost values at the beginning and at the end of the taxable year and dividing the total by two. The tax commissioner may require the use of monthly values during the taxable year if such values more reasonably reflect the average value of the sole proprietor's or pass-through entity's property.

Exclusions

Exclude from column 1 (within Ohio) and column 2 (total everywhere) the following:

- Construction in progress.
- Property relating to, or used in connection with, the production of nonbusiness income. See R.C. 5733.05(B)(2) as amended by Amended Substitute House Bill 95, 125th General Assembly.
- The numerator and the denominator of the property factor includes real property and tangible personal property that the sole proprietor or pass-through entity rents, subrents, leases or subleases to others if the income or loss from such rentals, subrentals, leases or subleases is business income. See R.C. 5733.05(B)(2)(a) as amended by Amended Substitute House Bill 95, 125th General Assembly. Property owned by the sole proprietor or pass-through entity and leased to others is excluded from the property factor only if the property generates nonbusiness income.
- The original cost of property within Ohio with respect to the air pollution, noise pollution or industrial water pollution control certificates issued by the state of Ohio. See R.C. 5733.05(B)(2)(a).
- The original cost of real property and tangible property (or in the case of property that the sole proprietor or pass-through entity is renting from others, eight times its net annual rental rate) within Ohio that is used exclusively during the taxable year for qualified research.

Do not include in column 1 but do include in column 2 the original cost of qualifying improvements to land or tangible

personal property in an enterprise zone for which the taxpayer holds a Tax Incentive Qualification Certificate issued by the Department of Development.

Line 1(a), Column 1 – Property Owned Within Ohio

Enter the average value of the sole proprietor's or pass-through entity's real property and tangible personal property, including leasehold improvements, owned and used in the trade or business in Ohio during the taxable year.

Line 1(a), Column 2 – Property Owned – Total Everywhere

Enter the average value of all the sole proprietor's or pass-through entity's real property and tangible personal property, including leasehold improvements, owned and used in the trade or business everywhere during the taxable year.

Line 1(b) – Property Rented

Enter the value of the sole proprietor's or pass-through entity's real property and tangible personal property rented and used in the trade or business in Ohio (column 1) and everywhere (column 2) during the taxable year. Property rented by the sole proprietor or pass-through entity is valued at eight times the annual rental rate (annual rental expense less subrental receipts).

Line 1(c) – Property Total Within Ohio and Everywhere

Add lines 1(a) and 1(b) for column 1 (within Ohio) and column 2 (total everywhere).

Line 1(c), Column 3 – Property Ratio

Enter the ratio of property within Ohio to total everywhere by dividing column 1 by column 2.

Line 1(c), Column 5 – Weighted Property Ratio

Multiply the property ratio on line 1(c), column 3 by the property factor weighting of 20%.

Payroll Factor

The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the sole proprietor or pass-through entity, and the denominator of which is the total compensation paid both within and without this state during the taxable year by the sole proprietor or pass-through entity. As used on page 6, the term "compensation" means any form of remuneration paid to an employee for personal services.

Exclusions

Exclude from column 1 (within Ohio) and column 2 (total everywhere) the following:

- Guaranteed payments made to partners;
- Compensation that the S corporation paid to any shareholder if the shareholder directly or indirectly owned at least 20% of the S corporation at any time during the year. R.C. 5733.40(A)(7);
- Compensation paid in Ohio to employees who are primarily engaged in qualified research; AND

- Compensation paid to employees to the extent that the compensation relates to the production of nonbusiness income allocable under R.C. 5733.051 (see R.C. 5733.05(B)(2)).

Do not include in column 1 but do include in column 2 compensation paid in Ohio to certain specified new employees at an urban job and enterprise zone facility for which the pass-through entity has received a Tax Incentive Qualification Certificate issued by the Department of Development.

Line 2, Column 1 – Payroll Within Ohio

Enter the total amount of the sole proprietor's or pass-through entity's compensation paid in Ohio during the taxable year. Compensation is paid in Ohio if any of the following apply:

- The recipient's service is performed entirely within Ohio; or
- The recipient's service is performed both within and without Ohio, but the service performed without Ohio is incidental to the recipient's service within Ohio; OR
- Some of the recipient's service is performed within Ohio and either the recipient's base of operations, or if there is no base of operations, the place from which the recipient's service is directed or controlled is within Ohio, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the recipient's residence is in Ohio.

Compensation is paid in Ohio to any employee of a common or contract motor carrier corporation who performs his regularly assigned duties on a motor vehicle in more than one state in the same ratio by which the mileage traveled by such employee within Ohio bears to the total mileage traveled by such employee everywhere during the taxable year. The statutorily required mileage ratio applies only to contract or common carriers. Thus, without approval by the tax commissioner a manufacturer or merchant who operates its own fleet of delivery trucks cannot use the ratio of miles traveled in Ohio to miles traveled everywhere to situs driver payroll. See *Cooper Tire and Rubber Co. v. Limbach* (1994), 70 Ohio St. 3d 347.

Line 2, Column 2 – Payroll Total Everywhere

Enter the total amount of the sole proprietor's or pass-through entity's compensation paid everywhere during the taxable year.

Line 2, Column 3 – Payroll Ratio

Enter the ratio of payroll within Ohio to total everywhere by dividing column 1 by column 2.

Line 2, Column 5 – Weighted Payroll Ratio

Multiply the property ratio on line 2, column 3 by the payroll factor weighting of 20%.

Sales Factor

The sales factor is a fraction whose numerator is the sole proprietor's or pass-through entity's includable business

income receipts in Ohio during the taxable year and whose denominator is the sum of the sole proprietor's or pass-through entity's within Ohio and without Ohio includable business income receipts during the taxable year. **The sales factor specifically excludes receipts attributable to nonbusiness income allocable under R.C. 5733.051** (see R.C. 5733.05(B)(2) and the tax commissioner's April 2004 information release entitled "Sales Factor Situsing Revisions").

Exclusions

The following receipts are not includable in either the numerator or the denominator of the sales factor even if the receipts arise from transactions, activities and sources in the regular course of a trade or business (see R.C. 5733.05(B)(2) (c) as amended by Substitute House Bill 127, 125th General Assembly):

- Interest or similar amounts received for the use of, or for the forbearance of the use of, money;
- Dividends;
- Receipts and any related gains or losses from the sale or other disposal of intangible property other than trademarks, trade names, patents, copyrights and similar intellectual property;
- Receipts and any related gains and losses from the sale or other disposal of tangible personal property or real property where that property is a capital asset or an asset described in I.R.C. 1231. For purposes of this provision the determination of whether or not an asset is a capital asset or a 1231 asset is made without regard to the holding period specified in the I.R.C.; AND
- Receipts from sales to (a) an at-least-80%-owned public utility other than an electric company, combined electric company, or telephone company, (b) an at-least-80%-owned insurance company, or (c) an at-least-25%-owned financial institution.

Note: Income and gain from receipts excluded from the sales factor is not presumed to be nonbusiness income. All income, gain, loss, and expense is presumed to be apportionable business income – even if the related receipts are excluded from the sales factor.

The law specifically **includes** in the sales factor the following amounts when arising from transactions, activities and sources in the regular course of a trade or business: (i) receipts from sales of tangible personal property, (ii) receipts from the sale of real property inventory (such as lots developed and sold by a real estate developer), (iii) rents and royalties from tangible personal property, (iv) rents and royalties from real property, (v) receipts from the sale, exchange, disposition or other grant of the right to use trademarks, trade names, patents, copyrights and similar intellectual property, (vi) receipt from the sale of services and other receipts not expressly excluded from the factor. These amounts are situsable to Ohio as set forth below.

Line 3, Column 1 – Sales Within Ohio

Enter the total of gross receipts from sales not excludable from the numerator and the denominator of the sales factor, to the extent the includable gross receipts reflect business done in Ohio. Sales within Ohio include the following:

- **Receipts from sales of tangible personal property, less returns and allowances, received by the purchaser in Ohio.** In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed is considered as the place at which such property is received by the purchaser. Direct delivery in Ohio, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in Ohio, and direct delivery outside Ohio to a person or firm designated by a purchaser does not constitute delivery to the purchaser in Ohio, regardless of where title passes or other conditions of sale. Customer pick-up sales are situsable to the final destination after all transportation (including customer transportation) has been completed. See *Dupps Co. v. Lindley* (1980), 62 Ohio St. 2d 305.

Revenue from servicing, processing, or modifying tangible personal property is situated to the destination state as a sale of tangible personal property. See *Custom Deco, Inc. v. Limbach*, BTA Case No. 86-C-1024, June 2, 1989.

- Receipts from sales of real property inventory in Ohio.
- Rents and royalties from tangible personal property to the extent the property was used in Ohio.
- Rents and royalties from real property located in Ohio.
- Receipts from the sale, exchange, disposition or other grant of the right to use trademarks, trade names, patents, copyrights, and similar intellectual property are situated to Ohio to the extent that the receipts are based on the amount of use of that property in Ohio. If the receipts are not based on the amount of use of that property, but rather on the right to use the property and the payor has the right to use the property in Ohio, then the receipts from the sale, exchange, disposition, or other grant of the right to use such property are situated to Ohio to the extent the receipts are based on the right to use the property in Ohio.
- Receipts from the performance of services and receipts from any other sales not excluded from the sales factor and not otherwise situated within or without Ohio under the above situsing provisions are situsable to Ohio in proportion to the purchaser's benefit, with respect to the sale, in Ohio to the purchaser's benefit, with respect to the sale, everywhere. The physical location where the purchaser ultimately uses or receives the benefit of what was purchased is paramount in determining the proportion of the benefit in Ohio to the benefit everywhere. **Note:** For taxable years ending on or after Dec. 11, 2003, the "cost of performance" provision is no longer the law.

Line 3, Column 2 – Sales Everywhere

Enter the total of such includable gross receipts, less returns and allowances, from sales everywhere.

Line 3, Column 3 – Sales Ratio

Enter the ratio of sales within Ohio to total everywhere by dividing column 1 by column 2.

Line 3, Column 5 – Weighted Sales Ratio

Multiply the sales ratio on line 3, column 3 by the sales factor weighting of 60%.

Line 4, Column 5 – Total Weighted Apportionment Ratio

(add column (5), lines 1 (c), 2 and 3).

Nonbusiness Income and Deductions (Part IV)

Note: Generally, all sole proprietorship and pass-through entity income and gain is business income.

Line 6

Each nonresident taxpayer who sells, exchanges or otherwise disposes of his/her direct or indirect interest in a closely held business having property, payroll and/or sales in Ohio must situs to Ohio a portion of the gain (loss) recognized from the sale, exchange or other disposition. For additional information, see R.C. 5757.212.

Line 7

With respect to depreciation expenses relating to nonbusiness income, if any, add back excess depreciation. Follow the principles and concepts set forth on page 3 of the instructions, Part II, Part A, line 6.

With respect to miscellaneous federal tax adjustments relating to nonbusiness income, if any, add back any that was not included in federal adjusted gross income. Follow the principles and concepts set forth on page 4, Part II, Part A, line 7.

Line 14

With respect to depreciation expenses relating to nonbusiness income, if any, deduct 1/5 of the nonbusiness depreciation add-back made for each of the previous five taxable years. Follow the principles and concepts set forth on page 4 of the instructions, Part II, Part B, line 9b.

Miscellaneous Federal Income Tax Adjustments

With respect to miscellaneous federal tax adjustments relating to nonbusiness income, if any, deduct any that was included in federal adjusted gross income. Follow the principles and concepts set forth on page 4 of the instructions for Part II, Part B, line 9d.

Summary of Ohio Tax Treatment of Income and Deductions

Note: Except for lottery prizes and awards, all income and gain is presumed to be business income/gain.

Type of Income and Deductions	Ohio Tax Treatment
1. Guaranteed payments and compensation paid to an individual for services performed	Allocate to Ohio to the extent earned in Ohio. However, if the individual directly or indirectly owns at least 20% of the business, the individual must show the guaranteed payments and compensation on Part II, A, line 1.
2. Gains or losses from the sale or transfer of real property	Apportion if gain constitutes business income; otherwise, allocate to Ohio if the property is physically located in Ohio.
3. Gains or losses from the sale or transfer of tangible personal property	Apportion if gain constitutes business income. Nonbusiness gains and losses are allocated to Ohio if the property is physically located in Ohio.
4. Gains or losses from the sale or transfer of intangible personal property	Apportion if gain or loss constitutes business income. If the gain or loss is from the sale, exchange or other disposition of a closely held business, special apportionment provisions apply. See R.C. 5747.212. All other nonbusiness gains and losses are allocated to Ohio if the nonresident was domiciled in Ohio at the time of sale or transfer.
5. Rents or royalties from real property	Apportion if gain constitutes business income; otherwise allocate to Ohio if the property is physically located in Ohio.
6. Rents or royalties from tangible personal property	<p>Apportion if the rents or royalties constitute business income; otherwise, allocate to Ohio to the extent the property is used in Ohio. Extent the property is used in Ohio =</p> $\frac{\text{Number of days of physical location of property in Ohio during rental or royalty periods in the taxable year}}{\text{Number of days of physical location of property everywhere during all rental or royalty periods in the taxable year}}$ <p>If the physical location of the property during the rental or royalty period is unknown or unascertainable by the nonresident, and if the rents and royalties do not constitute business income, tangible personal property is used in the state in which the property was located at the time the rental or royalty payor obtained possession.</p>
7. Patent and copyright royalties	<p>Apportion if the rents or royalties constitute business income; otherwise, allocate to Ohio to the extent used by the payor in Ohio.</p> <ul style="list-style-type: none"> • A patent is used in Ohio to the extent it is employed in production, fabrication, manufacturing or other processing in Ohio or to the extent that a patented product is produced in Ohio. If the basis of receipts or accounting procedures do not reflect this, then the patent is used in Ohio if the business has its commercial domicile in Ohio. • A copyright is used in Ohio to the extent that printing or other publication originates in Ohio. If the basis of receipts or accounting procedures do not reflect this, then the copyright is used in Ohio if the business had its commercial domicile in Ohio.
8. Lottery prize awards	Allocate to Ohio if the award was paid by the Ohio State Lottery Commission.
9. Depreciation expense add-back/deduction	If the depreciation relates to nonbusiness property, the 5/6th add-back and corresponding 1/5th deductions are allocated as items of nonbusiness income and deductions using the Part IV nonbusiness income worksheet. Otherwise, these depreciation adjustments are apportioned as items of business income and deduction using the Part II business income worksheet.

Federal Privacy Act Notice

Because we require you to provide us with a social security account number, the *Federal Privacy Act of 1974* requires us to inform you that your providing us your Social Security number is mandatory. Ohio Revised Code sections 5703.05, 5703.057 and 5747.08 authorize us to request this information. We need your Social Security number in order to administer this tax.