5703-29-02 **Application of "Common Owners" and Joint Ventures.**

(A) Consolidated elected and combined taxpayer groups under sections 5751.011 and 5751.012 of the Revised Code are required to file as one taxpayer if persons in the group meet certain requirements. One of those requirements is that the persons have a specified portion of the value of their ownership interest owned and controlled by "common owners" included in the group. In addition to an ownership interest, the higher-tiered entity must have the ability through its voting rights to control the operations of the lower-tiered entities at each level of the vertical chain. There is a separate "control test" for combined groups than for consolidated elected groups. For combined groups, the "control test" is that the higher-tiered entity must own more than fifty per cent of the lower-tiered entity at each level of the vertical chain and effectively, through its ownership, possess the voting rights to be able to control the lower-tiered entity. For consolidated elected groups, the "control test is that the higher-tiered entity must own at least fifty per cent or at least eighty per cent of the lower-tiered entity at each level of the vertical chain and effectively, through its ownership, possess the voting rights to be able to control the lower-tiered entity. For purposes of this paragraph, "effectively" means that the entity has the ability to actually control the operations of the lower-tiered entity and is not required to be part of another combined or consolidated group.

(B)

(1) Subject to paragraphs (B)(2), (C), and (D) of this rule, if a person owns and controls, directly or constructively through related interests, more than fifty per cent of the value of the ownership interest of another person, the first person is a common owner of the second person, and those persons must be members of a combined taxpayer group unless they elect to be members of a consolidated elected taxpayer group. Consolidated elected taxpayers may choose the fifty percent or more ownership test or the eighty percent or more ownership test, and choose to either include or exclude all foreign entities. Common owners are not limited to business organizations, but also include individuals, trusts, and estates. Further, "common owner" includes an entity that is not a "person" as that termed is defined in division (A) of section 5751.01 of the Revised Code. Nothing will prevent such an entity from making an election to be in a consolidated elected group, allowing the entity to exclude receipts between members. If a person has common ownership of persons who report as a consolidated elected taxpayer group as well as persons who are in a combined taxpayer group, the common owner is to register as part of both groups but must report its taxable gross receipts as part of the consolidated elected taxpayer group.

(2) A de minimis test applies in determining whether an individual, a trust, or an estate must be included as a common owner in a combined or consolidated elected taxpayer group. If the individual, trust, or estate has less than four thousand five hundred dollars in taxable gross receipts for the calendar year, the individual, trust, or estate will not be required to be registered as part of a

combined or consolidated elected taxpayer group for that year. However, the individual, trust, or estate is still a common owner for all purposes of the commercial activity tax.

(C) There are general rules that are to be applied when determining the common ownership of any person. These are applicable to all persons defined in division (A) of section 5751.01 of the Revised Code.

(1) The determination of whether a person owns and controls another person constructively through related interests shall be made using a vertical ownership test, based on voting rights, pursuant to paragraph (D) of this rule. Attribution rules under the Internal Revenue Code, such as attribution between a husband and wife, do not apply. The vertical chain shall continue as long as the ownership test is satisfied, separately or in the aggregate, by any one or more members of the group.

(2) In the event a person or a group of persons believes that the uniqueness of its organizational structure justifies that "common ownership" exists despite the strict application of this rule, the person may file in writing with the tax commissioner a request for a finding that common ownership exists. Such request must be made prior to the reporting period for which the request is to become effective. The person making this request has the burden of proof to show that common ownership exists and must provide the commissioner with detailed probative evidence in support of its position.

(3)

(a) If the ownership test is met for any part of the calendar quarter or calendar year, as applicable, the group must include the taxable gross receipts of that person for the portion of the tax period in which the ownership test was met. A person who no longer meets the ownership test of the group shall report taxable gross receipts only through the date it qualifies as a member of that group. The person shall report all taxable gross receipts during the remaining portion of the tax period either as a separate taxpayer, as a member of a combined taxpayer, or as a member of another consolidated elected group if it satisfies the requirements with respect to such group.(4)(a) When an election under section 5751.011 of the Revised Code is made, the election remains in place for at least eight calendar quarters. During that time the composition of the consolidated elected taxpayer group is only changed when a person falls within or without the elected ownership threshold. At the end of the eight calendar quarters, the consolidated elected group must notify the commissioner in writing if it does not wish to renew its election. In the absence of such notification, the election to consolidate automatically renews for another eight calendar quarters.

(b) A separate taxpayer or a combined taxpayer may make an election under section 5751.011 of the Revised Code at any time after they have registered. However, once the election is made, it remains in place for at least eight calendar quarters. Such election is effective prospectively, unless a retroactive application has been requested by the taxpayer and approved by the tax commissioner.

(D)

(1) In the case of a corporation, the valuation is calculated with respect to only those classes of stock having voting rights. Interests held in a corporation are attributable to any shareholder in the corporation based on the percentage of total value of the voting equity interests in the corporation owned and controlled by that shareholder.

(2) In the cases of partnerships and entities with membership interests (e.g., an LLC) or beneficial interests (e.g., business trusts, or other unincorporated business interests), the value is calculated with respect to the fair market value of the voting interest in those entities.

(3) In the case of a limited partnership, only the value of general partnership interests will be considered.

(4)

(a) In the case of a trust to which section 677 of the Internal Revenue Code applies, commonly referred to as a "grantor trust," the grantor is the "common owner" of the trust described in that section.

(b) In the case of a trust to which section 678 of the Internal Revenue Code applies, the person, other than the trust, described in section 678 of the Internal Revenue Code is the common owner of the trust.

(c) In the case of a trust treated as a corporation for federal income tax purposes, including but not limited to real estate investment trusts and business trusts, the beneficiaries are treated as shareholders and the common ownership rules for corporations apply.

(d) In the case of any other trust, there is no common owner unless paragraph (C)(2) of this rule applies.

(5) In the case of two or more persons having an interest in an unincorporated business, including but not limited to rental property, where there is no formal partnership agreement between the persons, an "implied partnership" is deemed to exist. One "implied partnership" exists for all such commonly owned and controlled interests. The implied partnership is a separate entity

for purposes of the commercial activity tax and the ownership interests are determined as follows:

(a) In the case where the owners file a federal income tax Form 1065, paragraphs (D)(5)(b) and (c) do not apply and the ownership and control is based on the capital account contribution as reported at the end of the tax filing occurring in the previous calendar year.

(b) If, for some reason, the owners are not required to file a federal income tax Form 1065, in the case of rental property, the common ownership is based on the deed to the property. If two persons are listed on the deed, the property is considered to be owned and controlled fifty per cent by each of those persons. The burden is on those persons to prove an alternate ownership structure.

(c) If paragraph (5)(b) does not apply, the common ownership of the implied partnership is based on the number of persons in the group. The burden is on those persons to prove an alternate ownership structure.

(E) If a person elects to consolidate with all others in which it has at least a fifty per cent ownership and control interest, that person must include all taxable gross receipts of a joint venture so owned and controlled unless there is another fifty per cent owner of the joint venture that makes the fifty per cent election to consolidate. In other words, if one fifty per cent owner of a joint venture makes an eighty per cent election to consolidate with others or decides to be part of a combined taxpayer group or be a single taxpayer, and the other fifty per cent owner makes the fifty per cent election, that other owner is required to include all the taxable gross receipts of the joint venture except for any receipts the joint venture has from that other owner. If both fifty per cent owners make the fifty per cent election, the taxable gross receipts of the joint venture are split evenly between the two consolidated elected taxpayer groups. Each of the joint venture owners making the fifty per cent election are only allowed to exclude those receipts the joint venture entity has from that owner to the extent it has tax liability from the joint venture. In addition, each owner cannot exclude receipts the joint venture has from the other owner since the other owner is not in the same consolidated elected taxpayer group.

(F) For purposes of combined taxpayer groups, persons who do not have nexus with the state of Ohio may nevertheless be "common owners," but are not required to register for the commercial activity tax. Such combined taxpayer groups only need to include persons with substantial nexus with the state of Ohio, as defined in divisions (H) and (I) of section 5751.01 of the Revised Code.

(G) The commissioner shall publish and make available on the department of taxation’s website, examples of the application of this rule.

Effective:

R.C. 119.032 review dates: Exempt

____

Certification

____

Date

Promulgated Under:	5703.14
Statutory Authority:	5703.05
Rule Amplifies:	5751.011, 5751.012