Supreme Court of Ohio Clerk of Court - Filed September 21, 2015 - Case No. 2015-0917

IN THE SUPREME COURT OF OHIO

	:	
T. Ryan Legg Irrevocable Trust, UBS Trust Company, N.A., Trustee	:	Case No. 2015-0917
Appellant,	:	On Appeal from the Ohio Board of Tax Appeals
	:	
v.		
	:	
	:	BTA Case No. 2013-A-1469
Joseph W. Testa, Tax Commissioner of Ohio		
	:	
Appellee.	:	

APPENDIX OF APPELLANT T. RYAN LEGG IRREVOCABLE TRUST,
UBS TRUST COMPANY, N.A., TRUSTEE

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Other Authority

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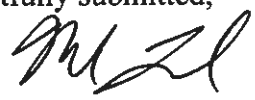
Respectfully submitted,



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IN THE SUPREME COURT OF OHIO

	:	
T. Ryan Legg Irrevocable Trust, UBS Trust Company, N.A., Trustee	:	
Appellant,	:	On Appeal from the Ohio Board of Tax Appeals
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Joseph W. Testa, Tax Commissioner of Ohio		
	:	
Appellee.	:	

NOTICE OF APPEAL OF APPELLANT T. RYAN LEGG IRREVOCABLE TRUST, UBS TRUST COMPANY, N.A., TRUSTEE

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Notice of Appeal of Appellant
T. Ryan Legg Irrevocable Trust, UBS Trust Company, N.A., Trustee

Appellant, T. Ryan Legg Irrevocable Trust, UBS Trust Company, N.A., Trustee ("Appellant" or "Trust") hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Ohio Board of Tax Appeals ("Board"), entered in Ohio Board of Tax Appeals case No. 2013-A-1469 on May 5, 2015 ("Order"). A copy of the Order is attached as Exhibit A. Jurisdiction is proper pursuant to S. Ct. Prac. R. 10.01 and R.C. 5717.04.

Assignments of Error

The Trust appeals the following findings of the Board because they are in error:

I. The Board erred when it found that the income from Appellant's 2006 sale of 65 shares of corporate stock in Total Quality Logistics, Inc. ("TQL") was a qualifying trust amount under R.C. 5747.01(BB)(2). *See* Order, p. 4. The Board erroneously determined that the book value of TQL's assets were "available" to Appellant so that the gain was a qualifying trust amount. *Id.* However, the book value was not available to Appellant so it was not a qualifying trust amount.

II. The Board erred when it found that the income from Appellant's sale of TQL stock was business income and thus taxable as income. *See* Order, p. 4. The Board erroneously determined that the income was business income and taxable under R.C. 5747.01(B) because the income came from a "liquidation of a business." *Id.* at 5. However, TQL was not liquidated, and the income was nonbusiness income under R.C. 5747.01(C) and was thus not taxable to Ohio.

III. The Board erred when it found that the Trust was an Ohio resident. *See* Order, p. 5. The Board determined that T. Ryan Legg, the grantor of the Trust, was an Ohio resident when the Trust was formed so that the Trust's domicile was Ohio. However, under R.C. 5747.01(I)(3), a trust is domiciled in a particular state for tax purposes when a beneficiary is a resident of that state during the taxable year at issue, and the Trust had no beneficiaries in 2006 so that the Trust was not an Ohio resident trust, and therefore the income was not taxable to Ohio.

IV. The Board erred by failing to address the Trust's argument that if the gain from the TQL stock is indeed a qualifying trust amount, it is overstated. Because a qualifying trust amount is multiplied by a fraction of the qualifying investee's physical assets' book value in Ohio versus the value everywhere as of the last day of the calendar year immediately prior to the date the gain was realized, any qualifying trust amount that results from the Trust's sale of TQL stock must be apportioned at less than 100% to Ohio because TQL had property in West Virginia as well as Ohio. Therefore, the gain from the sale of TQL stock is overstated and erroneous.

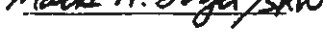
V. The Board by failing to address the Trust's alternative apportionment argument. The Commissioner's position results in an unfair allocation of the Trust's taxable income in Ohio and thus arbitrarily failed to apply alternative apportionment to accurately reflect that no portion of the Trust's Ohio income was taxable pursuant to R.C. 5747.21(C).

VI. The Commissioner's Final Determination is unconstitutional. The Board did not reach Appellant's constitutional claims. *See* Order, p. 5. Notwithstanding the Board's failure to reach these claims, the Board accepted evidence on these points, and they remain preserved on appeal, and. *See MCI Telecomm. Corp. v. Limbach* (1994), 68 Ohio St.3d 195, 198.

VII. The Commissioner's position violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I § 2 of the Ohio Constitution because it treats differently persons, nonresident trust shareholders, who are alike in all relevant aspects.

VIII. The Commissioner's position violates the Due Process Clause of the Fifth Amendment of the United States Constitution because there is no nexus between the Trust and Ohio, given that Appellant is a nonresident trust domiciled in Delaware.

Respectfully submitted,



Mark A. Loyd
Counsel for Appellant
T. Ryan Legg Irrevocable Trust,
UBS Trust Company, N.A., Trustee

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by certified mail to counsel for Appellee, Barton A. Hubbard and David E. Ebersole, 30 East Broad Street, 25th Floor, Columbus OH 43215 on June 3, 2015.

Mark A. Loyd /SLW

Mark A. Loyd

Counsel for Appellant

T. Ryan Legg Irrevocable Trust,

UBS Trust Company, N.A., Trustee

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OHIO BOARD OF TAX APPEALS

T. RYAN LEGG IRRECOVABLE TRUST, (et. al.),	CASE NO(S). 2013-1469
Appellant(s),	(TRUST INCOME TAX)
vs.	DECISION AND ORDER
JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO, (et. al.),	
Appellee(s).	

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Entered Tuesday, May 5, 2015

Mr. Williamson, Ms. Clements, and Mr. Harbarger concur.

This matter is considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant T. Ryan Legg Irrevocable Trust ("trust"), from a final determination of the Tax Commissioner. Therein, the Tax Commissioner ("commissioner") adjusted only the penalty associated with the trust income tax assessment against appellant relating to tax year 2006. The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript ("S.T.") certified to this board by the Tax Commissioner, the record of this board's hearing ("H.R."), and the briefs filed by counsel. We note that exhibits 16 and W, upon which this board reserved ruling as to their admission into evidence at the time of hearing, shall be received into evidence.

At the outset, this board must address a motion to dismiss filed by the commissioner; specifically, the commissioner contends that it has not been demonstrated that the trustee of the trust "authorized this appeal, as well as the Legg Trust's filing of a petition for reassessment." Motion at 2. The commissioner contends that "in order for a trust to prosecute or defend a legal action, the *trustee* must provide the necessary authorization. The trustee is the sole party who may bring or

defend an action on behalf of a trust. Without the requisite authorization of the trustee, the prosecution or defense of a legal action is invalid. *Schofield v. Cleveland Trust Co.* 149 Ohio St. 133, 144 (1948) ***." (Emphasis sic.) Motion at 1. The record establishes that in 2006, U.S. Trust Company was the trustee of the subject trust. H.R. at 98. "U.S. Trust Company was a wholly owned subsidiary of Charles Schwab and was sold by Charles Schwab at some point *** and *** Charles Schwab Bank essentially replaced U.S. Trust Company as the trustee." H.R. at 123-124. Thereafter, in 2009, the trustee was changed again from Charles Schwab to UBS Trust. H.R. at 124. The record further reflects that in August 2008, Kevin R. Ghassomian and Mark A. Loyd of Greenebaum Doll & McDonald PLLC were declared the trust's representatives by the Charles Schwab Bank, Trustee, through its senior trust officer, Shawn P. Wilson; notice of such declaration was provided to the commissioner with the trust's objections to the commissioner's audit changes to its 2006 income tax return, prior to the assessment and filing of the petition for reassessment. S.T. at 88-89. Thereafter, in May 2009, the trust was formally assessed for income tax deficiencies in 2006 and a petition for reassessment was filed in July 2009 by the stated representatives, purportedly on behalf of the Charles Schwab Bank, as trustee for the trust. S.T. at 7-45. While the record indicates that as of June 5, 2009, UBS Trust Company, N.A. had been appointed the successor trustee to the Charles Schwab Bank, contrary to the trustee listed on the petition for reassessment, the record, as a whole, also indicates that UBS, Mr. Legg as grantor/beneficiary of the trust, and counsel themselves, at all times, considered Greenebaum Doll & McDonald (and its successor Bingham Greenebaum Doll LLP) to be the authorized representative of the subject trust. As such, we consider the misstated name of the trustee on the petition for reassessment to be a typographical error and find that the petition for reassessment, notice of appeal, and all pleadings filed by the trust, both before and after, were properly filed by the trust's authorized representative. See Ex. 23; H.R. at 228. Accordingly, the motion to dismiss is hereby denied.

In reviewing appellant's appeal, we recognize the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Kern v. Tracy* (1995), 72 Ohio St.3d 347; *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213. Where no competent and probative evidence is presented to this board by the appellant to show that the Tax Commissioner's findings are incorrect, then the Board of Tax Appeals must affirm the Tax Commissioner's findings. *Kern*, supra; *Kroger Co. v. Limbach* (1990), 53 Ohio St.3d 245; *Alcan*, supra.

The facts leading to the instant appeal are best summarized by the commissioner in his final determination, as follows:

> "In November 2005, T. Ryan Legg *** transferred 65 shares of Total Quality Logistics, Inc., *** an Ohio S Corporation, to the petitioner [the subject trust]. The Trust sold the shares in February 2006, which created the gain at issue. The Trust was assessed when the Department determined that the gain at issue was a 'qualifying trust amount' under R.C. 5747.01(BB)(2), and thus subject to Ohio taxation. The petitioner

> contends that the gain from the Trust's sale of stock in an Ohio S Corporation is not a qualifying trust amount, but instead is nonbusiness income allocable to the Trust's state of domicile." S.T. at 1.

Specifically, Mr. Legg and his friend, Ken Oaks, had formed and operated a trucking business, Total Quality Logistics, Inc. ("TQL"), an Ohio Subchapter S corporation. Mr. Legg and Mr. Oaks each owned 50%, i.e., 100 shares each, of the business. The owners decided to part ways, and around August or September 2005, Mr. Legg stopped participating in the business and going to the office. H.R. at 96. Mr. Legg tendered his resignation in November of 2005 and thereafter created the subject trust and funded it by transferring 65 of his shares of TQL stock into it. H.R. at 57, 60-61. In December 2005, Mr. Legg entered into a purchase agreement with Mr. Oaks for the sale of the 65 shares of TQL stock. Ex. F; H.R. at 75-76. The sale closed on February 3, 2006, and the trust sold the 65 shares of TQL stock to Mr. Oaks for $18,525,000. Ex. F; H.R. at 115.

R.C. 5747.02(A) provides in pertinent part:

> "For the purpose of providing revenue for the support of schools and local government functions, to provide relief to property taxpayers, to provide revenue for the general revenue fund, and to meet the expenses of administering the tax levied by this chapter, there is hereby levied on every individual, trust, and estate residing in or earning or receiving income in this state, *** and on every individual, trust, and estate otherwise having nexus with or in this state under the Constitution of the United States, an annual tax *** *measured in the case of trusts by modified Ohio taxable income* under division (D) of this section." (Emphasis added.)

"Modified Ohio taxable income" is considered "the sum of the amounts described in division (BB)(4)(a) to (c)" of R.C. 5747.01, i.e., R.C. 5747.01(BB)(4)(a)(i) and (ii), amounts attributable to the trust's modified business income, R.C. 5747.01(BB)(1) and the trust's qualifying investment income, R.C. 5747.012; R.C. 5747.01(BB)(4)(b), amounts attributable to the "qualifying trust amount," R.C. 5747.01(BB)(2); and R.C. 5747.01(BB)(4)(c)(i) and (ii), amounts attributable to "modified nonbusiness income," R.C. 5747.01(3). R.C. 5747.01(BB) goes on to provide that "[i]f the allocation and apportionment of a trust's income under divisions (BB)(4)(a) and (c) of this section do not fairly represent the modified Ohio taxable income of the trust in this state, the alternative methods described in division (C) of section 5747.21 of the Revised Code may be applied in the manner and to the same extent provided in that section."

Thus, to the extent specified, we must review the trust's objections to the commissioner's calculations used to determine the amount of modified Ohio taxable income. Appellant first contends that the requirements in R.C. 5747.01(BB)(2)(a) and (b) for a "qualifying trust amount" have not been met, but we disagree. R.C. 5747.01(BB)(2) provides:

> "(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."

We find that regardless of the tenuous relationship between Mr. Legg and Mr. Oaks, the record establishes that the book value of the TQL assets was available to the trust, whether it was actually requested or not, as it was utilized by the trust's tax preparer; it was therefore "available," i.e., "a person [was] able to learn of" it. R.C. 5747.01(BB)(6). H.R. at 118, 133, 226, 241. See, also, *Alcan*, supra. Further, the commissioner represents that it is undisputed that the second requirement for a "qualifying trust amount" has been met, as the trust was a 32.5% interest holder in TQL, and therefore met the statutory 5% requirement set forth in R.C. 5747.01(BB)(2)(b). Commissioner brief at 13. The trust cites to this board's decision in *Random House, Inc. v. Tracy* (May 14, 1993), BTA No. 1991-A-1329, unreported, as support for its position that the book value was not "available" to the trust, as that term was defined therein. We find the *Random House* case inapposite herein, as it concerned a specific franchise tax statutory provision, namely, R.C. 5733.051(G), and the determination of whether the location of the payor's activities relating to patent and copyright royalties and technical assistance fees was available for purposes of allocating/apportioning such amounts to this state. As previously indicated, R.C. Chapter 5747 contains a definition of "available," and we need not look any further to conclude that the commissioner correctly determined that the information in question was "available."

Appellant next contends that the gain experienced by the trust from the sale of the stock constituted *nonbusiness* income, and, as such, was not taxable. Specifically, the trust argues that its "gain on the sale of TQL stock is nonbusiness income because the Trust did nothing more than hold and sell the TQL stock. *** These actions do not constitute a trade or business under the tax code. By definition, therefore, the TQL stock sale gain was nonbusiness income." Trust Brief at 11.

R.C. 5747.01(B) and (C) provide:

> "(B) '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, gain, or loss from real property, tangible property, 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. 'Business income' includes income, including gain or loss, from a partial or complete liquidation of a business ***."
>
> "(C) 'Nonbusiness income' means all income other than business income and may include, but is not limited to, compensation,

***capital gains ***."

Based upon the clear language of the foregoing statutory provisions, we conclude that any income arising out of a liquidation of a business, i.e., Mr. Legg's sale of his ownership interest in TQL, via his stock, constitutes "business income" in Ohio, as a gain from the partial liquidation of his interests in TQL.

Next, appellant contends that the subject trust is a non-resident trust, domiciled in Delaware, and therefore, pursuant to the version of the statute in effect at the time of the stock sale, was not liable for tax. While the trust provides that it "shall be construed and administered pursuant to the law of the State of Delaware," R.C. 5747.01(I)(3) provides that a "trust resides in this state for the trust's current taxable year to the extent *** that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred *** to the trust by *** (ii) [a] person who was domiciled in this state for the purposes of this chapter when the person *** transferred assets to an irrevocable trust, but only if 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[.]" The trust agreement was entered into on November 18, 2005 and the sale of the shares of stock out of the trust closed on February 3, 2006; Mr. Legg testified that he lived in Cincinnati from 2001 to mid-2006. Ex. 1; H.R. at 67-68, 71. Clearly, Mr. Legg's testimony established that he was domiciled in Ohio for at least a portion of the current tax year under consideration, i.e., 2006, and, domiciled in Ohio at both the time of transferring the stock into the trust and the time the stock was sold. Finally, the trust agreement clearly lists Mr. Legg as a beneficiary of such trust. Therefore, we find the subject trust should be taxed as a resident trust, pursuant to R.C. 5747.01(BB)(4)(c)(i).

With regard to appellant's constitutional claims, we make no finding in relation thereto. Although the Ohio Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that we have no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229; *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195, 198.

Accordingly, we find the appellant has failed to meet its burden of demonstrating the error in the commissioner's findings. See *Kern*, supra; *Kroger*, supra; *Alcan*, supra. As such, this board finds that the Tax Commissioner's conclusions in this matter were reasonable and lawful. It is the decision and order of the Board of Tax Appeals that the final determination of the Tax Commissioner must be and hereby is affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Ms. Clements		
Mr. Harbarger		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

Kathleen M. Crowley, Board Secretary

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Ohio | Department of Taxation

Office of the Tax Commissioner
30 E. Broad St., 22nd Floor • Columbus, OH 43215

FINAL DETERMINATION

Date: MAR 29 2013

T. Ryan Legg Irrevocable Trust
1300 Market St., Ste. 605
Wilmington, DE 19801

Re: Assessment No. 16200913485796
Trust Income Tax – 2006

This is the final determination of the Tax Commissioner with regard to a petition for reassessment pursuant to R.C. 5747.13 concerning the following trust income tax assessment:

Tax	Interest	Late Payment Penalty	Total
$1,275,597.00	$197,595.00	$395,190.00	$1,868,382.00

The petitioner, T. Ryan Legg Irrevocable Family Trust (herein after the "Trust"), an Ohio non-resident trust pursuant to R.C. 5747.01(I)(3), objects to the assessment as issued. The petitioner requested a hearing, which was held on August 10, 2010. In November 2005, T. Ryan Legg (herein after "Legg") transferred 65 shares[1] of Total Quality Logistics, Inc. (herein after "TQL"), an Ohio S Corporation, to the petitioner. The Trust sold the shares in February 2006, which created the gain at issue. The Trust was assessed when the Department determined that the gain at issue was a "qualifying trust amount" under R.C. 5747.01(BB)(2), and thus subject to Ohio taxation. The petitioner contends that the gain from the Trust's sale of stock in an Ohio S Corporation is not a qualifying trust amount, but instead is nonbusiness income allocable to the Trust's state of domicile.

Trusts are taxed on their modified Ohio taxable income. "Modified Ohio taxable income" is the sum of a trust's modified business income, qualifying trust amounts, and modified nonbusiness income. R.C. 5747.01(BB)(4)(a) through (c). Qualifying trust amounts are:

> [C]apital gains or losses from the sale, exchange, or other disposition of equity or ownership interest 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.

[1] Legg owned 100 shares in TQL, which constituted a 50 percent ownership interest. Thus, the Trust's 65 shares constituted a 32.5 percent ownership interest in TQL.

> 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.

R.C. 5747.01(BB)(2). The petitioner's contention that the gain at issue is not a qualifying trust amount is two-fold. The petitioner asserts that 1) the Department has already admitted that the gain at issue is not a qualifying trust amount, and 2) that the book value of the qualifying investee's physical assets was not available to the Trust. The petitioner and the Department agree that, pursuant to R.C. 5747.01(BB)(2), if the gain at issue is a qualifying trust amount, then it cannot be nonbusiness income as the petitioner contends.

The petitioner's first contention is essentially an estoppel argument. During the initial stages of the audit, the Department determined that the gain at issue was business income. However, the Department later changed its position and determined that the gain at issue was a qualifying trust amount. The petitioner reasons that since the Department determined that the gain at issue was business income, and by definition business income cannot be a qualifying trust amount, that the Department has already acceded to the petitioner's contention that the gain at issue is not a qualifying trust amount. However, the doctrine of estoppel is not applicable against the state or its agencies in the exercise of governmental function. *Lemming v. Levin*, BTA No. 2008-V-94 (Jan. 27, 2009), citing *Sekerak v. Fairhill Mental Health Ctr.*, 25 Ohio St.3d 38, 39 (1986). Thus, the petitioner cannot assert that the Department acceded that the gain at issue is not a qualifying trust amount simply because the Department originally classified the gain as business income. The petitioner's estoppel argument is not well taken.

The petitioner's second contention is that the book value of the qualifying investee's physical assets was not "available" to the Trust, as required by R.C. 5747.01(BB)(2)(a). Information is "available" if it "is such that a person is able to learn of the information by the due date... for filing the return for the taxable year in which the trust recognizes the gain or loss." R.C. 5747.01(BB)(6).[2] The definition does not require any specific person to be able to learn of the information, only "a person." A person includes "individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, and any other business entities." R.C. 5701.01.

In order to prevail in this case, the Trust, which owned 32.5 percent of TQL and is the namesake of an individual who owns an additional 17.5 percent of TQL, must contend that no person was able to learn of the information pertaining to the gain at issue. First, it is reasonable to believe that TQL, an S corporation and thus a person, knew or was able to know the book value of the assets at issue, since the assets were related to the company. Second, it seems unlikely that a 32.5 percent owner of TQL would be unable to access the records necessary to learn the book value of the assets. Finally, the petitioner has not provided any documentation to evince that it was unable to learn the book value of the assets at issue. Thus, the information at issue was "available" to the petitioner under R.C. 5747.01(BB)(6) and its contention is not well taken. As such, the Department did not err in classifying the petitioner's gain from the sale of stock in TQL as a qualifying trust amount.

[2] The petitioner does not address the statutory definition of "available" as it applies to a trust's modified Ohio taxable income. Instead, the petitioner cites case law that analyzes the definition of "available" that is not in the context of a trust's modified Ohio taxable income. *See Alcan Aluminum Corp. v. Limbach*, 42 Ohio St.3d 121 (1989).

In the alternative, the petitioner contends that classifying the gain at issue as a qualifying trust amount is unconstitutional. The gain at issue satisfies the definition of a qualifying trust amount. As such, the petitioner seems to contend that R.C. 5747.01(BB)(2) is unconstitutional on its face. The Tax Commissioner is without jurisdiction to decide the constitutionality of tax statutes. *See Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988). Furthermore, the laws of the State of Ohio are presumed to be constitutional. *See State, ex rel. Swetland v. Kinney*, 69 Ohio St.2d 567 (1982). Thus, this contention is also not well taken.

Even if the gain at issue is not a qualifying trust amount, it is still subject to taxation by Ohio. Division (BB)(4)(c) of R.C. 5747.01 defines how modified nonbusiness income is factored into a trust's modified taxable income. Prior to March 30, 2006, R.C. 5747.01(BB)(4)(c)(ii) read:

> With respect to a trust or portion of a trust that is not a resident as ascertained in accordance with division (I)(3)(d) of this section, the amount of its modified nonbusiness income satisfying the descriptions in divisions (B)(2) to (5) of section 5747.20 of the Revised Code.

Since the petitioner is a nonresident trust, the gain at issue would have been allocated to its state of domicile under this version of the statute. *See* R.C. 5747.20(B)(2)(c). However, effective March 30, 2006, R.C. 5747.01(BB)(4)(c)(ii) was amended to read:

> With respect to a trust or portion of a trust that is not a resident as ascertained in accordance with division (I)(3)(d) of this section, the amount of its modified nonbusiness income satisfying the descriptions in divisions (B)(2) to (5) of section 5747.20 of the Revised Code, <u>except as otherwise provided in division (BB)(4)(c)(ii) of this section. With respect to a trust or portion of a trust that is not a resident as ascertained in accordance with division (I)(3)(d) of this section, the trust's portion of modified nonbusiness income recognized from the sale, exchange, or other disposition of a debt interest in or equity interest in a section 5747.212 entity, as defined in section 5747.212 of the Revised Code, without regard to division (A) of that section, shall not be allocated to this state in accordance with section 5747.20 of the Revised Code but shall be apportioned to this state in accordance with division (B) of section 5747.212 of the Revised Code without regard to division (A) of that section</u>. 2006 Am.Sub.H.B. No. 530. (added text underlined).

Under the amended version of the statute, the petitioner's gain from its disposition of stock in TQL would be apportionable to Ohio because the petitioner owned more than 20 percent of TQL. *See* R.C. 5747.212(B).

The petitioner, citing *Lakengren, Inc. v. Kosydar*, contends that since this change became effective after its realization of the gain at issue, the law change cannot be applied to the petitioner's sale of its TQL stock. *See* 44 Ohio St.2d 199 (1975). However, while the effective date of the amended statute was after the petitioner's transaction, it was prior to the end of the petitioner's tax year, which ended on December 31, 2006. In *Burke International Research Corporation v. Lindley*, the Supreme Court of Ohio analyzed *Lakengren* and held that the Department's application of a law to a taxpayer whose tax year was still open during the changed law's effective date was not unconstitutional. 58 Ohio St.2d

27 (1979), *see also Coca-Cola Bottling Corp. v. Lindley*, 54 Ohio St.2d 1 (1978). Thus, even if the gain at issue in this case is not a qualifying trust amount, it is still taxable to Ohio under R.C. 5747.01(BB)(4)(c)(ii).

Finally, the petitioner requests abatement of the assessed penalty. Division (C) of R.C. 5747.15 allows the Tax Commissioner to abate a late payment penalty when the taxpayer demonstrates that the failure to comply was due to reasonable cause rather than willful neglect. The evidence and circumstances support abatement of the penalty.

Accordingly, the assessment is adjusted as follows:

Tax	Interest	Late Payment Penalty	Total
$1,275,597.00	$197,595.00	$0.00	$1,473,192.00

Current records indicate that no payments have been applied to this assessment, leaving a balance due of $1,473,192.00. However, due to payment processing and posting time lags, payments may have been made that are not reflected in this final determination. **Any unpaid balance bears post-assessment interest as provided by law, which is in addition to the above total.** Payments shall be made payable to "Ohio Treasurer Josh Mandel." Any payment made within sixty days of the date of this final determination should be forwarded to: Department of Taxation, Compliance Division, P.O. Box 1090, Columbus, Ohio 43216-1090.

THIS IS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THIS MATTER. UPON EXPIRATION OF THE SIXTY-DAY APPEAL PERIOD PRESCRIBED BY R.C. 5717.02, THIS MATTER WILL BE CONCLUDED AND THE FILE APPROPRIATELY CLOSED.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE COPY OF THE FINAL DETERMINATION RECORDED IN THE TAX COMMISSIONER'S JOURNAL

JOSEPH W. TESTA
TAX COMMISSIONER

/s/ Joseph W. Testa

Joseph W. Testa
Tax Commissioner

Ohio | Department of Taxation

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Baldwin's Ohio Revised Code Annotated
Constitution of the State of Ohio
Article I. Bill of Rights (Refs & Annos)

OH Const. Art. I, § 2

O Const I Sec. 2 Equal protection and benefit

Currentness

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

CREDIT(S)

(1851 constitutional convention, adopted eff. 9-1-1851)

Const. Art. I, § 2, OH CONST Art. I, § 2
Current through 2015 Files 1 to 10, and 12 to 24 of the 131st GA (2015-2016).

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Baldwin's Ohio Revised Code Annotated
Constitution of the State of Ohio
Article II. Legislative (Refs & Annos)

OH Const. Art. II, § 28

O Const II Sec. 28 Retroactive laws; laws impairing obligation of contracts

Currentness

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

CREDIT(S)

(1851 constitutional convention, adopted eff. 9-1-1851)

Const. Art. II, § 28, OH CONST Art. II, § 28
Current through 2015 Files 1 to 10, and 12 to 24 of the 131st GA (2015-2016).

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United States Code Annotated
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

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<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text
Current through P.L. 114-49 approved 8-7-2015

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United States Code Annotated
Constitution of the United States
Annotated
Article I. The Congress (Refs & Annos)

U.S.C.A. Const. Art. I § 8, cl. 3

Section 8, Clause 3. Regulation of Commerce

Currentness

<Notes of Decisions for Constitution Art. I, § 8, cl. 3, Regulation of Commerce, are displayed in two separate documents. Notes of Decisions for subdivisions I to XV are contained in this document. For Notes of Decisions for subdivisions XVI to end, see second document for Constitution Art. I, § 8, cl. 3, Regulation of Commerce.>

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

U.S.C.A. Const. Art. I § 8, cl. 3, USCA CONST Art. I § 8, cl. 3
Current through P.L. 114-49 approved 8-7-2015

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West's Delaware Code Annotated
Title 30. State Taxes
Part II. Income, Inheritance and Estate Taxes
Chapter 16. Pass-Through Entities, Estates and Trusts
Subchapter I. In General

30 Del.C. § 1601

§ 1601. Definitions

Currentness

Whenever used in this chapter, the following terms shall have the meanings ascribed to them in this section:

(1) "Beneficiary" has the meaning ascribed to it by common law, including, without limitation, any heir, devisee or legatee of an estate or beneficiary of a trust.

(2) "Distributive share" means, with respect to any member and with respect to any taxable year of such member:

In the case of a pass-through entity that is classified as a partnership under the Internal Revenue Code, the distributive share of such member for such taxable year of the pass-through entity's income, gain, loss or deduction, or items thereof, as appropriate, determined under § 704 of the Internal Revenue Code [26 U.S.C. § 704]; or

In the case of a pass-through entity that is an S corporation for federal income tax purposes, the pro rata share of such member for such taxable year of the pass-through entity's income, gain, loss or deduction, or items thereof, as appropriate, determined under § 1377(a) of the Internal Revenue Code [26 U.S.C. § 1377(a)].

(3) "Member of a pass-through entity" or "member" means a person treated for federal income tax purposes as either a partner in a partnership or a shareholder of an S corporation, but does not include a beneficiary of an estate or trust.

(4) "Nonresident estate" means an estate which is not a resident estate.

(5) "Nonresident trust" means a trust that is not a resident trust of this State.

(6) "Pass-through entity" means any person:

a. Which is classified as a partnership under the Internal Revenue Code [26 U.S.C. § 1, et seq.]; or

b. Which is classified as an "S corporation" for federal income tax purposes within the meaning of § 1361 of the Internal Revenue Code [26 U.S.C. § 1361].

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(7) "Resident estate" means the estate of a decedent who at death was domiciled in this State.

(8) "Resident trust" means a trust:

a. Created by the will of a decedent who at death was domiciled in this State;

b. Created by, or consisting of property of, a person domiciled in this State; or

c. With respect to which the conditions of 1 of the following paragraphs are met during more than ½ of any taxable year:

1. The trust has only 1 trustee who or which is:

A. A resident individual of this State, or

B. A corporation, partnership or other entity having an office for the conduct of trust business in this State;

2. The trust has more than 1 trustee, and 1 of such trustees is a corporation, partnership or other entity having an office for the conduct of trust business in this State; or

3. The trust has more than 1 trustee, all of whom are individuals and ½ or more of whom are resident individuals of this State.

(9) "Trust" means an entity classified as a trust for federal income tax purposes, other than a trust of which the grantor or another person is treated as the owner of the entire trust under §§ 672 through 679 of the Internal Revenue Code [26 U.S.C. §§ 672-679].

Credits
72 Laws 2000, ch. 467, § 1, eff. July 18, 2000.

30 Del.C. § 1601, DE ST TI 30 § 1601
Current through 80 Laws 2015, ch. 187. Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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United States Code Annotated
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle A. Income Taxes (Refs & Annos)
Chapter 1. Normal Taxes and Surtaxes (Refs & Annos)
Subchapter J. Estates, Trusts, Beneficiaries, and Decedents (Refs & Annos)
Part I. Estates, Trusts, and Beneficiaries (Refs & Annos)
Subpart C. Estates and Trusts Which May Accumulate Income or Which Distribute Corpus (Refs & Annos)

26 U.S.C.A. § 661

§ 661. Deduction for estates and trusts accumulating income or distributing corpus

Currentness

(a) Deduction.--In any taxable year there shall be allowed as a deduction in computing the taxable income of an estate or trust (other than a trust to which subpart B applies), the sum of--

(1) any amount of income for such taxable year required to be distributed currently (including any amount required to be distributed which may be paid out of income or corpus to the extent such amount is paid out of income for such taxable year); and

(2) any other amounts properly paid or credited or required to be distributed for such taxable year;

but such deduction shall not exceed the distributable net income of the estate or trust.

(b) Character of amounts distributed.--The amount determined under subsection (a) shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the estate or trust as the total of each class bears to the total distributable net income of the estate or trust in the absence of the allocation of different classes of income under the specific terms of the governing instrument. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section 642(c)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary.

(c) Limitation on deduction.--No deduction shall be allowed under subsection (a) in respect of any portion of the amount allowed as a deduction under that subsection (without regard to this subsection) which is treated under subsection (b) as consisting of any item of distributable net income which is not included in the gross income of the estate or trust.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 220; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1906(b) (13) (A), 90 Stat. 1834; Sept. 3, 1982, Pub.L. 97-248, Title III, § 302(b)(2), 96 Stat. 586; Aug. 5, 1983, Pub.L. 98-67, Title I, § 102(a), 97 Stat. 369.)

26 U.S.C.A. § 661, 26 USCA § 661
Current through P.L. 114-49 approved 8-7-2015

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United States Code Annotated
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle A. Income Taxes (Refs & Annos)
Chapter 1. Normal Taxes and Surtaxes (Refs & Annos)
Subchapter S. Tax Treatment of S Corporations and Their Shareholders (Refs & Annos)
Part I. In General

26 U.S.C.A. § 1361

§ 1361. S corporation defined

Effective: May 25, 2007
Currentness

(a) S corporation defined.--

(1) In general.--For purposes of this title, the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

(2) C corporation.--For purposes of this title, the term "C corporation" means, with respect to any taxable year, a corporation which is not an S corporation for such year.

(b) Small business corporation.--

(1) In general.--For purposes of this subchapter, the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not--

(A) have more than 100 shareholders,

(B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual,

(C) have a nonresident alien as a shareholder, and

(D) have more than 1 class of stock.

(2) Ineligible corporation defined.--For purposes of paragraph (1), the term "ineligible corporation" means any corporation which is--

(A) a financial institution which uses the reserve method of accounting for bad debts described in section 585,

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(B) an insurance company subject to tax under subchapter L,

(C) a corporation to which an election under section 936 applies, or

(D) a DISC or former DISC.

(3) Treatment of certain wholly owned subsidiaries.--

(A) In general.--Except as provided in regulations prescribed by the Secretary, for purposes of this title--

(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

(B) Qualified subchapter S subsidiary.--For purposes of this paragraph, the term "qualified subchapter S subsidiary" means any domestic corporation which is not an ineligible corporation (as defined in paragraph (2)), if--

(i) 100 percent of the stock of such corporation is held by the S corporation, and

(ii) the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

(C) Treatment of terminations of qualified subchapter S subsidiary status.--

(i) In general.--For purposes of this title, if any corporation which was a qualified subchapter S subsidiary ceases to meet the requirements of subparagraph (B), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the S corporation in exchange for its stock.

(ii) Termination by reason of sale of stock.--If the failure to meet the requirements of subparagraph (B) is by reason of the sale of stock of a corporation which is a qualified subchapter S subsidiary, the sale of such stock shall be treated as if--

(I) the sale were a sale of an undivided interest in the assets of such corporation (based on the percentage of the corporation's stock sold), and

(II) the sale were followed by an acquisition by such corporation of all of its assets (and the assumption by such corporation of all of its liabilities) in a transaction to which section 351 applies.

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(D) Election after termination.--If a corporation's status as a qualified subchapter S subsidiary terminates, such corporation (and any successor corporation) shall not be eligible to make--

(i) an election under subparagraph (B)(ii) to be treated as a qualified subchapter S subsidiary, or

(ii) an election under section 1362(a) to be treated as an S corporation,

before its 5th taxable year which begins after the 1st taxable year for which such termination was effective, unless the Secretary consents to such election.

(E) Information returns.--Except to the extent provided by the Secretary, this paragraph shall not apply to part III of subchapter A of chapter 61 (relating to information returns).

(c) Special rules for applying subsection (b).--

(1) Members of a family treated as 1 shareholder.--

(A) In general.--For purposes of subsection (b)(1)(A), there shall be treated as one shareholder--

(i) a husband and wife (and their estates), and

(ii) all members of a family (and their estates).

(B) Members of a family.--For purposes of this paragraph--

(i) In general.--The term "members of a family" means a common ancestor, any lineal descendant of such common ancestor, and any spouse or former spouse of such common ancestor or any such lineal descendant.

(ii) Common ancestor.--An individual shall not be considered to be a common ancestor if, on the applicable date, the individual is more than 6 generations removed from the youngest generation of shareholders who would (but for this subparagraph) be members of the family. For purposes of the preceding sentence, a spouse (or former spouse) shall be treated as being of the same generation as the individual to whom such spouse is (or was) married.

(iii) Applicable date.--The term "applicable date" means the latest of--

(I) the date the election under section 1362(a) is made,

(II) the earliest date that an individual described in clause (i) holds stock in the S corporation, or

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(III) October 22, 2004.

(C) Effect of adoption, etc.--Any legally adopted child of an individual, any child who is lawfully placed with an individual for legal adoption by the individual, and any eligible foster child of an individual (within the meaning of section 152(f)(1)(C)), shall be treated as a child of such individual by blood.

(2) Certain trusts permitted as shareholders.--

(A) In general.--For purposes of subsection (b)(1)(B), the following trusts may be shareholders:

(i) A trust all of which is treated (under subpart E of part I of subchapter J of this chapter) as owned by an individual who is a citizen or resident of the United States.

(ii) A trust which was described in clause (i) immediately before the death of the deemed owner and which continues in existence after such death, but only for the 2-year period beginning on the day of the deemed owner's death.

(iii) A trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 2-year period beginning on the day on which such stock is transferred to it.

(iv) A trust created primarily to exercise the voting power of stock transferred to it.

(v) An electing small business trust.

(vi) In the case of a corporation which is a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)), a trust which constitutes an individual retirement account under section 408(a), including one designated as a Roth IRA under section 408A, but only to the extent of the stock held by such trust in such bank or company as of the date of the enactment of this clause.

This subparagraph shall not apply to any foreign trust.

(B) Treatment as shareholders.--For purposes of subsection (b)(1)--

(i) In the case of a trust described in clause (i) of subparagraph (A), the deemed owner shall be treated as the shareholder.

(ii) In the case of a trust described in clause (ii) of subparagraph (A), the estate of the deemed owner shall be treated as the shareholder.

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(iii) In the case of a trust described in clause (iii) of subparagraph (A), the estate of the testator shall be treated as the shareholder.

(iv) In the case of a trust described in clause (iv) of subparagraph (A), each beneficiary of the trust shall be treated as a shareholder.

(v) In the case of a trust described in clause (v) of subparagraph (A), each potential current beneficiary of such trust shall be treated as a shareholder; except that, if for any period there is no potential current beneficiary of such trust, such trust shall be treated as the shareholder during such period.

(vi) In the case of a trust described in clause (vi) of subparagraph (A), the individual for whose benefit the trust was created shall be treated as a shareholder.

(3) Estate of individual in bankruptcy may be shareholder.--For purposes of subsection (b)(1)(B), the term "estate" includes the estate of an individual in a case under Title 11 of the United States Code.

(4) Differences in common stock voting rights disregarded.--For purposes of subsection (b)(1)(D), a corporation shall not be treated as having more than 1 class of stock solely because there are differences in voting rights among the shares of common stock.

(5) Straight debt safe harbor.--

(A) In general.--For purposes of subsection (b)(1)(D), straight debt shall not be treated as a second class of stock.

(B) Straight debt defined.--For purposes of this paragraph, the term "straight debt" means any written unconditional promise to pay on demand or on a specified date a sum certain in money if--

(i) the interest rate (and interest payment dates) are not contingent on profits, the borrower's discretion, or similar factors,

(ii) there is no convertibility (directly or indirectly) into stock, and

(iii) the creditor is an individual (other than a nonresident alien), an estate, a trust described in paragraph (2), or a person which is actively and regularly engaged in the business of lending money.

(C) Regulations.--The Secretary shall prescribe such regulations as may be necessary or appropriate to provide for the proper treatment of straight debt under this subchapter and for the coordination of such treatment with other provisions of this title.

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(6) Certain exempt organizations permitted as shareholders.--For purposes of subsection (b)(1)(B), an organization which is--

(A) described in section 401(a) or 501(c)(3), and

(B) exempt from taxation under section 501(a),

may be a shareholder in an S corporation.

(d) Special rule for qualified subchapter S trust.--

(1) In general.--In the case of a qualified subchapter S trust with respect to which a beneficiary makes an election under paragraph (2)--

(A) such trust shall be treated as a trust described in subsection (c)(2)(A)(i),

(B) for purposes of section 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under paragraph (2) is made, and

(C) for purposes of applying sections 465 and 469 to the beneficiary of the trust, the disposition of the S corporation stock by the trust shall be treated as a disposition by such beneficiary.

(2) Election.--

(A) In general.--A beneficiary of a qualified subchapter S trust (or his legal representative) may elect to have this subsection apply.

(B) Manner and time of election.--

(i) Separate election with respect to each corporation.--An election under this paragraph shall be made separately with respect to each corporation the stock of which is held by the trust.

(ii) Elections with respect to successive income beneficiaries.--If there is an election under this paragraph with respect to any beneficiary, an election under this paragraph shall be treated as made by each successive beneficiary unless such beneficiary affirmatively refuses to consent to such election.

(iii) Time, manner, and form of election.--Any election, or refusal, under this paragraph shall be made in such manner and form, and at such time, as the Secretary may prescribe.

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(C) Election irrevocable.--An election under this paragraph, once made, may be revoked only with the consent of the Secretary.

(D) Grace period.--An election under this paragraph shall be effective up to 15 days and 2 months before the date of the election.

(3) Qualified subchapter S trust.--For purposes of this subsection, the term "qualified subchapter S trust" means a trust--

(A) the terms of which require that--

(i) during the life of the current income beneficiary, there shall be only 1 income beneficiary of the trust,

(ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary,

(iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and

(iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and

(B) all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

A substantially separate and independent share of a trust within the meaning of section 663(c) shall be treated as a separate trust for purposes of this subsection and subsection (c).

(4) Trust ceasing to be qualified.--

(A) Failure to meet requirements of paragraph (3)(A).--If a qualified subchapter S trust ceases to meet any requirement of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the date it ceases to meet such requirement.

(B) Failure to meet requirements of paragraph (3)(B).--If any qualified subchapter S trust ceases to meet any requirement of paragraph (3)(B) but continues to meet the requirements of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the first day of the first taxable year beginning after the first taxable year for which it failed to meet the requirements of paragraph (3)(B).

(e) Electing small business trust defined.--

(1) Electing small business trust.--For purposes of this section--

(A) In general.--Except as provided in subparagraph (B), the term "electing small business trust" means any trust if--

(i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in paragraph (2), (3), (4), or (5) of section 170(c), or (IV) an organization described in section 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary,

(ii) no interest in such trust was acquired by purchase, and

(iii) an election under this subsection applies to such trust.

(B) Certain trusts not eligible.--The term "electing small business trust" shall not include--

(i) any qualified subchapter S trust (as defined in subsection (d)(3)) if an election under subsection (d)(2) applies to any corporation the stock of which is held by such trust,

(ii) any trust exempt from tax under this subtitle, and

(iii) any charitable remainder annuity trust or charitable remainder unitrust (as defined in section 664(d)).

(C) Purchase.--For purposes of subparagraph (A), the term "purchase" means any acquisition if the basis of the property acquired is determined under section 1012.

(2) Potential current beneficiary.--For purposes of this section, the term "potential current beneficiary" means, with respect to any period, any person who at any time during such period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust (determined without regard to any power of appointment to the extent such power remains unexercised at the end of such period). If a trust disposes of all of the stock which it holds in an S corporation, then, with respect to such corporation, the term "potential current beneficiary" does not include any person who first met the requirements of the preceding sentence during the 1-year period ending on the date of such disposition.

(3) Election.--An election under this subsection shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

(4) Cross reference.--

For special treatment of electing small business trusts, see section 641(c).

(f) Restricted bank director stock.--

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(1) In general.--Restricted bank director stock shall not be taken into account as outstanding stock of the S corporation in applying this subchapter (other than section 1368(f)).

(2) Restricted bank director stock.--For purposes of this subsection, the term "restricted bank director stock" means stock in a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)), [1] if such stock--

(A) is required to be held by an individual under applicable Federal or State law in order to permit such individual to serve as a director, and

(B) is subject to an agreement with such bank or company (or a corporation which controls (within the meaning of section 368(c)) such bank or company) pursuant to which the holder is required to sell back such stock (at the same price as the individual acquired such stock) upon ceasing to hold the office of director.

(3) Cross reference.--

For treatment of certain distributions with respect to restricted bank director stock, see section 1368(f).

(g) Special rule for bank required to change from the reserve method of accounting on becoming S corporation.--In the case of a bank which changes from the reserve method of accounting for bad debts described in section 585 or 593 for its first taxable year for which an election under section 1362(a) is in effect, the bank may elect to take into account any adjustments under section 481 by reason of such change for the taxable year immediately preceding such first taxable year.

CREDIT(S)

(Added Pub.L. 97-354, § 2, Oct. 19, 1982, 96 Stat. 1669; amended Pub.L. 98-369, Title VII, § 721(c), (f), July 18, 1984, 98 Stat. 967, 968; Pub.L. 99-514, Title IX, § 901(d)(4)(G), Title XVIII, § 1879(m)(1)(A), Oct. 22, 1986, 100 Stat. 2380, 2910; Pub.L. 100-647, Title I, § 1018(q)(2), Nov. 10, 1988, 102 Stat. 3585; Pub.L. 101-239, Title VII, § 7811(c)(6), Dec. 19, 1989, 103 Stat. 2407; Pub.L. 104-188, Title I, §§ 1301, 1302(a), (b), (c), 1303, 1304, 1308(a), (b), (d)(1), 1315, 1316 (a), (e), 1616(b)(15), Aug. 20, 1996, 110 Stat. 1777, 1779, 1782, 1783, 1785, 1786, 1857; Pub.L. 105-34, Title XVI, § 1601(c)(1), (3), (4)(B), (C), Aug. 5, 1997, 111 Stat. 1087; Pub.L. 105-206, Title VI, § 6007(f)(3), July 22, 1998, 112 Stat. 810; Pub.L. 106-554, § 1(a)(7) [Title III, § 316(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-644; Pub.L. 108-357, Title II, §§ 231(a), 232(a), 233(a), (b), 234(a), 236(a), 239(a), Oct. 22, 2004, 118 Stat. 1433, 1434, 1435, 1437; Pub.L. 109-135, Title IV, §§ 403(b), 413(a)(1), (c), Dec. 21, 2005, 119 Stat. 2620, 2641; Pub.L. 110-28, Title VIII, §§ 8232(a), 8233(a), 8234(a), May 25, 2007, 121 Stat. 197, 198.)

Footnotes

1 So in original. Another closing parenthesis probably should precede the comma.

26 U.S.C.A. § 1361, 26 USCA § 1361

Current through P.L. 114-49 approved 8-7-2015

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Baldwin's Ohio Revised Code Annotated
Title XVII. Corporations--Partnerships (Refs & Annos)
Chapter 1701. General Corporation Law (Refs & Annos)
Books and Records

R.C. § 1701.37

1701.37 Books, records of account, minutes of proceedings, and shareholders records

Currentness

(A) Each corporation shall keep correct and complete books and records of account, together with minutes of the proceedings of its incorporators, shareholders, directors, and committees of the directors, and records of its shareholders showing their names and addresses and the number and class of shares issued or transferred of record to or by them from time to time.

(B) Upon request of any shareholder at any meeting of shareholders, there shall be produced at such meeting an alphabetically arranged list, or classified lists, of the shareholders of record as of the applicable record date, who are entitled to vote, showing their respective addresses and the number and class of shares held by each. Such list or lists when certified by the officer or agent in charge of the transfers of shares shall be prima-facie evidence of the facts shown therein. If the meeting is to be held solely or in part by means of communications equipment, then the corporation shall make the list or lists open to the examination of any shareholder or proxyholder during the whole time of the meeting on a reasonably accessible electronic network. The directors may adopt guidelines and procedures to permit the corporation to verify that any person accessing the list or lists is a shareholder or proxyholder.

(C) Any shareholder of the corporation, upon written demand stating the specific purpose thereof, shall have the right to examine in person or by agent or attorney at any reasonable time and for any reasonable and proper purpose, the articles of the corporation, its regulations, its books and records of account, minutes, and records of shareholders aforesaid, and voting trust agreements, if any, on file with the corporation, and to make copies or extracts thereof. Any written demand by an acquiring person to examine the records of shareholders for the purpose of communicating with shareholders of the issuing public corporation in connection with a meeting of shareholders called pursuant to section 1701.831 of the Revised Code shall be deemed to have been made by a shareholder of the issuing public corporation for a reasonable and proper purpose.

(D) Unless otherwise prohibited by law, if a shareholder has authorized the corporation to deliver notices of shareholder meetings required by section 1701.41 of the Revised Code to the shareholder by any means other than mail and has not rescinded that authorization, the corporation shall include the electronic mail address or other electronic contact information necessary to deliver the notice on any list or lists of shareholders prepared pursuant to division (B) or (C) of this section.

CREDIT(S)

(2002 H 278, eff. 5-16-02; 1982 H 822, eff. 11-18-82; 126 v 432)

R.C. § 1701.37, OH ST § 1701.37
Current through 2015 Files 1 to 10, and 12 to 24 of the 131st GA (2015-2016).

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Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5733. Corporation Franchise Tax (Refs & Annos)
Net Income

R.C. § 5733.051

5733.051 Taxation of net income of a corporation

Currentness

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

Subject to section 5733.0510 of the Revised Code, net-nonbusiness income of a corporation shall be allocated and apportioned to this state as follows:

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

(B) Net rents and royalties from tangible personal property, to the extent such property is utilized in this state, are allocable to this state. Net rents and royalties from tangible personal property, to the extent such property is utilized outside this state, are allocable outside this state.

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

(D) Capital gains and losses from the sale or other disposition of tangible personal property are allocable to this state to the extent such property was utilized in this state prior to the property's sale or other disposition. Capital gains and losses from the sale or other disposition of tangible personal property are allocable outside this state to the extent such property was utilized outside this state prior to the property's sale or other disposition.

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

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

(1) Dividends or distributions which are not otherwise deducted or excluded from net income, other than dividends or distributions from a domestic international sales corporation, shall be allocated to this state by multiplying such dividends and distributions by a fraction. The numerator of the fraction is the book value of the physical assets in this state of the payor or, if the payor is a member of a modified qualifying controlled group on the last day of the payor's fiscal or calendar year ending immediately prior to the day on which the payor pays the dividend or makes the distribution, the sum of the book values of the physical assets in this state of the payor and of all the other members of the modified qualifying controlled group of which the payor is a member on the last day of the payor's fiscal or calendar year ending immediately prior to the day on which the payor pays the dividend or makes the distribution. The denominator of the fraction is the book value of the physical assets everywhere of the payor or, if the payor is a member of a modified qualifying controlled group on the last day of the payor's fiscal or calendar year ending immediately prior to the day on which the payor pays the dividend or makes the distribution, the sum of the book values of the physical assets everywhere of the payor and of all the other members of the modified qualifying controlled group of which the payor is a member on the last day of the payor's fiscal or calendar year ending immediately prior to the day on which the payor pays the dividend or makes the distribution. Dividends or distributions received from a domestic international sales corporation, or from a payor for which the location of physical assets described in this division is not available to the taxpayer, are apportionable under division (I) of this section.

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

(3) For the purposes of division (F)(3) of this section, " upper level pass-through entity" means a pass-through entity directly or indirectly owning any equity of another pass-through entity, and "lower level pass-through entity" means that other pass-through entity. For purposes of divisions (F)(1) and (2) of this section, an upper level pass-through entity is deemed to own, on the last day of the upper level pass-through entity's fiscal or calendar year, the proportionate share of the lower level pass-through entity's physical assets that the lower level pass-through entity directly or indirectly owns on the last day of the lower level pass-through entity's fiscal or calendar year ending within or with the last day of the upper level pass-through entity's fiscal or calendar year. If the upper level pass-through entity directly and indirectly owns less than fifty per cent of the equity of the lower level pass-through entity on each day of the upper level pass-through entity's fiscal or calendar year in which or with which ends the fiscal or calendar year of the lower level pass- through entity and if, based upon clear and convincing evidence, complete information about the location and cost of the physical assets of the lower level pass-through entity is not available to the upper level pass-through entity, then for purposes of divisions (F)(1) and (2) of this section, the upper level pass-through entity shall be deemed as owning no equity of the lower level pass-through entity for each day during the upper level pass-through entity's calendar or fiscal year in which or with which ends the lower level pass-through entity's fiscal or calendar year.

(G) Net rents, net royalties, and net technical assistance fees from intangible property are allocable to this state to the extent that the activity of the payor thereof giving rise to the payment takes place in this state. If the location of a payor's activity

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is not available to the corporation, the net rents, net royalties, and net technical assistance fees are allocable or apportionable under division (I) of this section.

(H)(1) The following amounts are allocable to this state:

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

(b) All earnings, profit, income, and gain from the sale, exchange, or other disposition of lottery prize awards paid or to be paid to any person by the state lottery commission pursuant to Chapter 3770. of the Revised Code;

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

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

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

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

CREDIT(S)

(2003 H 95, eff. 9-26-03; 2002 S 226, eff. 9-17-02; 1999 S 3, eff. 7-6-99; 1997 H 215, eff. 6-30-97; 1987 S 33, eff. 9-10-87; 1984 H 250; 1983 H 291; 1971 H 475)

R.C. § 5733.051, OH ST § 5733.051
Current through 2015 Files 1 to 10, and 12 to 24 of the 131st GA (2015-2016).

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Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5747. Income Tax (Refs & Annos)
General Provisions

R.C. § 5747.01

5747.01 Definitions

Effective: September 29, 2013
Currentness

Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter that is not otherwise defined in this section has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes or if not used in a comparable context in those laws, has the same meaning as in section 5733.40 of the Revised Code. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

As used in this chapter:

(A) "Adjusted gross income" or "Ohio adjusted gross income" means federal adjusted gross income, as defined and used in the Internal Revenue Code, adjusted as provided in this section:

(1) Add interest or dividends on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities.

(2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes.

(3) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.

(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.

(5) Deduct benefits under Title II of the Social Security Act [1] and tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code [2].

(6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which the distribution is made to the extent that the portion was not included in the trust's taxable income for any of the

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trust's taxable years beginning in 2002 or thereafter. "Undistributed net income of a trust" means the taxable income of the trust increased by (a)(i) the additions to adjusted gross income required under division (A) of this section and (ii) the personal exemptions allowed to the trust pursuant to section 642(b) of the Internal Revenue Code, and decreased by (b)(i) the deductions to adjusted gross income required under division (A) of this section, (ii) the amount of federal income taxes attributable to such income, and (iii) the amount of taxable income that has been included in the adjusted gross income of a beneficiary by reason of a prior accumulation distribution. Any undistributed net income included in the adjusted gross income of a beneficiary shall reduce the undistributed net income of the trust commencing with the earliest years of the accumulation period.

(7) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal adjusted gross income for the taxable year, had the targeted jobs credit allowed and determined under sections 38, 51, and 52 of the Internal Revenue Code [3] not been in effect.

(8) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent that the interest or interest equivalent is included in federal adjusted gross income.

(9) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of public obligations to the extent that the loss has been deducted or the gain has been included in computing federal adjusted gross income.

(10) Deduct or add amounts, as provided under section 5747.70 of the Revised Code, related to contributions to variable college savings program accounts made or tuition units purchased pursuant to Chapter 3334. of the Revised Code.

(11)(a) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer paid during the taxable year for medical care insurance and qualified long-term care insurance for the taxpayer, the taxpayer's spouse, and dependents. No deduction for medical care insurance under division (A)(11) of this section shall be allowed either to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the taxpayer's spouse, or to any taxpayer who is entitled to, or on application would be entitled to, benefits under part A of Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of division (A)(11)(a) of this section, "subsidized health plan" means a health plan for which the employer pays any portion of the plan's cost. The deduction allowed under division (A)(11)(a) of this section shall be the net of any related premium refunds, related premium reimbursements, or related insurance premium dividends received during the taxable year.

(b) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income during the taxable year, the amount the taxpayer paid during the taxable year, not compensated for by any insurance or otherwise, for medical care of the taxpayer, the taxpayer's spouse, and dependents, to the extent the expenses exceed seven and one-half per cent of the taxpayer's federal adjusted gross income.

(c) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income, any amount included in federal adjusted gross income under section 105 [4] or not excluded under section 106 of the Internal Revenue Code [5] solely because it relates to an accident and health plan for a person who otherwise would be a "qualifying relative" and thus a "dependent" under section 152 of the Internal Revenue Code [6] but for the fact that the person fails to meet the income and support limitations under section 152(d)(1)(B) and (C) of the Internal Revenue Code.

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(d) For purposes of division (A)(11) of this section, "medical care" has the meaning given in section 213 of the Internal Revenue Code, subject to the special rules, limitations, and exclusions set forth therein, and "qualified long-term care" has the same meaning given in section 7702B(c) of the Internal Revenue Code[7]. Solely for purposes of divisions (A)(11)(a) and (c) of this section, "dependent" includes a person who otherwise would be a "qualifying relative" and thus a "dependent" under section 152 of the Internal Revenue Code but for the fact that the person fails to meet the income and support limitations under section 152(d)(1)(B) and (C) of the Internal Revenue Code.

(12)(a) Deduct any amount included in federal adjusted gross income solely because the amount represents a reimbursement or refund of expenses that in any year the taxpayer had deducted as an itemized deduction pursuant to section 63 of the Internal Revenue Code and applicable United States department of the treasury regulations. The deduction otherwise allowed under division (A)(12)(a) of this section shall be reduced to the extent the reimbursement is attributable to an amount the taxpayer deducted under this section in any taxable year.

(b) Add any amount not otherwise included in Ohio adjusted gross 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 adjusted gross income in any taxable year.

(13) 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 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 adjusted gross income for the current or any other taxable year.

(14) Deduct an amount equal to the deposits made to, and net investment earnings of, a medical savings account during the taxable year, in accordance with section 3924.66 of the Revised Code. The deduction allowed by division (A)(14) of this section does not apply to medical savings account deposits and earnings otherwise deducted or excluded for the current or any other taxable year from the taxpayer's federal adjusted gross income.

(15)(a) Add an amount equal to the funds withdrawn from a medical savings account during the taxable year, and the net investment earnings on those funds, when the funds withdrawn were used for any purpose other than to reimburse an account holder for, or to pay, eligible medical expenses, in accordance with section 3924.66 of the Revised Code;

(b) Add the amounts distributed from a medical savings account under division (A)(2) of section 3924.68 of the Revised Code during the taxable year.

(16) Add any amount claimed as a credit under section 5747.059 or 5747.65 of the Revised Code to the extent that such amount satisfies either of the following:

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(a) The amount was deducted or excluded from the computation of the taxpayer's federal adjusted gross income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;

(b) The amount resulted in a reduction of the taxpayer's federal adjusted gross income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.

(17) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of job and family services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax commissioner, the taxpayer shall provide any information that, in the tax commissioner's opinion, is necessary to establish the amount deducted under division (A)(17) of this section.

(18) Beginning in taxable year 2001 but not for any taxable year beginning after December 31, 2005, if the taxpayer is married and files a joint return and the combined federal adjusted gross income of the taxpayer and the taxpayer's spouse for the taxable year does not exceed one hundred thousand dollars, or if the taxpayer is single and has a federal adjusted gross income for the taxable year not exceeding fifty thousand dollars, deduct amounts paid during the taxable year for qualified tuition and fees paid to an eligible institution for the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer, who is a resident of this state and is enrolled in or attending a program that culminates in a degree or diploma at an eligible institution. The deduction may be claimed only to the extent that qualified tuition and fees are not otherwise deducted or excluded for any taxable year from federal or Ohio adjusted gross income. The deduction may not be claimed for educational expenses for which the taxpayer claims a credit under section 5747.27 of the Revised Code.

(19) Add any reimbursement received during the taxable year of any amount the taxpayer deducted under division (A)(18) of this section in any previous taxable year to the extent the amount is not otherwise included in Ohio adjusted gross income.

(20)(a)(i) Subject to divisions (A)(20)(a)(iii), (iv), and (v) of this section, add five-sixths of the amount of depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code, including the taxpayer's proportionate or distributive share of the amount of depreciation expense allowed by that subsection to a pass-through entity in which the taxpayer has a direct or indirect ownership interest.

(ii) Subject to divisions (A)(20)(a)(iii), (iv), and (v) of this section, add five-sixths of the amount of qualifying section 179 depreciation expense, including the taxpayer's proportionate or distributive share of the amount of qualifying section 179 depreciation expense allowed to any pass-through entity in which the taxpayer has a direct or indirect ownership interest.

(iii) Subject to division (A)(20)(a)(v) of this section, for taxable years beginning in 2012 or thereafter, if the increase in income taxes withheld by the taxpayer is equal to or greater than ten per cent of income taxes withheld by the taxpayer during the taxpayer's immediately preceding taxable year, "two-thirds" shall be substituted for "five-sixths" for the purpose of divisions (A)(20)(a)(i) and (ii) of this section.

(iv) Subject to division (A)(20)(a)(v) of this section, for taxable years beginning in 2012 or thereafter, a taxpayer is not required to add an amount under division (A)(20) of this section if the increase in income taxes withheld by the taxpayer and by any pass-through entity in which the taxpayer has a direct or indirect ownership interest is equal to or greater than the sum of (I) the amount of qualifying section 179 depreciation expense and (II) the amount of depreciation expense allowed to the taxpayer

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by subsection (k) of section 168 of the Internal Revenue Code, and including the taxpayer's proportionate or distributive shares of such amounts allowed to any such pass-through entities.

(v) If a taxpayer directly or indirectly incurs a net operating loss for the taxable year for federal income tax purposes, to the extent such loss resulted from depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code and by qualifying section 179 depreciation expense, "the entire" shall be substituted for "five-sixths of the" for the purpose of divisions (A)(20)(a)(i) and (ii) of this section.

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

(b) Nothing in division (A)(20) of this section shall be construed to adjust or modify the adjusted basis of any asset.

(c) To the extent the add-back required under division (A)(20)(a) of this section is attributable to property generating nonbusiness income or loss allocated under section 5747.20 of the Revised Code, the add-back shall be sitused to the same location as the nonbusiness income or loss generated by the property for the purpose of determining the credit under division (A) of section 5747.05 of the Revised Code. Otherwise, the add-back shall be apportioned, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.

(d) For the purposes of division (A)(20)(a)(v) of this section, net operating loss carryback and carryforward shall not include the allowance of any net operating loss deduction carryback or carryforward to the taxable year to the extent such loss resulted from depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount.

(e) For the purposes of divisions (A)(20) and (21) of this section:

(i) "Income taxes withheld" means the total amount withheld and remitted under sections 5747.06 and 5747.07 of the Revised Code by an employer during the employer's taxable year.

(ii) "Increase in income taxes withheld" means the amount by which the amount of income taxes withheld by an employer during the employer's current taxable year exceeds the amount of income taxes withheld by that employer during the employer's immediately preceding taxable year.

(iii) "Qualifying section 179 depreciation expense" means the difference between (I) the amount of depreciation expense directly or indirectly allowed to a taxpayer under section 179 of the Internal Revised Code, and (II) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code as that section existed on December 31, 2002.

(21)(a) If the taxpayer was required to add an amount under division (A)(20)(a) of this section for a taxable year, deduct one of the following:

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(i) One-fifth of the amount so added for each of the five succeeding taxable years if the amount so added was five-sixths of qualifying section 179 depreciation expense or depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code;

(ii) One-half of the amount so added for each of the two succeeding taxable years if the amount so added was two-thirds of such depreciation expense;

(iii) One-sixth of the amount so added for each of the six succeeding taxable years if the entire amount of such depreciation expense was so added.

(b) If the amount deducted under division (A)(21)(a) of this section is attributable to an add-back allocated under division (A)(20)(c) of this section, the amount deducted shall be sitused to the same location. Otherwise, the add-back shall be apportioned using the apportionment factors for the taxable year in which the deduction is taken, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.

(c) No deduction is available under division (A)(21)(a) of this section with regard to any depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount to the extent that such depreciation results in or increases a federal net operating loss carryback or carryforward. If no such deduction is available for a taxable year, the taxpayer may carry forward the amount not deducted in such taxable year to the next taxable year and add that amount to any deduction otherwise available under division (A)(21)(a) of this section for that next taxable year. The carryforward of amounts not so deducted shall continue until the entire addition required by division (A)(20)(a) of this section has been deducted.

(d) No refund shall be allowed as a result of adjustments made by division (A)(21) of this section.

(22) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year as reimbursement for life insurance premiums under section 5919.31 of the Revised Code.

(23) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year as a death benefit paid by the adjutant general under section 5919.33 of the Revised Code.

(24) Deduct, to the extent included in federal adjusted gross income and not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, military pay and allowances received by the taxpayer during the taxable year for active duty service in the United States army, air force, navy, marine corps, or coast guard or reserve components thereof or the national guard. The deduction may not be claimed for military pay and allowances received by the taxpayer while the taxpayer is stationed in this state.

(25) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year and not otherwise compensated for by any other source, the amount of qualified organ donation expenses incurred by the taxpayer during the taxable year, not to exceed ten thousand dollars. A taxpayer may deduct qualified organ donation expenses only once for all taxable years beginning with taxable years beginning in 2007.

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For the purposes of division (A)(25) of this section:

(a) "Human organ" means all or any portion of a human liver, pancreas, kidney, intestine, or lung, and any portion of human bone marrow.

(b) "Qualified organ donation expenses" means travel expenses, lodging expenses, and wages and salary forgone by a taxpayer in connection with the taxpayer's donation, while living, of one or more of the taxpayer's human organs to another human being.

(26) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, amounts received by the taxpayer as retired personnel pay for service in the uniformed services or reserve components thereof, or the national guard, or received by the surviving spouse or former spouse of such a taxpayer under the survivor benefit plan on account of such a taxpayer's death. If the taxpayer receives income on account of retirement paid under the federal civil service retirement system or federal employees retirement system, or under any successor retirement program enacted by the congress of the United States that is established and maintained for retired employees of the United States government, and such retirement income is based, in whole or in part, on credit for the taxpayer's uniformed service, the deduction allowed under this division shall include only that portion of such retirement income that is attributable to the taxpayer's uniformed service, to the extent that portion of such retirement income is otherwise included in federal adjusted gross income and is not otherwise deducted under this section. Any amount deducted under division (A)(26) of this section is not included in a taxpayer's adjusted gross income for the purposes of section 5747.055 of the Revised Code. No amount may be deducted under division (A)(26) of this section on the basis of which a credit was claimed under section 5747.055 of the Revised Code.

(27) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year from the military injury relief fund created in section 5101.98 of the Revised Code.

(28) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received as a veterans bonus during the taxable year from the Ohio department of veterans services as authorized by Section 2r of Article VIII, Ohio Constitution.

(29) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Revised Code.

(30) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, Ohio college opportunity or federal Pell grant amounts received by the taxpayer or the taxpayer's spouse or dependent pursuant to section 3333.122 of the Revised Code or 20 U.S.C. 1070a, et seq., and used to pay room or board furnished by the educational institution for which the grant was awarded at the institution's facilities, including meal plans administered by the institution. For the purposes of this division, receipt of a grant includes the distribution of a grant directly to an educational institution and the crediting of the grant to the enrollee's account with the institution.

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(31) Deduct one-half of the taxpayer's Ohio small business investor income, the deduction not to exceed sixty-two thousand five hundred dollars for each spouse if spouses file separate returns under section 5747.08 of the Revised Code or one hundred twenty-five thousand dollars for all other taxpayers. No pass-through entity may claim a deduction under this division.

For the purposes of this division, "Ohio small business investor income" means the portion of a taxpayer's adjusted gross income that is business income reduced by deductions from business income and apportioned or allocated to this state under sections 5747.21 and 5747.22 of the Revised Code, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year.

(B) "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, gain, or loss from real property, tangible property, 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. "Business income" includes income, including gain or loss, from a partial or complete liquidation of a business, including, but not limited to, gain or loss from the sale or other disposition of goodwill.

(C) "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 and distributions, patent or copyright royalties, or lottery winnings, prizes, and awards.

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

(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.

(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

(G) "Individual" means any natural person.

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

(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 2002 or thereafter:

(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;

(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code are not controlling for purposes of division (I)(2) of this section.

(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.

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For the purposes of division (I)(3) of this section:

(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 indirectly, to the trust by any of the following:

(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)(e)(i) or (ii) of this section;

(ii) A person who was 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 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;

(iii) A person who was domiciled in this state for the purposes of this chapter when the trust document or instrument or part of the trust document or instrument became irrevocable, but only if 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. If a trust document or instrument became irrevocable upon the death of a person who at the time of death was domiciled in this state for purposes of this chapter, that person is a person described in division (I)(3)(a)(iii) of this section.

(b) A trust is irrevocable to the extent that the transferor is not considered to be the owner of the net assets of the trust under sections 671 to 678 of the Internal Revenue Code[8].

(c) With respect to a trust other than a charitable lead trust, "qualifying beneficiary" has the same meaning as "potential current beneficiary" as defined in section 1361(e)(2) of the Internal Revenue Code, and with respect to a charitable lead trust "qualifying beneficiary" is any current, future, or contingent beneficiary, but with respect to any trust "qualifying beneficiary" excludes a person or a governmental entity or instrumentality to any of which a contribution would qualify for the charitable deduction under section 170 of the Internal Revenue Code.

(d) For the purposes of division (I)(3)(a) of this section, the extent to which a trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred directly or indirectly, in whole or part, to the trust by any of the sources enumerated in that division shall be ascertained by multiplying the fair market value of the trust's assets, net of related liabilities, by the qualifying ratio, which shall be computed as follows:

(i) The first time the trust receives assets, the numerator of the qualifying ratio is the fair market value of those assets at that time, net of any related liabilities, from sources enumerated in division (I)(3)(a) of this section. The denominator of the qualifying ratio is the fair market value of all the trust's assets at that time, net of any related liabilities.

(ii) Each subsequent time the trust receives assets, a revised qualifying ratio shall be computed. The numerator of the revised qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent transfer, net of any related liabilities, multiplied by the qualifying ratio last computed without regard to the subsequent transfer, and (2) the fair market value of the subsequently transferred assets at the time transferred, net of any related liabilities, from sources

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enumerated in division (I)(3)(a) of this section. The denominator of the revised qualifying ratio is the fair market value of all the trust's assets immediately after the subsequent transfer, net of any related liabilities.

(iii) Whether a transfer to the trust is by or from any of the sources enumerated in division (I)(3)(a) of this section shall be ascertained without regard to the domicile of the trust's beneficiaries.

(e) For the purposes of division (I)(3)(a)(i) of this section:

(i) A trust is described in division (I)(3)(e)(i) of this section if the trust is a testamentary trust and the testator of that testamentary trust was domiciled in this state at the time of the testator's death for purposes of the taxes levied under Chapter 5731. of the Revised Code.

(ii) A trust is described in division (I)(3)(e)(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.

(f) For the purposes of division (I)(3)(e)(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:

(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.

(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.

(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 purposes of the taxes levied under Chapter 5731. of the Revised Code.

(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.

(v) The transfer is made to a trust on account of the will of a testator who was domiciled in this state at the time of the testator's death for purposes of the taxes levied under Chapter 5731. of the Revised Code.

(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.

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(g) The tax commissioner may adopt rules to ascertain the part of a trust residing in this state.

(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.

(K) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code.

(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.

(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 pursuant to this chapter.

(N) "Taxpayer" means any person subject to the tax imposed by section 5747.02 of the Revised Code or any pass-through entity that makes the election under division (D) of section 5747.08 of the Revised Code.

(O) "Dependents" means dependents as defined in the Internal Revenue Code and as claimed in the taxpayer's federal income tax return for the taxable year or which the taxpayer would have been permitted to claim had the taxpayer filed a federal income tax return.

(P) "Principal county of employment" means, in the case of a nonresident, the county within the state in which a taxpayer performs services for an employer or, if those services are performed in more than one county, the county in which the major portion of the services are performed.

(Q) As used in sections 5747.50 to 5747.55 of the Revised Code:

(1) "Subdivision" means any county, municipal corporation, park district, or township.

(2) "Essential local government purposes" includes all functions that any subdivision is required by general law to exercise, including like functions that are exercised under a charter adopted pursuant to the Ohio Constitution.

(R) "Overpayment" means any amount already paid that exceeds the figure determined to be the correct amount of the tax.

(S) "Taxable income" or "Ohio taxable income" applies only to estates and trusts, and means federal taxable income, as defined and used in the Internal Revenue Code, adjusted as follows:

(1) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and

its subdivisions and authorities, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section:

(a) The net amount is not attributable to the S portion of an electing small business trust and has not been distributed to beneficiaries for the taxable year;

(b) The net amount is attributable to the S portion of an electing small business trust for the taxable year.

(2) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section;

(3) Add the amount of personal exemption allowed to the estate pursuant to section 642(b) of the Internal Revenue Code;

(4) Deduct interest or dividends, net of related expenses deducted in computing federal taxable income, on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are exempt from state taxes under the laws of the United States, but only to the extent that such amount is included in federal taxable income and is described in either division (S)(1)(a) or (b) of this section;

(5) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income for the taxable year, had the targeted jobs credit allowed under sections 38, 51, and 52 of the Internal Revenue Code not been in effect, but only to the extent such amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;

(6) Deduct any interest or interest equivalent, net of related expenses deducted in computing federal taxable income, on public obligations and purchase obligations, but only to the extent that such net amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;

(7) Add any loss or deduct any gain resulting from sale, exchange, or other disposition of public obligations to the extent that such loss has been deducted or such gain has been included in computing either federal taxable income or income of the S portion of an electing small business trust for the taxable year;

(8) Except in the case of the final return of an estate, add any amount deducted by the taxpayer on both its Ohio estate tax return pursuant to section 5731.14 of the Revised Code, and on its federal income tax return in determining federal taxable income;

(9)(a) Deduct any amount included in federal taxable income solely because the amount represents a reimbursement or refund of expenses that in a previous year the decedent had deducted as an itemized deduction pursuant to section 63 of the Internal Revenue Code and applicable treasury regulations. The deduction otherwise allowed under division (S)(9)(a) of this section shall be reduced to the extent the reimbursement is attributable to an amount the taxpayer or decedent deducted under this section in any taxable year.

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(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 or 5747.65 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 if the assets of the trust include at least ten acres of land satisfying the definition of "land devoted exclusively to agricultural use" under section 5713.30 of the Revised Code, regardless of whether the land is valued for tax purposes as such land under sections 5713.30 to 5713.38 of the Revised Code. If the trust is a pass-through entity investor, section 5747.231 of the Revised Code applies in ascertaining if the trust is eligible to claim the deduction provided by division (S)(12) of this section in connection with the pass-through entity's farm income.

Except for farm income attributable to the S portion of an electing small business trust, the deduction provided by division (S)(12) of this section is allowed only to the extent that the trust has not distributed such farm income. Division (S)(12) of this section applies only to taxable years of a trust beginning in 2002 or thereafter.

(13) Add the net amount of income described in section 641(c) of the Internal Revenue Code[9] to the extent that amount is not included in federal taxable income.

(14) Add or deduct the amount the taxpayer would be required to add or deduct under division (A)(20) or (21) of this section if the taxpayer's Ohio taxable income were computed in the same manner as an individual's Ohio adjusted gross income is computed under this section. In the case of a trust, division (S)(14) of this section applies only to any of the trust's taxable years beginning in 2002 or thereafter.

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(T) "School district income" and "school district income tax" have the same meanings as in section 5748.01 of the Revised Code.

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.

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

(W) "Pass-through entity investor" means any person who, during any portion of a taxable year of a pass-through entity, is a partner, member, shareholder, or equity investor in that pass-through entity.

(X) "Banking day" has the same meaning as in section 1304.01 of the Revised Code.

(Y) "Month" means a calendar month.

(Z) "Quarter" means the first three months, the second three months, the third three months, or the last three months of the taxpayer's taxable year.

(AA)(1) "Eligible institution" means a state university or state institution of higher education as defined in section 3345.011 of the Revised Code, or a private, nonprofit college, university, or other post-secondary institution located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code or a certificate of registration issued by the state board of career colleges and schools under Chapter 3332. of the Revised Code.

(2) "Qualified tuition and fees" means tuition and fees imposed by an eligible institution as a condition of enrollment or attendance, not exceeding two thousand five hundred dollars in each of the individual's first two years of post-secondary education. If the individual is a part-time student, "qualified tuition and fees" includes tuition and fees paid for the academic equivalent of the first two years of post-secondary education during a maximum of five taxable years, not exceeding a total of 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.

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(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 section 5747.013, and applying section 5747.231 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 division (BB)(4)(b) of this section shall equal the sum of the products so computed for each such qualifying investee.

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(c)(i) With respect to a trust or portion of a trust that is a resident as ascertained in accordance with division (I)(3)(d) of this section, its modified nonbusiness income.

(ii) With respect to a trust or portion of a trust that is not a resident as ascertained in accordance with division (I)(3)(d) of this section, the amount of its modified nonbusiness income satisfying the descriptions in divisions (B)(2) to (5) of section 5747.20 of the Revised Code, except as otherwise provided in division (BB)(4)(c)(ii) of this section. With respect to a trust or portion of a trust that is not a resident as ascertained in accordance with division (I)(3)(d) of this section, the trust's portion of modified nonbusiness income recognized from the sale, exchange, or other disposition of a debt interest in or equity interest in a section 5747.212 entity, as defined in section 5747.212 of the Revised Code, without regard to division (A) of that section, shall not be allocated to this state in accordance with section 5747.20 of the Revised Code but shall be apportioned to this state in accordance with division (B) of section 5747.212 of the Revised Code without regard to division (A) of that section.

If the allocation and apportionment of a trust's income under divisions (BB)(4)(a) and (c) of this section do not fairly represent the modified Ohio taxable income of the trust in this state, the alternative methods described in division (C) of section 5747.21 of the Revised Code may be applied in the manner and to the same extent provided in that section.

(5)(a) Except as set forth in division (BB)(5)(b) of this section, "qualifying investee" means a person in which a trust has an equity or ownership interest, or a person or unit of government the debt obligations of either of which are owned by a trust. For the purposes of division (BB)(2)(a) of this section and for the purpose of computing the fraction described in division (BB)(4)(b) of this section, all of the following apply:

(i) If the qualifying investee is a member of a qualifying controlled group on 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, then "qualifying investee" includes all persons in the qualifying controlled group on such last day.

(ii) If the qualifying investee, or if the qualifying investee and any members of the qualifying controlled group of which the qualifying investee is a member on 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, separately or cumulatively own, directly or indirectly, on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the qualifying trust amount, more than fifty per cent of the equity of a pass-through entity, then the qualifying investee and the other members are deemed to own the proportionate share of the pass-through entity's physical assets which the pass-through entity directly or indirectly owns on the last day of the pass-through entity's calendar or fiscal year ending within or with the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the qualifying trust amount.

(iii) For the purposes of division (BB)(5)(a)(iii) of this section, "upper level pass-through entity" means a pass-through entity directly or indirectly owning any equity of another pass-through entity, and "lower level pass-through entity" means that other pass-through entity.

An upper level pass-through entity, whether or not it is also a qualifying investee, is deemed to own, on the last day of the upper level pass-through entity's calendar or fiscal year, the proportionate share of the lower level pass-through entity's physical assets that the lower level pass-through entity directly or indirectly owns on the last day of the lower level pass-through entity's calendar or fiscal year ending within or with the last day of the upper level pass-through entity's fiscal or calendar year. If the upper level pass-through entity directly and indirectly owns less than fifty per cent of the equity of the lower level pass-through entity on each day of the upper level pass-through entity's calendar or fiscal year in which or with which ends the calendar

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or fiscal year of the lower level pass-through entity and if, based upon clear and convincing evidence, complete information about the location and cost of the physical assets of the lower pass-through entity is not available to the upper level pass-through entity, then solely for purposes of ascertaining if a gain or loss constitutes a qualifying trust amount, the upper level pass-through entity shall be deemed as owning no equity of the lower level pass-through entity for each day during the upper level pass-through entity's calendar or fiscal year in which or with which ends the lower level pass-through entity's calendar or fiscal year. Nothing in division (BB)(5)(a)(iii) of this section shall be construed to provide for any deduction or exclusion in computing any trust's Ohio taxable income.

(b) With respect to a trust that is not a resident for the taxable year and with respect to a part of a trust that is not a resident for the taxable year, "qualifying investee" for that taxable year does not include a C corporation if both of the following apply:

(i) During the taxable year the trust or part of the trust recognizes a gain or loss from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, the C corporation.

(ii) Such gain or loss constitutes nonbusiness income.

(6) "Available" means information is such that a person is able to learn of the information by the due date plus extensions, if any, for filing the return for the taxable year in which the trust recognizes the gain or loss.

(CC) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code.

(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code.

(EE)(1) For the purposes of division (EE) of this section:

(a) "Qualifying person" means any person other than a qualifying corporation.

(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:

(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year;

(ii) A subsidiary that is wholly owned by any corporation that has made an election under subchapter S, chapter one, subtitle A of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year.

(2) For the purposes of this chapter, unless expressly stated otherwise, no qualifying person indirectly owns any asset directly or indirectly owned by any qualifying corporation.

(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:

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(1) "Trust" does not include a qualified pre-income tax trust.

(2) A "qualified pre-income tax trust" is any pre-income tax trust that makes a qualifying pre-income tax trust election as described in division (FF)(3) of this section.

(3) A "qualifying pre-income tax trust election" is an election by a pre-income tax trust to subject to the tax imposed by section 5751.02 of the Revised Code the pre-income tax trust and all pass-through entities of which the trust owns or controls, directly, indirectly, or constructively through related interests, five per cent or more of the ownership or equity interests. The trustee shall notify the tax commissioner in writing of the election on or before April 15, 2006. The election, if timely made, shall be effective on and after January 1, 2006, and shall apply for all tax periods and tax years until revoked by the trustee of the trust.

(4) A "pre-income tax trust" is a trust that satisfies all of the following requirements:

(a) The document or instrument creating the trust was executed by the grantor before January 1, 1972;

(b) The trust became irrevocable upon the creation of the trust; and

(c) The grantor was domiciled in this state at the time the trust was created.

(GG) "Uniformed services" has the same meaning as in 10 U.S.C. 101.

CREDIT(S)

(2013 H 59, eff. 9-29-13; 2013 H 51, eff. 7-1-13; 2012 H 510, eff. 3-27-13; 2012 H 365, eff. 3-13-13; 2011 H 167, eff. 12-9-11; 2011 H 153, eff. 9-29-11; 2010 H 519, eff. 9-10-10; 2010 H 48, eff. 4-2-10; 2009 S 106, eff. 3-24-10; 2009 H 1, eff. 1-1-10; 2008 H 562, eff. 9-23-08; 2007 H 372, eff. 3-24-08; 2007 H 119, eff. 6-30-07; 2006 H 73, eff. 4-4-07; 2006 H 530, eff. 3-30-06 (Provisions subject to different effective dates); 2005 H 66, eff. 6-30-05; 2004 H 362, eff. 12-30-04; 2003 H 127, eff. 12-11-03; 2003 H 95, eff. 9-26-03; 2002 H 675, eff. 12-13-02; 2002 S 266, eff. 4-3-03; 2002 S 261, eff. 6-5-02; 2000 S 161, § 3, eff. 7-1-00; 2000 S 161, § 1, eff. 6-8-00; 1999 H 471, eff. 7-1-00; 1999 H 4, eff. 10-14-99; 1999 H 282, eff. 9-28-99; 1998 H 770, eff. 9-16-98; 1997 H 408, eff. 10-1-97; 1997 H 215, eff. 9-29-97; 1996 H 627, eff. 12-2-96; 1996 H 179, eff. 10-1-96; 1994 S 74, eff. 7-1-94; 1993 S 123, eff. 10-29-93; 1993 H 152; 1992 H 478; 1990 S 223, H 286; 1989 H 111, H 61; 1988 S 386; 1987 H 171; 1986 H 428; 1985 S 121; 1984 S 307, H 250; 1983 H 291; 1981 H 694; 1980 H 653; 1974 H 971; 1973 H 95; 1972 S 464, S 472; 1971 H 475)

Footnotes

1 42 U.S.C.A. § 401 et seq

2 26 U.S.C.A. § 86.

3 26 U.S.C.A. §§ 38, 51, 52.

4 26 U.S.C.A. § 105.

5 26 U.S.C.A. § 106.

6 26 U.S.C.A. § 152.

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7 26 U.S.C.A. § 7702(B)(c).

8 26 U.S.C.A. §§ 671 to 678.

9 26 U.S.C.A. § 641(c).

R.C. § 5747.01, OH ST § 5747.01

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Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5747. Income Tax (Refs & Annos)
General Provisions

R.C. § 5747.04

5747.04 Filing of reports, returns and payments; attribution of moneys; rules; indication of taxpayer's school district of residence

Currentness

All reports, returns, and payments required of a taxpayer or employer by this chapter, except payments by electronic funds transfer as required under section 5747.072 of the Revised Code, shall be filed with the tax commissioner.

Upon receipt by him of any payments under this chapter arising from a tax imposed under section 5747.02 of the Revised Code, the commissioner shall estimate and annually reconcile and determine for any amount paid by or on behalf of any taxpayer and for any amount shown due or owed to any taxpayer, the county to which such amount is attributable. The county of attribution is the county in which the taxpayer was a resident for one more than half of the number of days of the payroll period during which any income subject to taxation under this chapter was earned or, in the case of a nonresident taxpayer, his principal county of employment. If there is no payroll period to which such income can be attributed, the county of attribution is the county in which the taxpayer resided at the time he received such income.

The commissioner shall adopt such rules, including a requirement that each taxpayer indicate his school district of residence on his tax return, as are reasonably necessary to insure the efficient administration of this section and the distribution required by division (B) of section 5747.03 of the Revised Code.

CREDIT(S)
(1992 H 740, eff. 3-19-93; 1981 H 694; 1975 S 170; 1971 H 475)

R.C. § 5747.04, OH ST § 5747.04
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Title LVII. Taxation (Refs & Annos)
Chapter 5747. Income Tax (Refs & Annos)
General Provisions

R.C. § 5747.011

5747.011 Definitions; limited application

Currentness

(A) As used in this section:

(1) "Qualifying closely-held C corporation" means a person classified for federal income tax purposes as an association taxed as a corporation and that has more than fifty per cent of the value of its outstanding stock or equity owned, directly or indirectly, by or for not more than five qualifying persons. For the purposes of this division, the ownership of stock shall be determined under the rules set forth in section 544 of the Internal Revenue Code.

(2) "Qualifying person" means an individual; an organization described in section 401(a), 501(c)(17), or 509(a) of the Internal Revenue Code; or a portion of a trust permanently set aside or to be used exclusively for the purposes described in section 642(c) of the Internal Revenue Code or a corresponding provision of a prior federal income tax law.

(3) "Qualifying limited liability company" means a limited liability company that is not classified for federal income tax purposes as an association taxed as a corporation.

(4) "Ownership interest" means the equity or ownership interest in, or debt obligation of, a "qualifying investee" as defined in section 5747.01 of the Revised Code.

(5) "Qualifying individual beneficiary" has the same meaning as qualifying beneficiary as used in division (I)(3)(c) of section 5747.01 of the Revised Code, but is limited to individuals.

(6) "Family" of an individual means only the individual's spouse; the individual's ancestors, limited to the individual's parents, grandparents, and great grandparents; the siblings of such ancestors, whether by the whole or half blood or by legal adoption; the lineal descendants of such ancestors and siblings; persons legally adopted by such ancestors or by such siblings; and the spouses of such ancestors, siblings, legally adopted persons, and lineal descendants.

(B) The requirements of this division apply for purposes of division (BB)(2)(b) of section 5747.01 of the Revised Code and for the purposes of division (D) of section 5747.012 of the Revised Code. Gain or loss included in a trust's Ohio taxable income is not a qualifying trust amount unless the trust's ownership interest in the qualifying investee is at least five per cent of the total outstanding ownership interests in such qualifying investee at any time during the ten-year period ending on the last day of the trust's taxable year in which the sale, exchange, or other disposition occurs. Nothing in this section negates the requirements in division (BB)(2) of section 5747.01 of the Revised Code.

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For the purpose of ascertaining whether the trust's ownership interest in a qualifying investee is at least five per cent of the total outstanding ownership interests in such qualifying investee, the following apply:

(1) On each day, an ownership interest owned, directly or indirectly, by or for a qualifying closely-held C corporation, an S corporation, a partnership other than a publicly traded partnership, a qualifying limited liability company, an estate, or a trust that is irrevocable as defined in division (I)(3)(b) of section 5747.01 of the Revised Code is considered as being owned proportionately on the same day by the equity investors of such qualifying closely-held C corporation, S corporation, partnership, or qualifying limited liability company, or by the beneficiaries of such estate or trust, as the case may be. For the purposes of division (B)(1) of this section, a beneficiary's proportionate share of an ownership interest held by a trust shall be ascertained in accordance with section 544(a)(1) of the Internal Revenue Code.

(2) On each day, a trust, hereinafter referred to as the first trust, is considered as owning any ownership interest owned, directly or indirectly, by or for another trust, hereinafter referred to as the second trust, if on the same day the second trust has at least one individual trustee who is either (a) a trustee of the first trust, or (b) a member of a family that includes at least one of the trustees of the first trust.

(3) On each day, a trust, hereinafter referred to as the first trust, is considered as owning any ownership interest owned, directly or indirectly, by or for another trust, hereinafter referred to as the second trust, if on the same day the second trust has at least one qualifying individual beneficiary who is either (a) a qualifying individual beneficiary of the first trust or (b) a member of a family which includes a qualifying individual beneficiary of the first trust.

(4) An ownership interest constructively owned by a person by reason of the application of division (B)(1) of this section shall, for the purpose of applying divisions (B)(1) to (3) of this section, be treated as actually owned by that person.

(5) An ownership interest constructively owned by a trust by reason of the application of division (B)(2) or (3) of this section shall not be treated as actually owned by that trust for purposes of applying divisions (B)(1) to (3) of this section.

(6) If an ownership interest may be considered as owned by a trust under division (B)(1) or (2) of this section, the ownership interest shall be considered owned by that trust under division (B)(2) of this section.

(7) If an ownership interest may be considered as owned by a trust under division (B)(1) or (3) of this section, the ownership interest shall be considered owned by that trust under division (B)(3) of this section.

CREDIT(S)

(2002 H 675, eff. 12-13-02)

R.C. § 5747.011, OH ST § 5747.011
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Title LVII. Taxation (Refs & Annos)
Chapter 5747. Income Tax (Refs & Annos)
Calculation and Allocation of Income and Deductions

R.C. § 5747.20

5747.20 Allocation of nonbusiness income or deduction

Effective: September 10, 2010
Currentness

This section applies solely for the purposes of computing the credit allowed under division (A) of section 5747.05 of the Revised Code and computing income taxable in this state under division (D) of section 5747.08 of the Revised Code.

All items of nonbusiness income or deduction shall be allocated in this state as follows:

(A) All items of nonbusiness income or deduction taken into account in the computation of adjusted gross income for the taxable year by a resident shall be allocated to this state.

(B) All items of nonbusiness income or deduction taken into account in the computation of adjusted gross income for the taxable year by a nonresident shall be allocated to this state as follows:

(1) All items of compensation paid to an individual for personal services performed in this state who was a nonresident at the time of payment and all items of deduction directly allocated thereto shall be allocated to this state.

(2) All gains or losses from the sale of real property, tangible personal property, or intangible property shall be allocated as follows:

(a) Capital gains or losses from the sale or other transfer of real property are allocable to this state if the property is located physically in this state.

(b) Capital gains or losses from the sale or other transfer of tangible personal property are allocable to this state if, at the time of such sale or other transfer, the property had its physical location in this state.

(c) Capital gains or losses from the sale or other transfer of intangible personal property are allocable to this state if the taxpayer's domicile was in this state at the time of such sale or other transfer.

(3) All rents and royalties of real or tangible personal property shall be allocated to this state as follows:

(a) Rents and royalties derived from real property are allocable to this state if the property is physically located in this state.

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(b) Rents and royalties derived from tangible personal property are allocable to this state to the extent that such property is utilized in this state.

The extent of utilization of tangible personal property in a state is determined by multiplying the rents or royalties derived from such property by a fraction, the numerator of which is the number of days of physical location of the property in this state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the nonresident, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payor obtained possession.

(4) All patent and copyright royalties shall be allocated to this state to the extent the patent or copyright was utilized by the payor in this state.

A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state, or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in this state if the taxpayer's domicile was in this state at the time such royalties were paid or accrued.

A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in this state if the taxpayer's domicile was in this state at the time such royalties were paid or accrued.

(5)(a) All lottery prize awards paid by the state lottery commission pursuant to Chapter 3770. of the Revised Code shall be allocated to this state.

(b) All earnings, profit, income, and gain from the sale, exchange, or other disposition of lottery prize awards paid or to be paid to any person by the state lottery commission pursuant to Chapter 3770. of the Revised Code shall be allocated to this state.

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

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

(6) Any item of income or deduction which has been taken into account in the computation of adjusted gross income for the taxable year by a nonresident and which is not otherwise specifically allocated or apportioned pursuant to sections 5747.20 to 5747.23 of the Revised Code, including, without limitation, interest, dividends and distributions, items of income taken into account under the provisions of sections 401 to 425 of the Internal Revenue Code, and benefit payments received by a beneficiary of a supplemental unemployment trust which is referred to in section 501(c)(17) of the Internal Revenue Code, shall not be allocated to this state unless the taxpayer's domicile was in this state at the time such income was paid or accrued.

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(7) All casino gaming winnings paid by any person licensed by the Ohio casino control commission shall be allocated to the state.

(C) If an individual is a resident for part of the taxable year and a nonresident for the remainder of the taxable year, all items of nonbusiness income or deduction shall be allocated under division (A) of this section for the part of the taxable year that the individual is a resident and under division (B) of this section for the part of the taxable year that the individual is a nonresident.

CREDIT(S)

(2010 H 519, eff. 9-10-10; 2002 S 226, eff. 9-17-02; 1997 H 215, eff. 9-29-97; 1989 H 111, eff. 7-1-89; 1987 H 171; 1984 H 250; 1973 H 95; 1971 H 475)

R.C. § 5747.20, OH ST § 5747.20
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Title LVII. Taxation (Refs & Annos)
Chapter 5747. Income Tax (Refs & Annos)
Calculation and Allocation of Income and Deductions

R.C. § 5747.21

5747.21 Calculation of business income and deduction

Effective: September 29, 2013
Currentness

(A) This section applies solely for the purposes of computing the credit allowed under division (A) of section 5747.05 of the Revised Code, computing income taxable in this state under division (D) of section 5747.08 of the Revised Code, computing the deduction under division (A)(31) of section 5747.01 of the Revised Code, and computing the credit allowed under section 5747.057 of the Revised Code.

(B) Except as otherwise provided under section 5747.212 of the Revised Code, all items of business income and business deduction shall be apportioned to this state by multiplying the adjusted gross income by the fraction calculated under division (B)(2) of section 5733.05 and section 5733.057 of the Revised Code as if the taxpayer's business were a corporation subject to the tax imposed by section 5733.06 of the Revised Code.

(C) If the allocation and apportionment provisions of sections 5747.20 to 5747.23 of the Revised Code or of any rule adopted by the tax commissioner, do not fairly represent the extent of business activity in this state of a taxpayer or pass-through entity, the taxpayer or pass-through entity may request, which request must be in writing accompanying a timely filed return or timely filed amended return, or the tax commissioner may require, in respect of all or any part of the business activity, if reasonable, any one or more of the following:

(1) Separate accounting;

(2) The exclusion of one or more factors;

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

(4) The employment of any other method to effectuate an equitable allocation and apportionment of such business in this state. An alternative method will be effective only with approval of the tax commissioner.

The tax commissioner may adopt rules in the manner provided by sections 5703.14 and 5747.18 of the Revised Code providing for alternative methods of calculating business income and nonbusiness income applicable to all taxpayers and pass-through entities, to classes of taxpayers and pass-through entities, or only to taxpayers and pass-through entities within a certain industry.

CREDIT(S)

(2013 H 59, eff. 9-29-13; 2002 S 261, eff. 6-5-02; 1997 H 215, eff. 9-29-97; 1984 H 250, eff. 7-30-84; 1971 H 475)

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Title LVII. Taxation (Refs & Annos)
Chapter 5747. Income Tax (Refs & Annos)
Calculation and Allocation of Income and Deductions

R.C. § 5747.212

5747.212 Apportionment of income by pass-through entity investor

Currentness

(A) This section applies solely for the purpose of computing the credit allowed under division (A) of section 5747.05 of the Revised Code, computing income taxable in this state under division (D) of section 5747.08 of the Revised Code, and computing the credit allowed under section 5747.057 of the Revised Code.

(B) A taxpayer, directly or indirectly, owning at any time during the three-year period ending on the last day of the taxpayer's taxable year at least twenty per cent of the equity voting rights of a section 5747.212 entity shall apportion any income, including gain or loss, realized from each sale, exchange, or other disposition of a debt or equity interest in that entity as prescribed in this section. For such purposes, in lieu of using the method prescribed by sections 5747.20 and 5747.21 of the Revised Code, the investor shall apportion the income using the average of the section 5747.212 entity's apportionment fractions otherwise applicable under section 5733.05, 5733.056, or 5747.21 of the Revised Code for the current and two preceding taxable years. If the section 5747.212 entity was not in business for one or more of those years, each year that the entity was not in business shall be excluded in determining the average.

(C) For the purposes of this section:

(1) A "section 5747.212 entity" is any qualifying person if, on at least one day of the three-year period ending on the last day of the taxpayer's taxable year, any of the following apply:

(a) The qualifying person is a pass-through entity;

(b) Five or fewer persons directly or indirectly own all the equity interests, with voting rights, of the qualifying person;

(c) One person directly or indirectly owns at least fifty per cent of the qualifying person's equity interests with voting rights.

(2) A "qualifying person" is any person other than an individual, estate, or trust.

(3) "Estate" and "trust" do not include any person classified for federal income tax purposes as an association taxable as a corporation.

CREDIT(S)

(2005 H 66, eff. 6-30-05; 2002 S 261, eff. 6-5-02)

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Baldwin's Ohio Revised Code Annotated
Title LVIII. Trusts (Refs & Annos)
Chapter 5808. Powers and Duties of Trustee

R.C. § 5808.01

5808.01 Duty to administer trust

Effective: January 1, 2007
Currentness

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with Chapters 5801. to 5811. of the Revised Code.

CREDIT(S)
(2006 H 416, eff. 1-1-07)

R.C. § 5808.01, OH ST § 5808.01
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1993 WL 178269 (Ohio Bd.Tax.App.)

Board of Tax Appeals

State of Ohio

RANDOM HOUSE, INC., APPELLANT
v.
ROGER W. TRACY, TAX COMMISSIONER OF OHIO, APPELLEE

CASE NO. 91-A-1329
May 14, 1993

***1 (FRANCHISE TAX)**

Decision and Order

APPEARANCES:

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This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein on September 30, 1991, by the above-named appellant from a decision of the Tax Commissioner of the State of Ohio dated September 3, 1991. Therein, the Tax Commissioner denied appellant's application for refund of certain corporate franchise taxes paid for the tax year 1989.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to the Board by the Tax Commissioner, the evidence presented at a hearing before this Board on August 25, 1992, and the briefs submitted by counsel to both parties.

Appellant Random House, Inc. is a book publisher headquartered in New York City. Appellant does business in and files franchise tax returns in Ohio. On its 1989 Ohio franchise tax return, appellant allocated its royalty income on the basis of the population of the state of Ohio. Thereafter, on October 24, 1990, appellant filed a claim for refund on its 1989 return, desiring

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to apportion its royalty income instead of allocating it as it had done on the original return. The Tax Commissioner denied said request for refund because appellant failed to provide information needed to substantiate appellant's claim.

R.C. 5733.051(G) and (H) provide the relevant statutory framework herein:
"(G) Patent and copyright royalties and technical assistance fees, not representing the principal source of gross receipts of the taxpayer, are allocable to this state to the extent that the activity of the payor thereof giving rise to the payment takes place in this state. If the location of the payor's activity is unavailable to the taxpayer, such royalties and fees are apportionable under division (H) of this section." (emphasis added)

"(H) Any other net income, from sources other than those enumerated in divisions (A) to (G) of this section, is apportionable to this state on the basis of the mechanism provided in division (B)(2) of section 5733.05 of the Revised Code."

Appellant contends that the location of its payors activities was unavailable for tax year 1989 and thus, it should be permitted to apportion its royalty income pursuant to the provisions of R.C. 5733.07(H). Such information was not routinely provided to appellant by its payors, nor was it contractually provided under the terms of appellant's written agreements with its clients.

The Supreme Court has considered the definition of 'available' in a franchise tax context. Specifically, in analyzing R.C. 5733.051(F), the Court "interpreted 'available' to mean 'ascertainable.' Dictionary definitions lend support to this interpretation. Black's Law Dictionary (5 Ed.1979) 123; Webster's Third New International Dictionary (1986) 150." Alcan Aluminum Corp. v. Limbach (1989), 42 Ohio St.3d 121, 123. The Court found that actual knowledge of the location of the physical assets of a payor was not necessary; the ability to "ascertain or learn of the location" was the only requirement of the party.

*2 Here, appellant's witness credibly testified to the publishing industry practice of not providing the location of payors' activities on royalty statements. Said witness indicated that many publishing companies have very antiquated royalty systems and correspondingly, their records are very poor. She indicated that in all of her experience, she had never seen a statement or any information that would indicate a state-by-state breakdown of sales affecting the royalty income from a payor. She also indicated that Random House itself did not provide such information to its authors.

This Board finds that the definition of "available" in the context of R.C. 5733.051(G) connotes the ability, "in the course of business", to obtain the required information. In the instant matter, it is clear that appellant was not able, in the ordinary course of business, to obtain the necessary information, and to find otherwise, would place an unduly burdensome requirement on the industry itself. Arguably, the alternative provision in the subject statute was included for just such an industry situation.

Therefore, based upon the foregoing, it is the Decision and Order of the Board of Tax Appeals that the decision of the Tax Commissioner must be and hereby is reversed.

I hereby certify the foregoing to be a true and correct copy of the action of the Board of Tax Appeals of the State of Ohio, this day taken, with respect to the above matter.

Kiehner Johnson
Chairman

1993 WL 178269 (Ohio Bd.Tax.App.)

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Certificate of Service

I hereby certify that a copy of the foregoing Appendix of Appellant T. Ryan Legg Irrevocable Trust, UBS Trust Company, N.A., Trustee was served upon the following by certified mail on September 21, 2015.

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