

5703-29-21

**Pre-income tax trusts, explained with revocation procedures.**

(A) Subject to paragraph (D) of this rule, each pre-income tax trust making a qualifying pre-income tax trust election pursuant to division (FF)(3) of section 5747.01 of the Revised Code must register for the commercial activity tax imposed under section 5751.02 of the Revised Code by April 17, 2007. In addition, all such trusts must file tax returns for tax years 2006 and 2007 and pay at least a minimum tax of one hundred fifty dollars for each year, regardless of the trust's taxable gross receipts. This is required pursuant to the last sentence of division (E)(11) of section 5751.01 of the Revised Code that states in pertinent part "If the pre-income tax trust has made a qualifying pre-income tax trust election under division (FF)(3) of section 5747.01 of the Revised Code, then the trust \* \* \* shall not be [an] excluded [person] for purposes of the tax imposed under section 5751.02 of the Revised Code."

(B) A "pre-income tax trust" is a trust that meets all of the following requirements under division (FF)(4) of section 5747.01 of the Revised Code: (i) the document creating the trust was executed prior to January 1, 1972; (ii) the trust became irrevocable upon creation; and (iii) the grantor was domiciled in Ohio when the trust was created.

(C) A "qualified pre-income tax trust" is a "pre-income tax trust", as that term is defined in division (FF)(4) of section 5747.01 of the Revised Code and paragraph (B) of this rule, that made an election pursuant to division (FF)(3) of section 5747.01 of the Revised Code prior to April 17, 2006. The deadline of April 15, 2006 specified in division (FF)(3) of section 5747.01 of the Revised Code was extended to coincide with section 1.14 of the Revised Code that addresses due dates of certain documents filed with the state that fall on a weekend or legal holiday.

(D)

(1) If the trustee of a qualified pre-income tax trust wishes to revoke the trust's election, the trustee must do so prior to the fifteenth day of the fourth month following the end of the tax period for which the revocation is made (i.e., April 15 for calendar year taxpayers, unless extended by a weekend or legal holiday). For example, for taxable year 2006, written notice of the revocation must be received by April 17, 2007 in order for the revocation to apply to the entire taxable year of 2006. Such revocation is irrevocable and shall apply to the full taxable year for which the revocation is timely made.

(2) The trustee of a trust revoking its election must file a personal income tax return for the trust for taxable year 2006 (due to be filed in 2007) and make all corresponding payments by April 17, 2007 in order to avoid the imposition of penalties. For all future tax periods, a trustee of a trust revoking its election must file all applicable personal income tax returns and make all corresponding payments by the fifteenth day of the fourth month following the end of the tax period, unless extended by a weekend or legal holiday.

- (3) The trustee of a trust revoking an election may receive a letter acknowledging the revocation. Such letter does not signify that the trust meets the definition of a pre-income tax trust for purposes of the commercial activity tax. Therefore, even though a trust revoked its election, it may remain subject to both the personal income tax and the commercial activity tax if it is later found not to be a pre-income tax trust.
- (E) If a qualified pre-income tax trust would otherwise be the common owner of either a combined taxpayer group or a consolidated elected taxpayer group, and the trust has less than four thousand five hundred dollars in taxable gross receipts, such trust is not required to register for the commercial activity tax pursuant to paragraph (B)(2) of rule 5703-29-02 of the Ohio Administrative Code. However, in the case of a qualified pre-income tax trust that is not a common owner of either a combined taxpayer group or a consolidated elected taxpayer group, such trust must be registered for the commercial activity tax and must file all applicable returns, regardless of its taxable gross receipts.

Effective:

R.C. 119.032 review dates:

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Certification

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Date

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