



Department of
Taxation

For taxable years beginning in

2008

Ohio IT 1140
Pass-Through Entity and
Trust Withholding Tax Return
Instructions

Purpose: Use this form to report withholding tax due on (i) pass-through entity distributive shares of income and (ii) trust distributions of income relating to real property in Ohio and to tangible personal property in Ohio.

Trusts may also be required to file the Ohio Fiduciary Income Tax Return, Ohio form IT 1041, which is available on the Department of Taxation's Web site at tax.ohio.gov.

Important note: There is no need to file if any of the following is applicable for the entire taxable year:

- The entity is a trust whose beneficiaries are limited to full-year Ohio resident taxpayers: individuals, estates and trusts [Ohio Revised Code (R.C.) section 5747.01(I) and (N)], OR
- The entity is a trust that has **no** real estate located in Ohio, no tangible personal property located in Ohio and **no** direct or indirect equity investments in (i) S corporations (including limited liability companies treated as S corporations for federal income tax purposes) that have nexus with Ohio, (ii) partnerships that have nexus with Ohio, and (iii) limited liability companies that have nexus with Ohio and for federal income tax purposes are treated as either partnerships or S corporations OR
- The entity is an S corporation, a partnership or a limited liability company treated for federal income tax purposes as either a partnership or S corporation, and such entity's equity investors are **limited** to full-year Ohio resident taxpayers (individuals, estates and trusts) [R.C. section 5747.01(I) and (N)] or corporations that are timely paying, or are exempt from paying, the Ohio corporation franchise tax, OR
- The entity is an S corporation, partnership or limited liability company treated for federal income tax purposes as either a partnership or S corporation, and the entity is filing the Ohio form IT 4708 ("Pass-Through Entity Composite Income Tax Return") on behalf of **all** of its equity investors who are not full-year Ohio resident taxpayers (individuals, estates and trusts) [R.C. section 5747.01(I) and (N)] OR
- The entity is either a disregarded entity or a qualifying subchapter S subsidiary, and the entity's owner is filing with, or is exempt from filing with, the Ohio Department of Taxation the appropriate income or franchise tax returns.

General Instructions

These instructions provide a general overview of the annual filing and payment requirements for pass-through entities and trusts. For detailed information, see R.C. sections 5733.40, 5733.41 and 5747.40 through 5747.453. You can also call 1-614-387-0232 (Ohio Relay Service, 1-800-750-0750) for additional assistance.

Each "qualifying pass-through entity" (see "What Is a Qualifying Pass-Through Entity?" on page 2) doing business in Ohio or otherwise having nexus with Ohio under the Constitution of the United States is subject to a withholding tax and to an entity tax based upon each qualifying investor's share of the qualifying pass-through entity's profits apportioned to Ohio (see "Who is a Qualifying Investor?" on page 3). But see the table on page 8 for information relating to Amended Substitute House Bill 66, 126th General Assembly and pass-through entity owners who are affected by the entity tax phase-out for certain corporate investors.

In addition, each "qualifying trust" (defined on page 2) is subject to a withholding tax based upon distributions of certain types of income

(discussed on page 2) to individuals who are nonresidents of Ohio for any portion of the trust's taxable year.

This yearly withholding tax return, Ohio form IT 1140, and payment of the tax are due on the 15th day of the fourth month following the end of the qualifying pass-through entity's or qualifying trust's taxable year. But see "Extension of Time To File," below.

Note: The tax is due only if the "adjusted qualifying amount" exceeds \$1,000 (see Schedule B, line 9 and Schedule D, line 3).

Which Form Should I Use: IT 1140 or IT 4708?

Qualifying pass-through entities whose equity investors are limited to nonresident individuals, nonresident estates and nonresident trusts can file either Ohio form IT 1140 or IT 4708. All other qualifying pass-through entities must file Ohio form IT 1140 and may also choose to file Ohio form IT 4708.

Ohio form IT 1140 is based upon the **first** day of the pass-through entity's calendar or fiscal year; Ohio form IT 4708 is based upon the **last** day of the pass-through entity's calendar or fiscal year. A pass-through entity that changes forms from year to year must make sure that (i) all periods of income are reported and (ii) all related tax is timely and fully paid.

Example: A pass-through entity whose equity investors are composed solely of nonresident individuals has a Jan. 31 fiscal year end. For the fiscal year beginning Feb. 1, 2007 and ending Jan. 31, 2008, the pass-through entity elects to file Ohio form IT 4708 for the 2008 year (this return would be due April 15, 2009 – not April 16, 2008). For the fiscal year beginning Feb. 1, 2008 and ending Jan. 31, 2009, the entity elects to file Ohio form IT 1140 for 2008. This return would be due May 15, 2009. For the fiscal year beginning Feb. 1, 2009 and ending Jan. 31, 2010, the entity elects to file the 2010 Ohio form IT 4708. This return would be due April 15, 2011. With this fact pattern the pass-through entity will not file any 2009 Ohio pass-through entity return, but the pass-through entity will have reported all periods of income.

Extension of Time to File Ohio Form IT 1140

If the qualifying pass-through entity or the qualifying trust has an extension of time to file the federal tax return (IRS form 1065, 1120S or 1041), then the qualifying pass-through entity or qualifying trust has the same extension of time to file the Ohio form IT 1140.

For example, assume (i) the IRS form 1065 is due April 15, 2009 and (ii) the Ohio form IT 1140 is due April 15, 2009. Further assume that the pass-through entity obtains from the IRS an extension of time to file until Aug. 15, 2009 (a five-month extension). In this example the Ohio form IT 1140 would be due Sept. 15, 2009 (five months later than the April 15, 2009 unextended due date).

However, there is **no** extension of time for **payment** of the withholding tax or the entity tax. Late payments are subject to interest and penalties. As such, interest will apply to all late payments, and a failure-to-pay-timely penalty will apply if (i) less than 90% of the tax is paid by the unextended due date and (ii) the balance of the tax due is not paid by the extended due date.

If the qualifying pass-through entity or qualifying trust has secured from the IRS an extension of time to file, use Ohio form IT 1140 EXT for taxable years beginning in **2008** to remit any withholding tax and/or entity tax due but not yet paid as of the unextended due date.

Preparer's Name

The Ohio Department of Taxation follows IRS Service Notice 2004-54, which provides for alternative preparer signature procedures for IRS income tax paper returns that paid practitioners prepare on behalf of their clients. Except as set forth below, paid preparers must follow those same procedures with respect to the following Ohio paper returns: individual income tax, school district income tax, withholding tax (employer and pass-through entity) and corporation franchise tax. See Ohio Revised Code sections 5703.262(B) and 5747.08(F).

Exception: The paid preparer should **print** (rather than write) his/her name on the form if the taxpayer checks "Yes" to the question, "Do you authorize your preparer to contact us regarding this return?"

Reporting IRS Changes

If as a result of a taxpayer's amendment to or the IRS' adjustment to the taxpayer's federal income tax return or if, as a result of any other recomputation or redetermination a change occurs in any item affecting the computation of the taxpayer's income as reported for federal income tax purposes, the taxpayer must file an amended Ohio form IT 1140 with the Ohio Department of Taxation no later than one year after final determination of the adjustment for federal income tax purposes.

This provision applies even if the statute of limitations has passed and applies to amended returns that reflect overpayments as well as to amended returns that reflect underpayments. If the amended return reflects an underpayment, the amended return must be accompanied by payment of any additional tax and interest. If the amended return reflects an overpayment, the amended return must be accompanied by a statement that sets forth the full and complete reason for the overpayment. See *Abitibi-Price Corporation and Subsidiaries v. Tracy*, BTA No. 98-N-401 (3-12-01).

Upon completing an amended return, please check the "amended return" box on the front of the return.

Caution: The IRS informs us of all changes it makes to federal income tax returns. To avoid penalties, be sure the pass-through entity files its Ohio amended return within one year of the final determination of the federal change.

Estimated Withholding Tax Payments for the Taxable Year Beginning in 2009

If the qualifying pass-through entity or qualifying trust has nexus with Ohio during any portion of its taxable year beginning in 2009, the qualifying pass-through entity or qualifying trust must make estimated withholding tax payments for the taxable year if (i) the sum of the "adjusted qualifying amounts" for the taxable year beginning in 2008 exceeded \$10,000 **and** (ii) the sum of the "adjusted qualifying amounts" for the taxable year beginning in 2009 will exceed \$10,000. For the calculation of the **adjusted qualifying amount** see line 9 on Ohio form IT 1140ES Worksheet #1 and line 3 on Ohio form IT 1140ES Worksheet #3. Ohio form IT 1140ES and the worksheets are available on our Web site at tax.ohio.gov.

These estimated payments are due on the 15th day of the month following the last day of each quarter of the taxable year. If the 15th day falls on a weekend or holiday, then the due date is the first business day following the 15th. Late payments of estimated tax are subject to interest penalties (see Ohio form IT/SD 2210). The year 2009 Ohio form IT 1140ES must accompany each estimated payment.

Penalties and Interest

If the entity **fails to file** the Ohio pass-through entity and trust withholding tax return by the due date (or extended federal due date), the law provides for a **failure to file penalty**, which is the greater of \$50 per month up to a maximum of \$500, or 5% per month up to a maximum of 50% of the tax.

If the entity **fails to pay** the full amount of tax by the 15th day of the fourth month following the last day of the taxable year, the law provides for a **failure-to-pay penalty**, which is up to a maximum of double the interest charged. The penalty will not apply if the entity obtained a federal extension of time to file **and** if the entity's total payments made by the due date without extension equal or exceed 90% of the total Ohio tax due. To make an extension payment, please use the year 2008 Ohio form IT 1140EXT available at tax.ohio.gov.

In all cases, interest is due on the late payments from the unextended due date to the date of payment. The interest rate is 8% for 2008 and is 5% for 2009.

What Is a Qualifying Pass-Through Entity?

A **qualifying pass-through entity** is each S corporation, partnership or limited liability company treated as either a partnership or an S corporation for federal income tax purposes. However, a qualifying pass-through entity does **not** include the following:

- Disregarded entities and qualifying subchapter S subsidiaries if the owner is filing, or is exempt from filing, with the Ohio Department of Taxation the appropriate income or franchise tax returns,
- Entities having no qualifying investors (see "Who is a Qualifying Investor?" on page 3),
- Pension plans and charities (an entity exempt from federal income tax pursuant to Internal Revenue Code section (I.R.C.) section 501(a) or 501(c)),
- Publicly traded partnerships (a partnership with equity securities registered with the U.S. Securities Exchange Commission under section 12 of the *Securities Exchange Act of 1934*),
- Entities that are real estate investment trusts, regulated investment companies or real estate mortgage investment conduits,
- Any entity treated as a "disregarded entity" for federal income tax purposes (see the "Check the Box" U.S. Treasury regulations), and
- Qualified subchapter S subsidiary (QSSS) corporations (however, if the parent S corporation has qualifying investors, the parent S corporation is a pass-through entity that must compute the tax on a consolidated basis with all of the S corporation's QSSS corporations).

What Is a Qualifying Trust?

A **qualifying trust** is each trust that meets the following three requirements during the trust's taxable year:

- The trust will file the IRS form 1041, U.S. Income Tax Return for Estates and Trusts, and
- The trust has at least one beneficiary who is neither a full-year Ohio resident individual nor an Ohio resident estate, and

- The trust makes a distribution to a nonresident beneficiary, and the distribution directly or indirectly relates either to real estate located in Ohio or to tangible personal property located in Ohio.

Who Is a Qualifying Investor?

According to R.C. section 5733.40(I), a **qualifying investor** is any qualifying pass-through entity investor **other than** those qualifying pass-through entity investors listed:

1. Investors that are pension plans or charities (investors that are exempt from federal income tax pursuant to I.R.C. section 501(a) or 501(c)).
2. Investors that are publicly traded partnerships (investors that are partnerships with equity securities registered with the U.S. Securities Exchange Commission under section 12 of the *Securities Exchange Act of 1934*).
3. Investors that are colleges or universities (investors that are "institutions of higher education" as defined in R.C. section 3334.01(F)).
4. Investors that are public utilities in Ohio and are required to pay the Ohio gross receipts excise tax.
5. Investors that are insurance companies, fraternal corporations, beneficial corporations, bond investment corporations, health maintenance organizations or any other corporation required to file an annual report with the Ohio superintendent of insurance.
6. Investors that are dealers in intangibles as defined in R.C. section 5725.01(B).
7. Investors that are real estate investment trusts, regulated investment companies or real estate mortgage investment conduits.
8. Nonresident individuals on whose behalf, and nonresident estates on whose behalf, the qualifying pass-through entity files Ohio form IT 4708, "Annual Composite Income Tax Return for Investors in Pass-through Entities" for the taxable year.
9. Investors that are financial institutions liable for the corporation franchise tax in accordance with R.C. section 5733.06(D) on the first day of January of the calendar year immediately following the last day of the financial institution's calendar or fiscal year in which or with which ends the qualifying pass-through entity's taxable year.
10. Investors that are themselves qualifying pass-through entities if the qualifying pass-through entities' investors during the three-year period beginning 12 months before the first day of the investee entity's taxable year are **limited** to those investors set forth in items #1 through #10, above (or any combination thereof).
11. Investors that are themselves pass-through entities, but only if the owners of those other pass-through entities are limited to (i) individuals who are full-year residents of Ohio, (ii) estates domiciled in Ohio, (iii) nonresident individuals on whose behalf those other pass-through entities file Ohio form IT 4708, "Pass-through Entity Composite Income Tax Return," and/or (iv) nonresident estates on whose behalf those other pass-through entities file Ohio form IT 4708, "Pass-through Entity Composite Income Tax Return" for the taxable year.

12. Investors that satisfy all the following:

- The investor submits a written statement to the qualifying pass-through entity stating that the investor irrevocably agrees that the investor has nexus with Ohio and is subject to and liable for the corporation franchise tax calculated under R.C. section 5733.06 with respect to the investor's distributive share of income attributable to the pass-through entity,
- The investor makes a good faith and reasonable effort to fully comply with all of the corporation franchise tax reporting and paying requirements set forth in R.C. chapter 5733, and
- Neither the investor nor the qualifying pass-through entity carries out, at any time, any transactions either with any related members of the investor or with any related member of the entity where such transactions either result in or would result in a reduction or deferral of the Ohio corporation franchise tax.

13. Investors that are either trusts or funds whose beneficiaries are limited to the following during the taxable year of the qualifying pass-through entity:

- Persons that are or may be beneficiaries of a pension plan trust, profit-sharing trust, a stock bonus plan trust or similar retirement trust, or
- Persons that are or may be beneficiaries of or the recipients of payments from a trust or fund that is a nuclear decommissioning reserve fund, a designated settlement fund, or any other similar trust or fund established to resolve and satisfy similar injury claims, or
- Persons who are or may be the beneficiaries of a complex trust, **but only if** the trust irrevocably agrees in writing that, for the taxable year during or for which the trust distributes any of its income to any of its beneficiaries who are individuals residing outside Ohio, the trust will be withholding tax as required under R.C. sections 5747.41 through 5747.453.

14. Investors that are corporations paying the Ohio corporation franchise tax **but only if** all the other equity investors in the qualifying pass-through entity are limited to (i) other corporations that are paying the Ohio corporation franchise tax and/or (ii) corporations that would be paying the Ohio corporation franchise tax if they were not exempt from the Ohio corporation franchise tax under R.C. section 5733.09. See the second sentence of the third paragraph of R.C. section 5733.41.

15. Investors that are "investment pass-through entities" (defined below), **but only if** the investment pass-through entity provides to the qualifying pass-through entity the name, address and Social Security number or federal employer identification number (FEIN) of each person who has an equity investment in the investment pass-through entity.

Special Notes

- A. The entity tax does not apply to any pass-through entity to the extent that the pass-through entity's distributive shares of income and gain pass through from that entity to another pass-through entity (hereinafter referred to as the "investing entity") **if** the investing entity (i) is not an investment pass-through entity (defined

below), (ii) irrevocably acknowledges that it has nexus with this state under the U.S. Constitution during the taxable year, (iii) makes a good faith and reasonable effort to comply with both the entity tax law and the withholding tax law, and (iv) includes in its apportionment factors (see Schedule C) its proportionate share of each lower-tiered pass-through entity's property, payroll and sales. See R.C. section 5733.402.

- B. Neither the entity tax nor the withholding tax applies to an investment pass-through entity's items of income listed below in the definition of "investment pass-through entity."

An **investment pass-through entity** is a pass-through entity having for its taxable year at least 90% of its assets represented by intangible assets and having for its taxable year at least 90% of its gross income from one or more of the following sources:

- Transaction fees earned in connection with the acquisition, ownership or disposition of intangible property.
- Loan fees
- Financing fees
- Consent fees
- Waiver fees
- Application fees
- Net management fees (management fees that the pass-through entity earns or receives from all sources reduced by the management fees that the pass-through entity incurs or pays to any person), but only if such net management fees do not exceed 5% of the pass-through entity's profit.
- Dividend income
- Interest income
- Net capital gains from the sale or exchange of intangible property, and
- All types and classifications of income and gain attributable to distributive shares of income and gain from other pass-through entities.

The percentages are based upon quarterly averages calculated during the pass-through entity's taxable year. Furthermore, for purposes of determining if a pass-through entity is an investment pass-through entity, intangible assets include investments in other pass-through entities. See R.C. section 5733.402.

- C. An equity investor (subsequently referred to as a "deemed investor") in an investment pass-through entity shall be deemed to be an equity investor in any qualifying pass-through entity in which the investment pass-through entity is a direct equity investor.

Each deemed investor's portion of the qualifying pass-through entity's adjusted qualifying amount will be (i) the adjusted qualifying amount that would otherwise pass through from the qualifying pass-through entity to the investment pass-through entity multiplied by (ii) the percentage of the deemed investor's direct ownership in the investment pass-through entity. Thus, except as discussed below, the qualifying pass-through entity

must pay the withholding tax and entity tax as if the investors in the investment pass-through entity were actual investors in the qualifying pass-through entity (hence, "deemed investors").

If the taxable year of the investment pass-through entity ends on a day that is different than the last day of the investee qualifying pass-through entity's taxable year, then this "deemed investor" rule applies to those persons who are the direct investors in the investment pass-through entity on the last day of the investee qualifying pass-through entity's taxable year ending within the investment pass-through entity's taxable year. See R.C. section 5747.401.

This "deemed investor" rule applies only to the extent the investment pass-through entity provides on a timely basis to the qualifying pass-through entity the name, address and Social Security number or FEIN for each investor in the investment pass-through entity.

If the investment pass-through entity does not provide on a timely basis to the qualifying pass-through entity the name, address and Social Security number or FEIN for each investor in the investment pass-through entity and if the investment pass-through entity is a qualifying investor, then the investee qualifying pass-through entity must pay the 8.5% entity tax with respect to the distributive share of income and gain passing through from the investee qualifying pass-through entity to the investment pass-through entity.

Calculating the Tax

The tax is due **only** if the adjusted qualifying amount exceeds \$1,000 (see Schedule B, line 9 and Schedule D, line 3). The tax is calculated as follows:

- The 5% withholding tax applies to the adjusted qualifying amounts for all qualifying investors who are nonresident individuals for any portion of the qualifying pass-through entity's taxable year (see Schedule B, column A) and
- The 5% withholding tax also applies to adjusted qualifying amounts that the qualifying trust pays to the qualifying trust's beneficiaries included in this return who are nonresident individuals for any portion of the qualifying trust's taxable year (see Schedule D).
- The 8.5% and 1.7% entity taxes apply to the adjusted qualifying amounts for all qualifying investors other than nonresident individuals (see Schedule B, column B).

Required Documents for Ohio Form IT 1140

All qualifying pass-through entities and qualifying trusts must include with Ohio form IT 1140 the qualifying K-1 information (discussed below).

Qualifying K-1 Information

Each qualifying pass-through entity and each qualifying trust must include with this return the qualifying K-1 information, which is any of the following:

- A paper copy of pages 1 and 2 of IRS schedule K-1, which the qualifying pass-through entity or qualifying trust will issue to each qualifying investor and for each qualifying beneficiary. The K-1 **must indicate the amount of tax credits that will pass through from the qualifying pass-through entity or qualifying trust to each qualifying investor or qualifying beneficiary** (see "Tax Credits Available to Certain Investors and

Beneficiaries," below). You need not include any attachments or schedules relating to the K-1.

- A paper listing showing the name, address, ownership percentage and FEIN or Social Security number for each qualifying investor and each qualifying beneficiary. The listing **must indicate the amount of tax credits that will pass through from the qualifying pass-through entity or qualifying trust to each qualifying investor or qualifying beneficiary** (see "Tax Credits Available to Certain Investors and Beneficiaries," below).
- Magnetic media meeting the specifications that the IRS requires for the transmission of information by magnetic media (for more information, see IRS publications 1525 and 3416). The magnetic media **must set forth the name, address and FEIN or Social Security number for each qualifying investor and indicate the net amount of tax credits that will pass through from the qualifying pass-through entity or qualifying trust to each qualifying investor or to each qualifying beneficiary** (see "Tax Credits Available to Certain Investors and Beneficiaries" on this page).

If a taxpayer submits the information in ASCII Comma Delimited Format, the fields must appear in the following order:

1. FEIN of the qualifying pass-through entity or trust.
2. Name of qualifying pass-through entity or trust.
3. Name of a qualifying investor or qualifying beneficiary.
4. FEIN or Social Security number of the qualifying investor or qualifying beneficiary set forth in field number 3.
5. Street address of the qualifying investor or qualifying beneficiary set forth in field number 3.
6. City of the qualifying investor or qualifying beneficiary set forth in field number 3.
7. State of the qualifying investor or qualifying beneficiary set forth in field number 3.
8. ZIP code of the qualifying investor or qualifying beneficiary set forth in field number 3.
9. The **amount of tax credits that will pass through from the qualifying pass-through entity or qualifying trust to the qualifying investor or qualifying beneficiary set forth in field number 3** (see "Tax Credits Available to Certain Investors and Beneficiaries" on this page).

If there is more than one qualifying investor or if there is more than one qualifying beneficiary, repeat the sequence set forth in fields number 1 through number 9. You must repeat all nine fields for **each** additional qualifying investor or qualifying beneficiary. If you use magnetic media, please affix to the outside of the magnetic media a label containing the following information in large print: (i) the name and FEIN of the qualifying pass-through entity or qualifying trust, (ii) the phrase, "IT 1140 K-1 Information" and (iii) the phrase, "Taxable Year Beginning in 2008."

Tax Credits Available to Certain Investors and Beneficiaries

R.C. sections 5733.0611 and 5747.059 provide that qualifying investors (see "Who Is a Qualifying Investor?" on page 3 of these instructions) can claim an income tax or franchise tax credit based upon the qualifying investor's proportionate share of the withholding

tax or the entity tax that was paid on or with respect to the qualified investor's direct or indirect investment in the qualifying pass-through entity. R.C. section 5747.059 also provides a similar credit for nonresident individual qualifying beneficiaries with respect to the withholding tax that a qualifying trust has withheld in connection with that nonresident individual qualifying beneficiary.

The credit is based upon the amount of tax (net of refunds, if any) paid for the taxable year – even if the tax is paid, or if the refund is received, after the end of the taxable year.

In order for qualifying investors and qualifying beneficiaries to claim these credits, the qualifying investor or the qualifying beneficiary must include with the corporation franchise tax report (Ohio form FT 1120 or FT 1120FI) or with the Ohio franchise tax request for refund (Ohio form FT REF) or with the Ohio income tax return (Ohio form IT 1040, IT 1041 or IT 4708) a copy of the IRS form K-1 indicating the amount of the entity tax and/or withholding tax with respect to which the qualifying investor or qualifying beneficiary seeks to claim a credit.

Accordingly, each qualifying pass-through entity or qualifying trust must separately state on the form K-1, which the qualifying pass-through entity or qualifying trust will issue to the qualifying investor or qualifying beneficiary, the following information:

- The qualifying investor's or beneficiary's proportionate share of the withholding tax and/or entity tax that the qualifying pass-through entity or qualifying trust paid (**net** of refunds shown on this return and **net** of amounts shown on Schedule A, line 3b, which have been transferred to Ohio form IT 4708) and
- The qualifying investor's or beneficiary's proportionate share of the withholding tax and/or entity tax that passes through from **another** pass-through entity or trust to the qualifying pass-through entity or qualifying trust (and then passes on to the qualifying investor or qualifying beneficiary).

If this pass-through entity or trust has invested in a partnership or limited liability company that also filed Ohio form IT 1140, this pass-through entity or trust is **not** entitled to any credit for this pass-through entity's or trust proportionate share of tax. Furthermore, this pass-through entity or trust **cannot** claim the credit as an estimated payment for this pass-through entity's or trust's taxable year.

However, the pass-through entity or trust can "pass through" (via the K-1s it will issue) to its qualifying investors or to its qualifying beneficiaries the pass-through entity's or trust's proportionate share of such tax that the investee partnership or investee limited liability company paid on behalf of this pass-through entity or trust.

Responsible Party Liability

R.C. section 5747.453 imposes personal liability for failure to pay the withholding tax. Set forth below is that section of the law:

An employee or beneficiary of, or investor in, a qualifying entity having control or supervision of, or charged with the responsibility for, filing returns and making payments, or any trustee or other fiduciary, officer, member or manager of the qualifying entity who is responsible for the execution of the qualifying entity's fiscal responsibilities, is personally liable for the failure to file any report or to pay any tax due as required by sections 5747.40 to 5747.453 of the Revised Code. The dissolution, termination or bankruptcy of a qualifying entity does not discharge a responsible trustee's, fiduciary's, officer's, member's, manager's, employee's, investor's or beneficiary's liability for failure of the qualifying

entity to file any report or pay any tax due as required by those sections. The sum due for the liability may be collected by assessment in the manner provided in section 5747.13 of the Revised Code.

Interest Penalty on Underpayment of Tax – Schedule A, Line 2

To compute an interest penalty (or to show that no interest penalty is due), complete Ohio form IT/SD 2210 (available on our Web site at tax.ohio.gov). Enter on Schedule A, line 2 any interest penalty due and attach Ohio form IT/SD 2210 to the return.

Payment Transfers – Schedule A, Lines 3(a) and 3(b)

If the pass-through entity or trust has used Ohio form IT 4708ES to make estimated payments in connection with the pass-through entity composite income tax, the pass-through entity or trust can elect to apply some or all of those Ohio form IT 4708ES payments to satisfy the tax due on Ohio form IT 1140. If the pass-through entity or trust so elects, please indicate on Ohio form IT 1140, Schedule A, line 3a the amount to be transferred **from** the Ohio form IT 4708ES and IT 4708EXT payments **to** Ohio form IT 1140. If the pass-through entity will be filing both Ohio form IT 1140 and IT 4708, please include with Ohio form IT 1140 a schedule setting forth (i) the dates on which the pass-through entity or trust made the Ohio form IT 4708ES and Ohio form IT 4708EXT payments, (ii) the amount of each payment transferred to Ohio form IT 1140 and (iii) if an amended return, the amount of payment(s) previously claimed for this taxable year.

The pass-through entity can also elect to transfer Ohio form IT 1140ES payments **to** Ohio form IT 4708 (“Pass-through Entity Composite Income Tax Return”). To the extent that the pass-through entity elects to make such transfers, please indicate on Ohio form IT 1140, Schedule A, line 3b the amount to be transferred **from** Ohio form IT 1140ES or Ohio form IT 1140EXT payments **to** Ohio form IT 4708. If the pass-through entity will be filing both Ohio form IT 1140 and Ohio form IT 4708, the pass-through entity should include Ohio form IT 4708 a schedule setting forth (i) the dates of Ohio form IT 1140ES payments, (ii) the amount of each payment transferred to Ohio form IT 4708 and (iii) if an amended return, the amount of refund(s) previously claimed for this taxable year.

Schedule B – Tax Computation

Line 2(a) and Schedule D, Line 2(a) – Depreciation Add-back

R.C. sections 5701.11 and 5733.40(A)(5) state that in determining the “adjusted qualifying amount” each taxpayer must add back five-sixths of the I.R.C. section 168(k) bonus depreciation allowed for the taxable year under the I.R.C. in effect on Dec. 30, 2008 and must also add back five-sixths of the qualifying I.R.C. section 179 depreciation expense allowed for the taxable year. Qualifying I.R.C. section 179 depreciation expense is the excess of (i) the amount of depreciation expense directly or indirectly allowed to the taxpayer under I.R.C. section 179 in effect on Dec. 30, 2008 over (ii) the amount of depreciation expense directly or indirectly allowed to the taxpayer under I.R.C. section 179 in effect on Dec. 31, 2002. See Substitute House Bill 458, 127th General Assembly.

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

defined on Dec. 31, 2002, were \$225,000 or more. In each of the five subsequent taxable years the taxpayer can deduct one-fifth of the amounts previously added back.

Important: S corporation shareholders cannot claim this deduction with respect to depreciable property for which the add-back occurred while the corporation was a C corporation. See R.C. sections 5733.40(A)(5), 5747.01(A)(21)(a) and 5747.01(S)(14).

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

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

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

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

For detailed information and examples regarding these adjustments, see the department’s information release entitled “Recently Enacted Ohio Legislation Affects Depreciation Deductions for Taxable Years Ending in 2002 and Thereafter” by visiting tax.ohio.gov. Click on the “Releases” tab on the left-hand side of the screen, then click on “Information Releases” and go to the Corporate Franchise Tax section. The department issued this information release on July 31, 2002, and revised it in July 2005.

Miscellaneous Federal Tax Adjustments

Because of a recent amendment to R.C. section 5701.11, there are **no** miscellaneous federal tax adjustments on this return. See Substitute House Bill 458, 127th General Assembly. However, you must make all other required adjustments for this line.

Line 2(b) and Schedule D, Line 2(b) – Other Adjustments

Adjustments available to taxpayers are (i) the five-subsequent-years depreciation deduction discussed above, (ii) miscellaneous federal tax adjustments (discussed on page 7), (iii) amounts not subject to a tax on or measured by net income (discussed below) and (iv) the domestic production activities deduction allowable to qualifying investors.

Miscellaneous Federal Tax Adjustments

Because of a recent amendment to R.C. section 5701.11, there

are **no** miscellaneous federal tax adjustments on this return. See Substitute House Bill 458, 127th General Assembly. However, you must make all other required adjustments for this line.

Amounts Not Subject to a Tax on or Measured by Net Income

R.C. section 5733.40(A)(2) provides that distributive shares of income from qualifying pass-through entities and distributions from qualifying trusts shall be reduced by “any amount that, pursuant to the Constitution of the United States, the Constitution of Ohio or any federal law is not subject to a tax on or measured by net income.” Such items of income include the following:

- Federal interest income that under federal law is exempt from state tax measured on or by net income (see the department’s Jan. 9, 1992, information release entitled “Corporate Franchise Tax and Personal Income Tax Information Release,” which lists most types of federal interest income that is exempt). You can obtain a copy of the release by accessing the department’s Web site at tax.ohio.gov. Click on the “Releases” tab on the left-hand side of the screen.
- All income that the qualifying pass-through entity earns if the qualifying pass-through entity claims an exemption under U.S. Public Law 86-272 **and** if the qualifying pass-through entity has no related members having nexus with Ohio under the Constitution of the United States for any portion of the qualifying pass-through entity’s taxable year (see R.C. section 5733.042(A)(6) for the definition of “related member”).
- An investment pass-through entity’s items of income listed on page 4.
- Interest income from Ohio public obligations and Ohio purchase obligations and gains from the sale or other disposition of Ohio public obligations. See R.C. section 5709.76.

Line 6 – Compensation Add-back

Reciprocity agreements do not apply to those nonresidents directly or indirectly owning at least 20% of the stock or other equity of the pass-through entity. So pass-through entities cannot use the reciprocity agreements in order to avoid adding back compensation that the pass-through entities pay to such nonresidents. See R.C. section 5733.40(A)(7).

Line 10 – Tax Rate

Consistent with the franchise tax rate phase-out, the tax rates applicable to distributive shares of income passing through to investors other than individuals are shown in the table on page 8.

***The phase-out tax rate does not apply and the 8.5% tax rate applies to the following qualifying investors:**

- Estates, trusts and other pass-through entities.
- Financial holding companies as defined in the federal “Bank Holding Company Act.”
- Bank holding companies as defined in the federal “Bank Holding Company Act.”
- Savings-and-loan holding companies as defined in the federal “Homeowners Loan Act” that are engaging only in activities permissible under 12 United States Code (U.S.C.) 1843(k).
- Persons, other than persons held pursuant to merchant banking authority under 12 U.S.C. 1843(k)(4)(H) or 12 U.S.C. 1843(k)(4)

(i), directly or indirectly “owned” by one or more financial institutions, financial holding companies, bank holding companies, or savings and loan holding companies, but only if those persons are engaged in activities permissible for a financial holding accompany under 12 U.S.C. 1843(k).

- Persons directly or indirectly “owned” by one or more insurance companies but only if those persons (i) are authorized to do the business of insurance in this state and (ii) are paying the Ohio insurance-premiums tax.
- Persons that solely facilitate or service one or more “securitizations” or similar transactions for financial institutions, financial holding companies, bank holding companies, savings-and-loan holding companies, insurance companies, or persons directly or indirectly “owned” by such businesses.

Definition of “owned” for this purpose: generally, a person “owns” another entity if the person . . .

- . . . owns at least 50% of the entity’s voting stock (corporations),
- . . . owns at least 50% of the entity’s membership interests (LLCs),
- or
- . . . has a beneficial interest in the entity’s profits, surpluses, losses or distributions (partnerships, trusts or other business interests).

Definition of “securitization” for this purpose: Transferring one or more assets to one or more persons and then issuing securities backed by the right to receive payment from the asset or assets so transferred.

Schedule C – Apportionment Factors

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

Property Factor

The property factor is a fraction, the numerator of which is the average value of the pass-through entity’s includable real and tangible personal property owned or rented, and used in the trade or business in this state during the taxable year, and the denominator of which is the average value of all the pass-through entity’s includable real and tangible personal property owned or rented, and used in the trade or business everywhere during such year.

The property factor specifically includes real property and tangible personal property that the pass-through entity rents, subrents, leases or subleases to others if the income or loss from such rentals, subrentals, leases or subleases is business income. Furthermore, for taxable years ending on or after June 26, 2003, Ohio law specifically excludes from the factor property relating to, or used in

Phase-Out of Pass-Through Entity Tax for Certain Corporate Investors

Pass-through entity's taxable year beginning in	Tax rate on Ohio income passing through to qualifying investors, other than individuals, if the qualifying investor is <u>not</u> subject to the corporation franchise tax phase-out	Tax rate on Ohio income passing through to qualifying investors subject to the corporation franchise tax phase-out*
2005	8.5%	6.8% (80% x 8.5%)
2006	8.5%	5.1% (60% x 8.5%)
2007	8.5%	3.4% (40% x 8.5%)
2008	8.5%	1.7% (20% x 8.5%)
2009 and thereafter	8.5%	0% (0% x 8.5%)

* **Fiscal filers:** Please use the rate in effect on the last day of the taxable year. If Schedule B, line 10, column (B) reflects both the 8.5% rate and the phase-out rate, please attach a schedule reflecting the computation of tax for each investor.

connection with, the production of nonbusiness income allocated under R.C. section 5733.051.

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

In determining average value do not include in either column 1 ("within Ohio") or in column 2 ("total everywhere") the following:

- Construction in progress.
- Property relating to, or used in connection with, the production of nonbusiness income. See R.C. section 5733.05(B)(2) as amended by Amended Substitute House Bill 95, 125th General Assembly, applicable to taxable years ending on or after June 26, 2003.
- The original cost of property within Ohio with respect to which the state of Ohio has issued an Air Pollution, Noise Pollution, or an Industrial Water Pollution Control Certificate. See R.C. section 5733.05(B)(2)(a).
- The original cost of real property and tangible property (or in the case of property that the pass-through entity is renting from others, eight times its net annual rental rate) within Ohio that is used exclusively during the taxable year for qualified research.

Do not include in column 1 but do include in column 2 the original cost of qualifying improvements to land or tangible personal property in an enterprise zone for which the taxpayer holds a Tax Incentive Qualification Certificate issued by the Department of Development.

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

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

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

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

Line 1(b) – Rented Property

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

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

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

Line 1(c), Column 3 – Property Ratio

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

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

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

Payroll Factor

The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the pass-through entity, and the denominator of which is the total compensation paid both within and without this state during the taxable year by the pass-through entity. As used below, the term "compensation" means any form of remuneration paid to an employee for personal services. Do not include in column 1 (within Ohio) or in column 2 (total everywhere) the following:

- Guaranteed payments made to partners.
- Compensation paid in Ohio to employees who are primarily engaged in qualified research.

- For taxable years ending on or after June 26, 2003, compensation paid to employees to the extent that the compensation relates to the production of nonbusiness income allocable under R.C. section 5733.051 (see R.C. section 5733.05(B)(2)).
- Compensation that an S corporation paid to any shareholder included in this report if the shareholder directly or indirectly owned at least 20% of the S corporation at any time during the year. R.C. section 5733.40(A) (7).

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

Line 2, Column 1 – Payroll Within Ohio

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

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

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

Line 2, Column 2 – Payroll Total Everywhere

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

Line 2, Column 3 – Payroll Ratio

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

Line 2, Column 5 – Weighted Payroll Ratio

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

Sales Factor

The sales factor is a fraction whose numerator is the pass-through entity's includable business income receipts in Ohio during the taxable year and whose denominator is the sum of the pass-through entity's within Ohio and without Ohio includable business income receipts during the taxable year. **The sales factor specifically**

excludes receipts attributable to nonbusiness income allocable under R.C. section 5733.051 (see R.C. section 5733.05(B)(2) and the tax commissioner's April 2004 information release entitled "Sales Factor Situsing Revisions").

The following receipts are **not** includable in either the numerator or the denominator of the sales factor even if the receipts arise from transactions, activities and sources in the regular course of a trade or business (see R.C. section 5733.05(B)(2)(c)):

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

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

The law specifically includes in the sales factor the following amounts when arising from transactions, activities and sources in the regular course of a trade or business: (1) receipts from sales of tangible personal property, (2) receipts from the sale of real property inventory (such as lots developed and sold by a real estate developer), (3) rents and royalties from tangible personal property, (4) rents and royalties from real property, (5) receipts from the sale, exchange, disposition or other grant of the right to use trademarks, trade names, patents, copyrights and similar intellectual property, (6) receipt from the sale of services and other receipts not expressly excluded from the factor. These amounts are situsable to Ohio as set out below.

Line 3, Column 1 – Sales Within Ohio

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

- Receipts from sales of tangible personal property, less returns and allowances, received by the purchaser in Ohio. In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed is considered as the place at which such property is received by the purchaser. Direct delivery in Ohio, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in Ohio, and direct delivery outside Ohio to a person or firm designated by a purchaser does

not constitute delivery to the purchaser in Ohio, regardless of where title passes or other conditions of sale. Customer pick-up sales are situsable to the final destination after all transportation (including customer transportation) has been completed. See *Dupps Co. v. Lindley* (1980), 62 Ohio St. 2d 305.

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

- Receipts from sales of real property inventory in Ohio.
- Rents and royalties from tangible personal property to the extent the property was used in Ohio.
- Rents and royalties from real property located in Ohio.
- Receipts from the sale, exchange, disposition or other grant of the right to use trademarks, trade names, patents, copyrights and similar intellectual property are situated to Ohio to the extent that the receipts are based on the amount of use of that property in Ohio. If the receipts are not based on the amount of use of that property, but rather on the right to use the property and the payor has the right to use the property in Ohio, then the receipts from the sale, exchange, disposition or other grant of the right to use such property are situated to Ohio to the extent the receipts are based on the right to use the property in Ohio.
- Receipts from the performance of services and receipts from any other sales not excluded from the sales factor and not otherwise situated within or without Ohio under the above situsing provisions are situsable to Ohio in the proportion to the purchaser's benefit,

with respect to the sale, in Ohio to the purchaser's benefit, with respect to the sale, everywhere. The physical location where the purchaser ultimately uses or receives the benefit of what was purchased is paramount in determining the proportion of the benefit in Ohio to the benefit everywhere. For taxable years ending on or after Dec. 11, 2003, the "cost-of-performance" provision is no longer the law.

Line 3, Column 2 – Sales Everywhere

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

Line 3, Column 3 – Sales Ratio

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

Line 3, Column 5 – Weighted Sales Ratio

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

Line 4, Column 5 – Total Weighted Apportionment Ratio

Add column (5), lines 1 (c) , 2 and 3. Enter ratio here and on page 1, upper right-hand corner, and on Schedule B, line 8 (both columns).

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Ohio Department of Taxation Taxpayer Services Mailing Address

Ohio Department of Taxation
Taxpayer Services Division
Taxpayer Services Contact Center
P.O. Box 182382
Columbus, Ohio 43218-2382

Walk-in



Ohio Department of Taxation Taxpayer Service Locations

Taxpayer Service Center Hours
Office hours: 8:00 a.m. – 5:00 p.m.
Monday through Friday

See location listing at right.

Ohio Department of Taxation Taxpayer Service Centers

Akron Taxpayer Service Center
161 S. High St., Suite 501
Akron, OH 44308-1600

Cincinnati Taxpayer Service Center
900 Dalton Ave. at W. 8th St.
Cincinnati, OH 45203-1171

Cleveland Taxpayer Service Center
615 W. Superior Ave.
Fifth Floor, Suite 570
Cleveland, OH 44113-1891

Columbus Taxpayer Service Center
4485 Northland Ridge Blvd., 1st Floor
Columbus, OH 43229

Dayton Taxpayer Service Center
Centre City Offices
40 S. Main St., 5th Floor
Dayton, OH 45402-2089

Toledo Taxpayer Service Center
One Government Center, Suite 1400
Toledo, OH 43604-2232

Youngstown Taxpayer Service Center
242 Federal Plaza West, Suite 402
Youngstown, OH 44503-1294

Zanesville Taxpayer Service Center
601 Underwood St.
Zanesville, OH 43701-3786

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Please contact the Ohio Relay Service at 1-800-750-0750 and give the communication assistant the Department of Taxation phone number that you wish to contact.

Volunteer Tax Assistance Program (VITA) and Tax Counseling for the Elderly (TCE):
These programs help older, disabled, low-income and non-English-speaking people fill in their state and federal returns. For locations in your area, call the Internal Revenue Service at 1-800-829-1040. If you received an Ohio and/or federal income tax package in the mail, take them with you when you go for help.