



Ohio Revised Code

Section 5733.051 Allocating and apportioning of net income of corporation.

Effective: June 26, 2003

Legislation: House Bill 95 - 125th General Assembly

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.

(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 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.