

NWOTCA Training Seminar

November 16th, 2016

NOL CFs & Individual Offsets

House Bill 5 – Today's Agenda

- ❑ **NOL Carryforward & Examples**
- ❑ **Resident Individual Income & Loss Offsets**

5-YR NOL CF

H.B. 5 Mandates 5-year NOL CF

- Net Operating Loss Carryforward (“NOL CF”) Requirements
- NOL CF Phase-ins
- Municipal Income Tax Net Operating Loss Review Committee
- Business Income Offsets for Residents

NOL CF Requirements

- HB 5 provides for a state-wide five year carryforward for NOLs incurred in taxable years beginning after 2016.
 - **Applies to losses incurred in taxable years beginning on or after January 1, 2017, and then carried forward to future taxable years.**

- NOL CFs apply to:
 - 1) Business Net Profits
 - 2) Schedule C, E, & F income of Non-residents earned in taxing municipalities
 - 3) All Schedule income of Residents of taxing municipalities.

NOL CF Requirements

- NOL CFs do not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.
 - Losses that are *not reportable* on Federal Schedule E Part II *are not included* in current year taxable income *or allowed* to be carried forward.
 - Applies to Partners and S Corporation shareholders.
- NOL CFs may not be used to offset qualifying wages.

NOL CF Requirements

- NOL CF Provision is phased in:
 - Taxpayers may only claim 50% of the available NOL carryforward during years 2018 through 2022.
 - 100% utilization of NOL CFs is delayed until tax year 2023.

NOL CF Requirements

- NOL CF Provision is phased in:
 - TPs may carry forward any “unutilized” NOLs for 5 years.
 - From technical clarification in State Budget Bill (HB 64) on how unutilized NOL CFs are handled in regards to the bill’s NOL CF phase-in provisions.
 - See “declining balance method” examples below
 - Phase-in provisions also apply to NOL CF related to Schedule income of residents and non-residents

NOL CF Requirements

- Pre-2017 NOLs are permitted to be carried forward to the extent already allowed by municipalities.
- The 50% phase-in limitation *does not apply to pre-2017* NOLs.
- Pre-2017 NOLs must be utilized *before* utilizing new NOLs generated after tax year 2016.
- Post 2016 NOL carry-forwards are calculated and applied on a pre-apportionment basis.

NOL CF - Pre HB5 vs. Post HB5

Form 27 Regional Income Tax Agency
RITA Net Profits Tax Return

RITA's eFile
Easy, Fast, Free & Secure
www.ritaohio.com

Contact us toll free:
Cleveland 800.860.7462
Columbus 686.721.7462
Youngstown 686.750.7462
TDD 440.526.3532
Fax 440.922.3536

FOR CALENDAR YEAR [] OR FISCAL YEAR BEGINNING [] AND ENDING []
The federal return with applicable schedules and 1099's MUST be attached to be considered a complete tax return.

Check if: Initial RITA Return Moved out of RITA []
 Amended Return Out of Business []
 Consolidated Return (Attach Form 851)

BUSINESS: C CORPORATION PARTNERSHIP LLC
 S CORPORATION ESTATE TRUST

Federal Business Activity Code # []
Business Activity []

Company Name [] Federal Identification Number []
Address # [] Street [] Suite # []
City [] State [] Zip Code []

Pre-HB5 (Post-Apportionment Basis)

1. ADJUSTED FEDERAL TAXABLE INCOME (per attached Federal Form 1120 (Line 28), 1120S (Sch. K - Line 18), 9901 (Line 30), 1065 (Sch. K - Analysis of Net Income (Loss), Page 5 - Line 1), 1041 (Line 17) or the equivalent)	1	[]	.00
2. A. ITEMS NOT DEDUCTIBLE (from Page 3, Schedule X, Line G)	Add 2A	[]	.00
B. ITEMS NOT TAXABLE (from Page 3, Schedule X, Line Q)	Deduct 2B	[]	.00
C. ENTER EXCESS OF LINE 2A OR 2B	2C	[]	.00
3. A. ADJUSTED NET PROFIT / LOSS (Line 1 plus or minus Line 2C) if Schedule X is used	3A	[]	.00
B. AMOUNT ALLOCABLE TO RITA If Schedule Y, Page 4 is used [] % of Line 3A	3B	[]	.00
C. LESS ALLOWABLE NET LOSS Per previous Municipal Income Tax Returns (submit schedule)	▶ 3C	[]	.00
4. AMOUNT SUBJECT TO MUNICIPAL INCOME TAX (Line 3A or 3B less Line 3C)	▶ 4	[]	.00
5. MUNICIPAL INCOME TAX DUE (see instructions) NOTE: Must equal Schedule B on Page 2	▶ 5	[]	.00

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Federal Business Activity Code # []
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Post-HB5 (Pre-Apportionment Basis)

1. ADJUSTED FEDERAL TAXABLE INCOME (per attached Federal Form 1120 (Line 28), 1120S (Sch. K - Line 18), 9901 (Line 30), 1065 (Sch. K - Analysis of Net Income (Loss), Page 5 - Line 1), 1041 (Line 17) or the equivalent)	1	[]	.00
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C. AMOUNT ALLOCABLE TO RITA If Schedule Y, Page 4 is used [] % of Line 3A	▶ 3C	[]	(1)
4. AMOUNT SUBJECT TO MUNICIPAL INCOME TAX (Line 3A or 3B less Line 3C)	▶ 4	[]	.00
5. MUNICIPAL INCOME TAX DUE (see instructions) NOTE: Must equal Schedule B on Page 2	▶ 5	[]	.00

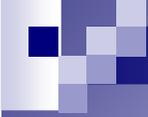
NOL CF Phase-in Examples

Example 4 – Muni Currently Allows NOL CF

40% of TP's Income is Apportionable to Muni Each Yr				Step 1	Step 2	Actual				
	2016	2017	2018	2019	2019	2019	2020	2021	2022	2023
Total Net Profit (Loss) for Tax Year - Pre Apportionment	-\$25,000	-\$4,000	\$20,000	\$8,000	\$3,000	\$8,000	-\$45,000	\$90,000	\$2,000	\$16,000
Net Profit (Loss) for Tax Year - Post Apportionment 40%	-\$10,000									
Utilized Post 2016 NOL CF from Tax Year 2017					-\$2,000	-\$2,000		-\$1,000	-\$500	-\$16,000
Utilized Post 2016 NOL CF (50% Limitation Applies for 2022)									-\$1,500	
Pre Apportionment Muni Taxable Income									\$0	\$0
Apportionment %										
Pre-2017 NOL CF Available			-\$8,000	-\$2,000		-\$2,000				
Municipal Taxable Income			\$0	\$1,200		\$400		\$26,600		
Unutilized 2017 NOL CF		-\$4,000	-\$4,000			-\$2,000	-\$2,000	-\$1,000	-\$500	*
Unutilized 2020 NOL CF							-\$45,000	-\$22,500	-\$21,000	-\$5,000
	-\$10,000	-\$10,000	-\$2,000							
Amount of Unutilized 2017 NOL CF Available for Next Tax Year		-\$2,000	-\$2,000			-\$1,000	-\$1,000	-\$500	*	
Amount of Unutilized 2020 NOL CF Available for Next Tax Year							-\$22,500	-\$11,250	-\$21,000	-\$5,000

Please refer to spreadsheet handout

* 5-year CF period expired in 2022 for Tax Yr 2017 NOLs



Municipal Income Tax NOL Review Committee

Municipal Income Tax Net Operating Loss Review Committee

Purpose:

- Evaluate and quantify the potential fiscal impact to municipalities of the NOL carryforward provisions contained in HB 5.

Municipal Income Tax NOL Review Committee

11 Committee members:

- 2 from House, appointed by the Speaker of the House;
- 2 from the Senate, appointed by Senate President;
- 3 representing municipal income taxpayers, appointed by Speaker;
- 3 representing municipal corporations that levy an income tax in 2016 (at least 2 of which do not allow NOLs), appointed by Senate President.
- 1 appointed by the Governor; appointee will chair the Committee.

Members shall be appointed not later than March 1, 2015 (?)

Municipal Income Tax NOL Review Committee

■ MEMBERS (Appointed in 2016):

- State Tax Commissioner Joe Testa, Chairman
- Senators Bob Peterson (R) and Capri Cafaro (D)
- House Members Kirk Schuring (R) and Jack Cera (D)

- Municipal Taxpayer Representatives J. Matthew Yuskewich, CPA; Mark Bainbridge, CPA and Bret Dixon
- Municipal Representatives Mayor Jeffrey Hazel of Celina, and New Albany City Manager Joseph Stefanov (3rd Municipal Representative not yet appointed)

Municipal Income Tax NOL Review Committee

Evaluate and quantify the potential fiscal impact to municipalities of the NOL carryforward provisions contained in HB 5.

Quantifying the potential fiscal impact:

- ❑ On or before November 30, 2015 (?) the Committee shall provide a method that municipalities will use to estimate actual/projected municipal tax revenue for tax years 2012 – 2018. (Committee formed in early May 2016)
- ❑ Municipalities will then estimate actual/projected municipal income tax revenue for tax years 2012 – 2018 that would have resulted if a 5-year NOL had existed during those years for losses incurred in tax years 2011 – 2013.
- ❑ “Each municipal corporation that levies an income tax in 2011, 2012, or 2013 shall report...” their revenue findings to the Committee on or before ~~September 30, 2016~~ December 31st 2016.



Municipal Income Tax NOL Review Committee

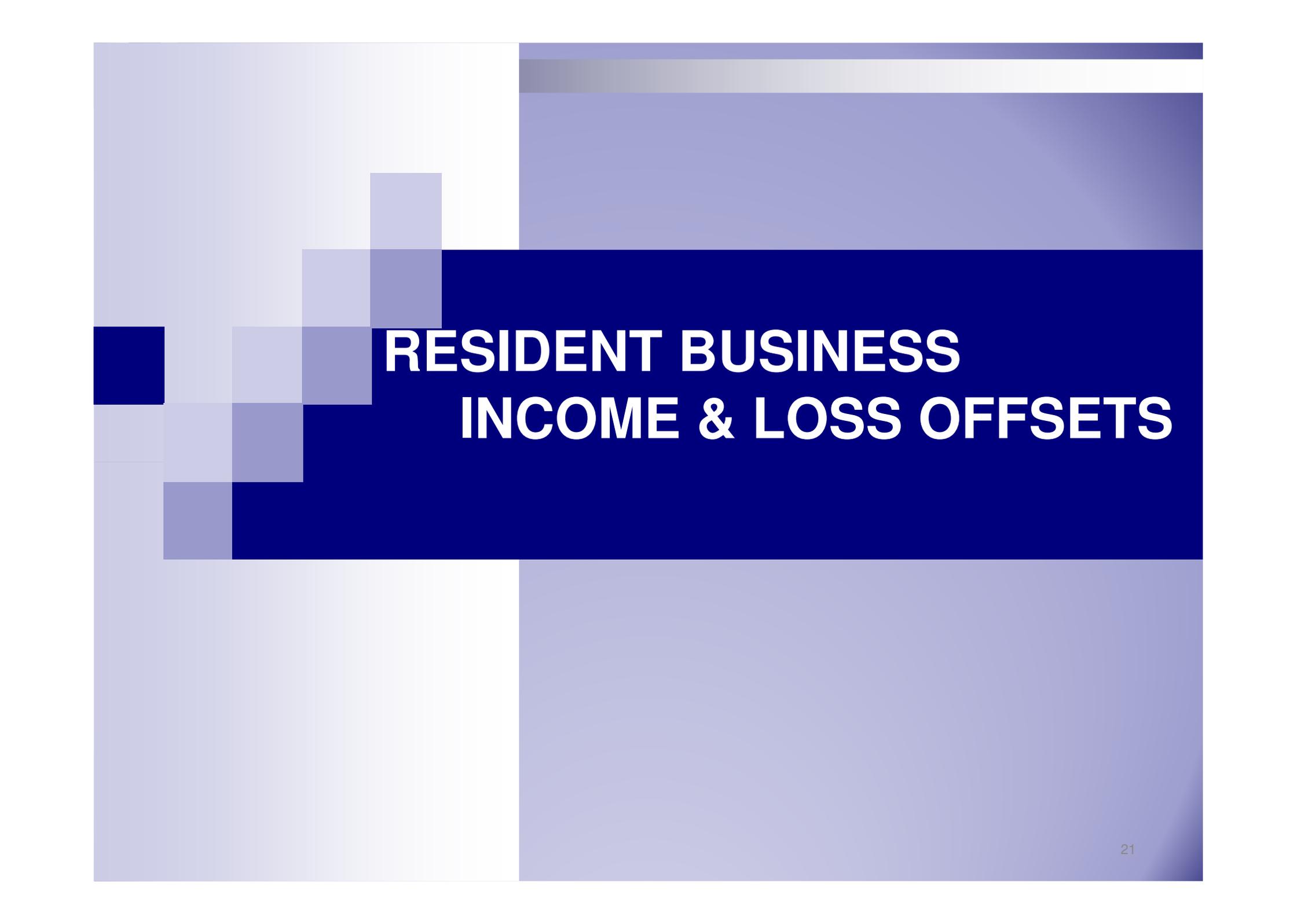
Written report due on or before May 1, 2017

- ❑ If the Municipal Income Tax NOL Review Committee (Committee) receives information from a “representative sample” of taxing municipalities, then they will review the info submitted.
- ❑ The report shall be submitted specifically to the Speaker and Minority Leader of the House, and the President and Minority Leader of the Senate.
- ❑ The Committee shall cease to exist on May 1, 2017.

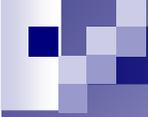
Municipal Income Tax NOL Review Committee

“Representative sample” consists of:

- At least 3 or more cities with more than 250,000 population.
- 5 cities/villages with higher ratio of business taxpayers to resident individual taxpayers, relative to the state average.
- 5 cities/villages with higher ratio of resident individual taxpayers to business taxpayers, relative to the state average.
- After reviewing the information, the Committee will calculate the total revenue effects reported by the “representative sample”.
- The Committee’s report will contain recommendations to address revenue shortfalls.



RESIDENT BUSINESS INCOME & LOSS OFFSETS



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- **Resident Schedule Activity Gain/Loss Offsets**

- Apply only to residents of a taxing municipality,
and
- Apply only for “resident tax purposes”
- One-bucket method beginning with TY 2016
- No offsetting allowed against W-2 income
- *Will discuss ...*

Resident Business Income & Loss Offsets

- Allows for current year offsetting of all Business income and losses of residents of taxing municipalities only for residence tax purposes.
 - i.e. All Business Income & Losses are in “one bucket” for offsetting purposes.
- Includes Schedule C, E & F owned by the resident.

Resident Business Income & Loss Offsets

- Includes pass-through income & losses of the resident.
- S Corporation limitations for residence tax purposes still apply – Income or losses of S corporations do not flow to an owner unless the owner lives in a municipality that voted in 2003 or 2004 to permit taxation of S corporation owners.

Resident Business Income & Loss Offsets

- **Net “Business Bucket Losses” cannot offset Qualifying Wages.**
 - NOL CF & Phase-in Provisions apply when net total “Business Activity Bucket” is loss.
 - NOL CF cannot offset Qualifying Wages.

- **Does not apply to Business income earned by non-residents in non-resident municipality.**
 - Non-residents must file and pay on Business Income (Typically Schedule C, E & F income) in municipality where income is earned.
 - NOL CF & Phase-in Provisions apply.

Resident Business Income & Loss Offsets

Example 1 – RITA Resident Tax Year 2015 “Two Bucket Method”

Unapportioned Business Activity - “Bucket 1”

Cleveland Heights Resident

- Schedule C loss in Cleveland Heights – (\$10,000)
- Township Schedule E rental income - \$25,000
- Florida Partnership distributive share loss - (\$ 6,000)

= Total Unapportioned income of \$9,000

Resident Business Income & Loss Offsets

Example 1 – RITA Resident Tax Year 2015

Apportioned Business Activity - “Bucket 2”

Cleveland Heights Resident

■ Taxing Muni A Partnership –	\$15,000
■ Taxing Muni B Rental –	(\$22,000)
■ Taxing Muni C Rental –	\$ 4,000

= Total Apportioned Loss of (\$3,000)

Resident Business Income & Loss Offsets

Example 1 Continued – RITA Resident Tax Year 2015 **Cleveland Heights Resident**

- Total Taxable Residence Business Income = \$9,000

Resident Business Income & Loss Offsets

Example 2 – RITA Resident Under HB 5 “One Bucket Method” Tax Year 2016

Cleveland Heights Resident

- Schedule C loss in Cleveland Heights – (\$10,000)
- Township Schedule E rental income - \$25,000
- Florida Partnership distributive share loss - (\$ 6,000)
- Taxing Muni A Partnership – \$15,000
- Taxing Muni B Rental – (\$22,000)
- Taxing Muni C Rental – \$ 4,000

=Net Total of \$6,000 Subject to Residence Tax

Resident Schedule Income & Loss Offsets

Example 2 Continued – RITA Resident Under HB 5 “One Bucket Method” Tax Year 2016

	Residence Muni	Non-taxing Locations	Taxing Muni A	Taxing Muni B	Taxing Muni C	Total
Cleveland Heights	\$(10,000)					\$ (10,000)
Township		\$ 25,000				\$ 25,000
Florida		\$ (6,000)				\$ (6,000)
Taxing Muni A			\$ 15,000			\$ 15,000
Taxing Muni B				\$ (22,000)		\$ (22,000)
Taxing Muni C					\$ 4,000	\$ 4,000
Net Total Schedule Income Subject to Residence Tax						\$ 6,000

Non-resident Pass-through Income & Losses

- Some municipalities permitted nonresident owners to file tax returns that offset income and losses of multiple Pass-through entities (“PTEs”) operating in the municipality.
 - In most instances, such municipalities did not permit a carryforward of NOLs.
- Under HB 5, PTEs must file and pay municipal income tax at the entity level for Ohio municipalities.
 - Each of those PTEs will be permitted to carryforward any NOLs for five years.



Thank-you!

Questions?