

As Introduced

**126th General Assembly
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Representatives Schaffer, McGregor, Fessler, Taylor

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A B I L L

To amend section 5747.01 of the Revised Code to 1
increase tax-deductibility of unreimbursed medical 2
expenses and to expressly incorporate favorable 3
tax treatment of new health savings accounts. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 5747.01 of the Revised Code be 5
amended to read as follows: 6

Sec. 5747.01. Except as otherwise expressly provided or 7
clearly appearing from the context, any term used in this chapter 8
has the same meaning as when used in a comparable context in the 9
laws of the United States relating to federal income taxes. Any 10
reference in this chapter to the Internal Revenue Code includes 11
other laws of the United States relating to federal income taxes. 12

As used in this chapter: 13

(A) "Adjusted gross income" or "Ohio adjusted gross income" 14
means federal adjusted gross income, as defined and used in the 15
Internal Revenue Code, adjusted as provided in this section: 16

(1) Add interest or dividends on obligations or securities of 17
any state or of any political subdivision or authority of any 18
state, other than this state and its subdivisions and authorities. 19

(2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes.

(3) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.

(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.

(5) Deduct benefits under Title II of the Social Security Act and tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code.

(6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002 or after 2004, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which the distribution is made to the extent that the portion was not included in the trust's taxable income for any of the trust's taxable years beginning in 2002, 2003, or 2004. "Undistributed net income of a trust" means the taxable income of the trust increased by (a)(i) the additions to adjusted gross income required under division (A) of this section and (ii) the personal exemptions allowed to the trust pursuant to section 642(b) of the Internal Revenue Code, and decreased by (b)(i) the

deductions to adjusted gross income required under division (A) of 51
this section, (ii) the amount of federal income taxes attributable 52
to such income, and (iii) the amount of taxable income that has 53
been included in the adjusted gross income of a beneficiary by 54
reason of a prior accumulation distribution. Any undistributed net 55
income included in the adjusted gross income of a beneficiary 56
shall reduce the undistributed net income of the trust commencing 57
with the earliest years of the accumulation period. 58

(7) Deduct the amount of wages and salaries, if any, not 59
otherwise allowable as a deduction but that would have been 60
allowable as a deduction in computing federal adjusted gross 61
income for the taxable year, had the targeted jobs credit allowed 62
and determined under sections 38, 51, and 52 of the Internal 63
Revenue Code not been in effect. 64

(8) Deduct any interest or interest equivalent on public 65
obligations and purchase obligations to the extent that the 66
interest or interest equivalent is included in federal adjusted 67
gross income. 68

(9) Add any loss or deduct any gain resulting from the sale, 69
exchange, or other disposition of public obligations to the extent 70
that the loss has been deducted or the gain has been included in 71
computing federal adjusted gross income. 72

(10) Deduct or add amounts, as provided under section 5747.70 73
of the Revised Code, related to contributions to variable college 74
savings program accounts made or tuition credits purchased 75
pursuant to Chapter 3334. of the Revised Code. 76

(11)(a) Deduct, to the extent not otherwise allowable as a 77
deduction or exclusion in computing federal or Ohio adjusted gross 78
income for the taxable year, the amount the taxpayer paid during 79
the taxable year for medical care insurance and qualified 80
long-term care insurance for the taxpayer, the taxpayer's spouse, 81

and dependents. No deduction for medical care insurance under
division (A)(11) of this section shall be allowed either to any
taxpayer who is eligible to participate in any subsidized health
plan maintained by any employer of the taxpayer or of the
taxpayer's spouse, or to any taxpayer who is entitled to, or on
application would be entitled to, benefits under part A of Title
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.
301, as amended. For the purposes of division (A)(11)(a) of this
section, "subsidized health plan" means a health plan for which
the employer pays any portion of the plan's cost. The deduction
allowed under division (A)(11)(a) of this section shall be the net
of any related premium refunds, related premium reimbursements, or
related insurance premium dividends received during the taxable
year.

(b) Deduct, to the extent not otherwise deducted or excluded
in computing federal or Ohio adjusted gross income during the
taxable year, the amount the taxpayer paid during the taxable
year, not compensated for by any insurance or otherwise, for
medical care of the taxpayer, the taxpayer's spouse, and
dependents, to the extent the expenses exceed ~~seven and one-half~~
five per cent of the taxpayer's federal adjusted gross income.

(c) For purposes of division (A)(11) of this section,
"medical care" has the meaning given in section 213 of the
Internal Revenue Code, subject to the special rules, limitations,
and exclusions set forth therein, and "qualified long-term care"
has the same meaning given in section 7702(B)(b) of the Internal
Revenue Code.

(12)(a) Deduct any amount included in federal adjusted gross
income solely because the amount represents a reimbursement or
refund of expenses that in any year the taxpayer had deducted as
an itemized deduction pursuant to section 63 of the Internal
Revenue Code and applicable United States department of the

treasury regulations. The deduction otherwise allowed under 114
division (A)(12)(a) of this section shall be reduced to the extent 115
the reimbursement is attributable to an amount the taxpayer 116
deducted under this section in any taxable year. 117

(b) Add any amount not otherwise included in Ohio adjusted 118
gross income for any taxable year to the extent that the amount is 119
attributable to the recovery during the taxable year of any amount 120
deducted or excluded in computing federal or Ohio adjusted gross 121
income in any taxable year. 122

(13) Deduct any portion of the deduction described in section 123
1341(a)(2) of the Internal Revenue Code, for repaying previously 124
reported income received under a claim of right, that meets both 125
of the following requirements: 126

(a) It is allowable for repayment of an item that was 127
included in the taxpayer's adjusted gross income for a prior 128
taxable year and did not qualify for a credit under division (A) 129
or (B) of section 5747.05 of the Revised Code for that year; 130

(b) It does not otherwise reduce the taxpayer's adjusted 131
gross income for the current or any other taxable year. 132

(14)(a) Deduct an amount equal to the deposits made to, and 133
net investment earnings of, a medical savings account during the 134
taxable year, in accordance with section 3924.66 of the Revised 135
Code. The deduction allowed by division (A)(14)(a) of this section 136
does not apply to medical savings account deposits and earnings 137
otherwise deducted or excluded for the current or any other 138
taxable year from the taxpayer's federal adjusted gross income. 139

~~(15)(a)(b)~~ Add an amount equal to the funds withdrawn from a 140
medical savings account during the taxable year, and the net 141
investment earnings on those funds, when the funds withdrawn were 142
used for any purpose other than to reimburse an account holder 143
for, or to pay, eligible medical expenses, in accordance with 144

section 3924.66 of the Revised Code;	145
(b) (c) Add the amounts distributed from a medical savings account under division (A)(2) of section 3924.68 of the Revised Code during the taxable year.	146 147 148
<u>(15)(a) Deduct an amount equal to the aggregate amount the taxpayer paid in cash during the taxable year to a health savings account of the taxpayer, to the extent the taxpayer is entitled to deduct such an amount under section 223 of the Internal Revenue Code and to the extent such amount is not otherwise deducted or excluded for the current or any other taxable year from the taxpayer's federal adjusted gross income.</u>	149 150 151 152 153 154 155
<u>(b) Add, to the extent not included in the taxpayer's federal adjusted gross income, any amount paid or distributed from a health savings account during the taxable year, and the net investment earnings on that amount, that was not used exclusively to pay qualified medical expenses of an account beneficiary, including any amount treated as not used to pay qualified medical expenses pursuant to section 223(e)(2) of the Internal Revenue Code.</u>	156 157 158 159 160 161 162 163
(16) Add any amount claimed as a credit under section 5747.059 of the Revised Code to the extent that such amount satisfies either of the following:	164 165 166
(a) The amount was deducted or excluded from the computation of the taxpayer's federal adjusted gross income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;	167 168 169 170
(b) The amount resulted in a reduction of the taxpayer's federal adjusted gross income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.	171 172 173
(17) Deduct the amount contributed by the taxpayer to an individual development account program established by a county	174 175

department of job and family services pursuant to sections 329.11 176
to 329.14 of the Revised Code for the purpose of matching funds 177
deposited by program participants. On request of the tax 178
commissioner, the taxpayer shall provide any information that, in 179
the tax commissioner's opinion, is necessary to establish the 180
amount deducted under division (A)(17) of this section. 181

(18) Beginning in taxable year 2001, if the taxpayer is 182
married and files a joint return and the combined federal adjusted 183
gross income of the taxpayer and the taxpayer's spouse for the 184
taxable year does not exceed one hundred thousand dollars, or if 185
the taxpayer is single and has a federal adjusted gross income for 186
the taxable year not exceeding fifty thousand dollars, deduct 187
amounts paid during the taxable year for qualified tuition and 188
fees paid to an eligible institution for the taxpayer, the 189
taxpayer's spouse, or any dependent of the taxpayer, who is a 190
resident of this state and is enrolled in or attending a program 191
that culminates in a degree or diploma at an eligible institution. 192
The deduction may be claimed only to the extent that qualified 193
tuition and fees are not otherwise deducted or excluded for any 194
taxable year from federal or Ohio adjusted gross income. The 195
deduction may not be claimed for educational expenses for which 196
the taxpayer claims a credit under section 5747.27 of the Revised 197
Code. 198

(19) Add any reimbursement received during the taxable year 199
of any amount the taxpayer deducted under division (A)(18) of this 200
section in any previous taxable year to the extent the amount is 201
not otherwise included in Ohio adjusted gross income. 202

(20)(a)(i) Add five-sixths of the amount of depreciation 203
expense allowed by subsection (k) of section 168 of the Internal 204
Revenue Code, including the taxpayer's proportionate or 205
distributive share of the amount of depreciation expense allowed 206
by that subsection to a pass-through entity in which the taxpayer 207

has a direct or indirect ownership interest.	208
(ii) Add five-sixths of the amount of qualifying section 179 depreciation expense, including a person's proportionate or distributive share of the amount of qualifying section 179 depreciation expense allowed to any pass-through entity in which the person has a direct or indirect ownership. For the purposes of this division, "qualifying section 179 depreciation expense" means the difference between (I) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code, and (II) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code as that section existed on December 31, 2002.	209 210 211 212 213 214 215 216 217 218 219 220
The tax commissioner, under procedures established by the commissioner, may waive the add-backs related to a pass-through entity if the taxpayer owns, directly or indirectly, less than five per cent of the pass-through entity.	221 222 223 224
(b) Nothing in division (A)(20) of this section shall be construed to adjust or modify the adjusted basis of any asset.	225 226
(c) To the extent the add-back required under division (A)(20)(a) of this section is attributable to property generating nonbusiness income or loss allocated under section 5747.20 of the Revised Code, the add-back shall be situated to the same location as the nonbusiness income or loss generated by the property for the purpose of determining the credit under division (A) of section 5747.05 of the Revised Code. Otherwise, the add-back shall be apportioned, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.	227 228 229 230 231 232 233 234 235 236
(d) For the purposes of division (A) of this section, net operating loss carryback and carryforward shall not include	237 238

five-sixths of the allowance of any net operating loss deduction 239
carryback or carryforward to the taxable year to the extent such 240
loss resulted from depreciation allowed by section 168(k) of the 241
Internal Revenue Code and by the qualifying section 179 242
depreciation expense amount. 243

(21)(a) If the taxpayer was required to add an amount under 244
division (A)(20)(a) of this section for a taxable year, deduct 245
one-fifth of the amount so added for each of the five succeeding 246
taxable years. 247

(b) If the amount deducted under division (A)(21)(a) of this 248
section is attributable to an add-back allocated under division 249
(A)(20)(c) of this section, the amount deducted shall be sitused 250
to the same location. Otherwise, the add-back shall be apportioned 251
using the apportionment factors for the taxable year in which the 252
deduction is taken, subject to one or more of the four alternative 253
methods of apportionment enumerated in section 5747.21 of the 254
Revised Code. 255

(c) No deduction is available under division (A)(21)(a) of 256
this section with regard to any depreciation allowed by section 257
168(k) of the Internal Revenue Code and by the qualifying section 258
179 depreciation expense amount to the extent that such 259
depreciation resulted in or increased a federal net operating loss 260
carryback or carryforward to a taxable year to which division 261
(A)(20)(d) of this section does not apply. 262

(B) "Business income" means income, including gain or loss, 263
arising from transactions, activities, and sources in the regular 264
course of a trade or business and includes income, gain, or loss 265
from real property, tangible property, and intangible property if 266
the acquisition, rental, management, and disposition of the 267
property constitute integral parts of the regular course of a 268
trade or business operation. "Business income" includes income, 269

including gain or loss, from a partial or complete liquidation of	270
a business, including, but not limited to, gain or loss from the	271
sale or other disposition of goodwill.	272
(C) "Nonbusiness income" means all income other than business	273
income and may include, but is not limited to, compensation, rents	274
and royalties from real or tangible personal property, capital	275
gains, interest, dividends and distributions, patent or copyright	276
royalties, or lottery winnings, prizes, and awards.	277
(D) "Compensation" means any form of remuneration paid to an	278
employee for personal services.	279
(E) "Fiduciary" means a guardian, trustee, executor,	280
administrator, receiver, conservator, or any other person acting	281
in any fiduciary capacity for any individual, trust, or estate.	282
(F) "Fiscal year" means an accounting period of twelve months	283
ending on the last day of any month other than December.	284
(G) "Individual" means any natural person.	285
(H) "Internal Revenue Code" means the "Internal Revenue Code	286
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	287
(I) "Resident" means any of the following, provided that	288
division (I)(3) of this section applies only to taxable years of a	289
trust beginning in 2002, 2003, or 2004:	290
(1) An individual who is domiciled in this state, subject to	291
section 5747.24 of the Revised Code;	292
(2) The estate of a decedent who at the time of death was	293
domiciled in this state. The domicile tests of section 5747.24 of	294
the Revised Code and any election under section 5747.25 of the	295
Revised Code are not controlling for purposes of division (I)(2)	296
of this section.	297
(3) A trust that, in whole or part, resides in this state. If	298
only part of a trust resides in this state, the trust is a	299

resident only with respect to that part. 300

For the purposes of division (I)(3) of this section: 301

(a) A trust resides in this state for the trust's current 302
taxable year to the extent, as described in division (I)(3)(d) of 303
this section, that the trust consists directly or indirectly, in 304
whole or in part, of assets, net of any related liabilities, that 305
were transferred, or caused to be transferred, directly or 306
indirectly, to the trust by any of the following: 307

(i) A person, a court, or a governmental entity or 308
instrumentality on account of the death of a decedent, but only if 309
the trust is described in division (I)(3)(e)(i) or (ii) of this 310
section; 311

(ii) A person who was domiciled in this state for the 312
purposes of this chapter when the person directly or indirectly 313
transferred assets to an irrevocable trust, but only if at least 314
one of the trust's qualifying beneficiaries is domiciled in this 315
state for the purposes of this chapter during all or some portion 316
of the trust's current taxable year; 317

(iii) A person who was domiciled in this state for the 318
purposes of this chapter when the trust document or instrument or 319
part of the trust document or instrument became irrevocable, but 320
only if at least one of the trust's qualifying beneficiaries is a 321
resident domiciled in this state for the purposes of this chapter 322
during all or some portion of the trust's current taxable year. 323

(b) A trust is irrevocable to the extent that the transferor 324
is not considered to be the owner of the net assets of the trust 325
under sections 671 to 678 of the Internal Revenue Code. 326

(c) With respect to a trust other than a charitable lead 327
trust, "qualifying beneficiary" has the same meaning as "potential 328
current beneficiary" as defined in section 1361(e)(2) of the 329

Internal Revenue Code, and with respect to a charitable lead trust 330
"qualifying beneficiary" is any current, future, or contingent 331
beneficiary, but with respect to any trust "qualifying 332
beneficiary" excludes a person or a governmental entity or 333
instrumentality to any of which a contribution would qualify for 334
the charitable deduction under section 170 of the Internal Revenue 335
Code. 336

(d) For the purposes of division (I)(3)(a) of this section, 337
the extent to which a trust consists directly or indirectly, in 338
whole or in part, of assets, net of any related liabilities, that 339
were transferred directly or indirectly, in whole or part, to the 340
trust by any of the sources enumerated in that division shall be 341
ascertained by multiplying the fair market value of the trust's 342
assets, net of related liabilities, by the qualifying ratio, which 343
shall be computed as follows: 344

(i) The first time the trust receives assets, the numerator 345
of the qualifying ratio is the fair market value of those assets 346
at that time, net of any related liabilities, from sources 347
enumerated in division (I)(3)(a) of this section. The denominator 348
of the qualifying ratio is the fair market value of all the 349
trust's assets at that time, net of any related liabilities. 350

(ii) Each subsequent time the trust receives assets, a 351
revised qualifying ratio shall be computed. The numerator of the 352
revised qualifying ratio is the sum of (1) the fair market value 353
of the trust's assets immediately prior to the subsequent 354
transfer, net of any related liabilities, multiplied by the 355
qualifying ratio last computed without regard to the subsequent 356
transfer, and (2) the fair market value of the subsequently 357
transferred assets at the time transferred, net of any related 358
liabilities, from sources enumerated in division (I)(3)(a) of this 359
section. The denominator of the revised qualifying ratio is the 360
fair market value of all the trust's assets immediately after the 361

subsequent transfer, net of any related liabilities. 362

(e) For the purposes of division (I)(3)(a)(i) of this 363
section: 364

(i) A trust is described in division (I)(3)(e)(i) of this 365
section if the trust is a testamentary trust and the testator of 366
that testamentary trust was domiciled in this state at the time of 367
the testator's death for purposes of the taxes levied under 368
Chapter 5731. of the Revised Code. 369

(ii) A trust is described in division (I)(3)(e)(ii) of this 370
section if the transfer is a qualifying transfer described in any 371
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 372
irrevocable inter vivos trust, and at least one of the trust's 373
qualifying beneficiaries is domiciled in this state for purposes 374
of this chapter during all or some portion of the trust's current 375
taxable year. 376

(f) For the purposes of division (I)(3)(e)(ii) of this 377
section, a "qualifying transfer" is a transfer of assets, net of 378
any related liabilities, directly or indirectly to a trust, if the 379
transfer is described in any of the following: 380

(i) The transfer is made to a trust, created by the decedent 381
before the decedent's death and while the decedent was domiciled 382
in this state for the purposes of this chapter, and, prior to the 383
death of the decedent, the trust became irrevocable while the 384
decedent was domiciled in this state for the purposes of this 385
chapter. 386

(ii) The transfer is made to a trust to which the decedent, 387
prior to the decedent's death, had directly or indirectly 388
transferred assets, net of any related liabilities, while the 389
decedent was domiciled in this state for the purposes of this 390
chapter, and prior to the death of the decedent the trust became 391
irrevocable while the decedent was domiciled in this state for the 392

purposes of this chapter.	393
(iii) The transfer is made on account of a contractual relationship existing directly or indirectly between the transferor and either the decedent or the estate of the decedent at any time prior to the date of the decedent's death, and the decedent was domiciled in this state at the time of death for purposes of the taxes levied under Chapter 5731. of the Revised Code.	394 395 396 397 398 399 400
(iv) The transfer is made to a trust on account of a contractual relationship existing directly or indirectly between the transferor and another person who at the time of the decedent's death was domiciled in this state for purposes of this chapter.	401 402 403 404 405
(v) The transfer is made to a trust on account of the will of a testator.	406 407
(vi) The transfer is made to a trust created by or caused to be created by a court, and the trust was directly or indirectly created in connection with or as a result of the death of an individual who, for purposes of the taxes levied under Chapter 5731. of the Revised Code, was domiciled in this state at the time of the individual's death.	408 409 410 411 412 413
(g) The tax commissioner may adopt rules to ascertain the part of a trust residing in this state.	414 415
(J) "Nonresident" means an individual or estate that is not a resident. An individual who is a resident for only part of a taxable year is a nonresident for the remainder of that taxable year.	416 417 418 419
(K) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code.	420 421
(L) "Return" means the notifications and reports required to	422

be filed pursuant to this chapter for the purpose of reporting the 423
tax due and includes declarations of estimated tax when so 424
required. 425

(M) "Taxable year" means the calendar year or the taxpayer's 426
fiscal year ending during the calendar year, or fractional part 427
thereof, upon which the adjusted gross income is calculated 428
pursuant to this chapter. 429

(N) "Taxpayer" means any person subject to the tax imposed by 430
section 5747.02 of the Revised Code or any pass-through entity 431
that makes the election under division (D) of section 5747.08 of 432
the Revised Code. 433

(O) "Dependents" means dependents as defined in the Internal 434
Revenue Code and as claimed in the taxpayer's federal income tax 435
return for the taxable year or which the taxpayer would have been 436
permitted to claim had the taxpayer filed a federal income tax 437
return. 438

(P) "Principal county of employment" means, in the case of a 439
nonresident, the county within the state in which a taxpayer 440
performs services for an employer or, if those services are 441
performed in more than one county, the county in which the major 442
portion of the services are performed. 443

(Q) As used in sections 5747.50 to 5747.55 of the Revised 444
Code: 445

(1) "Subdivision" means any county, municipal corporation, 446
park district, or township. 447

(2) "Essential local government purposes" includes all 448
functions that any subdivision is required by general law to 449
exercise, including like functions that are exercised under a 450
charter adopted pursuant to the Ohio Constitution. 451

(R) "Overpayment" means any amount already paid that exceeds 452

the figure determined to be the correct amount of the tax. 453

(S) "Taxable income" or "Ohio taxable income" applies only to 454
estates and trusts, and means federal taxable income, as defined 455
and used in the Internal Revenue Code, adjusted as follows: 456

(1) Add interest or dividends, net of ordinary, necessary, 457
and reasonable expenses not deducted in computing federal taxable 458
income, on obligations or securities of any state or of any 459
political subdivision or authority of any state, other than this 460
state and its subdivisions and authorities, but only to the extent 461
that such net amount is not otherwise includible in Ohio taxable 462
income and is described in either division (S)(1)(a) or (b) of 463
this section: 464

(a) The net amount is not attributable to the S portion of an 465
electing small business trust and has not been distributed to 466
beneficiaries for the taxable year; 467

(b) The net amount is attributable to the S portion of an 468
electing small business trust for the taxable year. 469

(2) Add interest or dividends, net of ordinary, necessary, 470
and reasonable expenses not deducted in computing federal taxable 471
income, on obligations of any authority, commission, 472
instrumentality, territory, or possession of the United States to 473
the extent that the interest or dividends are exempt from federal 474
income taxes but not from state income taxes, but only to the 475
extent that such net amount is not otherwise includible in Ohio 476
taxable income and is described in either division (S)(1)(a) or 477
(b) of this section; 478

(3) Add the amount of personal exemption allowed to the 479
estate pursuant to section 642(b) of the Internal Revenue Code; 480

(4) Deduct interest or dividends, net of related expenses 481
deducted in computing federal taxable income, on obligations of 482

the United States and its territories and possessions or of any
authority, commission, or instrumentality of the United States to
the extent that the interest or dividends are exempt from state
taxes under the laws of the United States, but only to the extent
that such amount is included in federal taxable income and is
described in either division (S)(1)(a) or (b) of this section;

(5) Deduct the amount of wages and salaries, if any, not
otherwise allowable as a deduction but that would have been
allowable as a deduction in computing federal taxable income for
the taxable year, had the targeted jobs credit allowed under
sections 38, 51, and 52 of the Internal Revenue Code not been in
effect, but only to the extent such amount relates either to
income included in federal taxable income for the taxable year or
to income of the S portion of an electing small business trust for
the taxable year;

(6) Deduct any interest or interest equivalent, net of
related expenses deducted in computing federal taxable income, on
public obligations and purchase obligations, but only to the
extent that such net amount relates either to income included in
federal taxable income for the taxable year or to income of the S
portion of an electing small business trust for the taxable year;

(7) Add any loss or deduct any gain resulting from sale,
exchange, or other disposition of public obligations to the extent
that such loss has been deducted or such gain has been included in
computing either federal taxable income or income of the S portion
of an electing small business trust for the taxable year;

(8) Except in the case of the final return of an estate, add
any amount deducted by the taxpayer on both its Ohio estate tax
return pursuant to section 5731.14 of the Revised Code, and on its
federal income tax return in determining federal taxable income;

(9)(a) Deduct any amount included in federal taxable income

solely because the amount represents a reimbursement or refund of
expenses that in a previous year the decedent had deducted as an
itemized deduction pursuant to section 63 of the Internal Revenue
Code and applicable treasury regulations. The deduction otherwise
allowed under division (S)(9)(a) of this section shall be reduced
to the extent the reimbursement is attributable to an amount the
taxpayer or decedent deducted under this section in any taxable
year.

(b) Add any amount not otherwise included in Ohio taxable
income for any taxable year to the extent that the amount is
attributable to the recovery during the taxable year of any amount
deducted or excluded in computing federal or Ohio taxable income
in any taxable year, but only to the extent such amount has not
been distributed to beneficiaries for the taxable year.

(10) Deduct any portion of the deduction described in section
1341(a)(2) of the Internal Revenue Code, for repaying previously
reported income received under a claim of right, that meets both
of the following requirements:

(a) It is allowable for repayment of an item that was
included in the taxpayer's taxable income or the decedent's
adjusted gross income for a prior taxable year and did not qualify
for a credit under division (A) or (B) of section 5747.05 of the
Revised Code for that year.

(b) It does not otherwise reduce the taxpayer's taxable
income or the decedent's adjusted gross income for the current or
any other taxable year.

(11) Add any amount claimed as a credit under section
5747.059 of the Revised Code to the extent that the amount
satisfies either of the following:

(a) The amount was deducted or excluded from the computation
of the taxpayer's federal taxable income as required to be

reported for the taxpayer's taxable year under the Internal 545
Revenue Code; 546

(b) The amount resulted in a reduction in the taxpayer's 547
federal taxable income as required to be reported for any of the 548
taxpayer's taxable years under the Internal Revenue Code. 549

(12) Deduct any amount, net of related expenses deducted in 550
computing federal taxable income, that a trust is required to 551
report as farm income on its federal income tax return, but only 552
if the assets of the trust include at least ten acres of land 553
satisfying the definition of "land devoted exclusively to 554
agricultural use" under section 5713.30 of the Revised Code, 555
regardless of whether the land is valued for tax purposes as such 556
land under sections 5713.30 to 5713.38 of the Revised Code. If the 557
trust is a pass-through entity investor, section 5747.231 of the 558
Revised Code applies in ascertaining if the trust is eligible to 559
claim the deduction provided by division (S)(12) of this section 560
in connection with the pass-through entity's farm income. 561

Except for farm income attributable to the S portion of an 562
electing small business trust, the deduction provided by division 563
(S)(12) of this section is allowed only to the extent that the 564
trust has not distributed such farm income. Division (S)(12) of 565
this section applies only to taxable years of a trust beginning in 566
2002, 2003, or 2004. 567

(13) Add the net amount of income described in section 641(c) 568
of the Internal Revenue Code to the extent that amount is not 569
included in federal taxable income. 570

(14) Add or deduct the amount the taxpayer would be required 571
to add or deduct under division (A)(20) or (21) of this section if 572
the taxpayer's Ohio taxable income were computed in the same 573
manner as an individual's Ohio adjusted gross income is computed 574
under this section. In the case of a trust, division (S)(14) of 575

this section applies only to any of the trust's taxable years 576
beginning in 2002, 2003, or 2004. 577

(T) "School district income" and "school district income tax" 578
have the same meanings as in section 5748.01 of the Revised Code. 579

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 580
of this section, "public obligations," "purchase obligations," and 581
"interest or interest equivalent" have the same meanings as in 582
section 5709.76 of the Revised Code. 583

(V) "Limited liability company" means any limited liability 584
company formed under Chapter 1705. of the Revised Code or under 585
the laws of any other state. 586

(W) "Pass-through entity investor" means any person who, 587
during any portion of a taxable year of a pass-through entity, is 588
a partner, member, shareholder, or equity investor in that 589
pass-through entity. 590

(X) "Banking day" has the same meaning as in section 1304.01 591
of the Revised Code. 592

(Y) "Month" means a calendar month. 593

(Z) "Quarter" means the first three months, the second three 594
months, the third three months, or the last three months of the 595
taxpayer's taxable year. 596

(AA)(1) "Eligible institution" means a state university or 597
state institution of higher education as defined in section 598
3345.011 of the Revised Code, or a private, nonprofit college, 599
university, or other post-secondary institution located in this 600
state that possesses a certificate of authorization issued by the 601
Ohio board of regents pursuant to Chapter 1713. of the Revised 602
Code or a certificate of registration issued by the state board of 603
career colleges and schools under Chapter 3332. of the Revised 604
Code. 605

(2) "Qualified tuition and fees" means tuition and fees 606
imposed by an eligible institution as a condition of enrollment or 607
attendance, not exceeding two thousand five hundred dollars in 608
each of the individual's first two years of post-secondary 609
education. If the individual is a part-time student, "qualified 610
tuition and fees" includes tuition and fees paid for the academic 611
equivalent of the first two years of post-secondary education 612
during a maximum of five taxable years, not exceeding a total of 613
five thousand dollars. "Qualified tuition and fees" does not 614
include: 615

(a) Expenses for any course or activity involving sports, 616
games, or hobbies unless the course or activity is part of the 617
individual's degree or diploma program; 618

(b) The cost of books, room and board, student activity fees, 619
athletic fees, insurance expenses, or other expenses unrelated to 620
the individual's academic course of instruction; 621

(c) Tuition, fees, or other expenses paid or reimbursed 622
through an employer, scholarship, grant in aid, or other 623
educational benefit program. 624

(BB)(1) "Modified business income" means the business income 625
included in a trust's Ohio taxable income after such taxable 626
income is first reduced by the qualifying trust amount, if any. 627

(2) "Qualifying trust amount" of a trust means capital gains 628
and losses from the sale, exchange, or other disposition of equity 629
or ownership interests in, or debt obligations of, a qualifying 630
investee to the extent included in the trust's Ohio taxable 631
income, but only if the following requirements are satisfied: 632

(a) The book value of the qualifying investee's physical 633
assets in this state and everywhere, as of the last day of the 634
qualifying investee's fiscal or calendar year ending immediately 635
prior to the date on which the trust recognizes the gain or loss, 636

is available to the trust.

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(b) The requirements of section 5747.011 of the Revised Code are satisfied for the trust's taxable year in which the trust recognizes the gain or loss.

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Any gain or loss that is not a qualifying trust amount is modified business income, qualifying investment income, or modified nonbusiness income, as the case may be.

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(3) "Modified nonbusiness income" means a trust's Ohio taxable income other than modified business income, other than the qualifying trust amount, and other than qualifying investment income, as defined in section 5747.012 of the Revised Code, to the extent such qualifying investment income is not otherwise part of modified business income.

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(4) "Modified Ohio taxable income" applies only to trusts, and means the sum of the amounts described in divisions (BB)(4)(a) to (c) of this section:

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(a) The fraction, calculated under section 5747.013, and applying section 5747.231 of the Revised Code, multiplied by the sum of the following amounts:

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(i) The trust's modified business income;

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(ii) The trust's qualifying investment income, as defined in section 5747.012 of the Revised Code, but only to the extent the qualifying investment income does not otherwise constitute modified business income and does not otherwise constitute a qualifying trust amount.

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(b) The qualifying trust amount multiplied by a fraction, the numerator of which is the sum of the book value of the qualifying investee's physical assets in this state on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the qualifying

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trust amount, and the denominator of which is the sum of the book
value of the qualifying investee's total physical assets
everywhere on the last day of the qualifying investee's fiscal or
calendar year ending immediately prior to the day on which the
trust recognizes the qualifying trust amount. If, for a taxable
year, the trust recognizes a qualifying trust amount with respect
to more than one qualifying investee, the amount described in
division (BB)(4)(b) of this section shall equal the sum of the
products so computed for each such qualifying investee.

(c)(i) With respect to a trust or portion of a trust that is
a resident as ascertained in accordance with division (I)(3)(d) of
this section, its modified nonbusiness income.

(ii) With respect to a trust or portion of a trust that is
not a resident as ascertained in accordance with division
(I)(3)(d) of this section, the amount of its modified nonbusiness
income satisfying the descriptions in divisions (B)(2) to (5) of
section 5747.20 of the Revised Code.

If the allocation and apportionment of a trust's income under
divisions (BB)(4)(a) and (c) of this section do not fairly
represent the modified Ohio taxable income of the trust in this
state, the alternative methods described in division (C) of
section 5747.21 of the Revised Code may be applied in the manner
and to the same extent provided in that section.

(5)(a) Except as set forth in division (BB)(5)(b) of this
section, "qualifying investee" means a person in which a trust has
an equity or ownership interest, or a person or unit of government
the debt obligations of either of which are owned by a trust. For
the purposes of division (BB)(2)(a) of this section and for the
purpose of computing the fraction described in division (BB)(4)(b)
of this section, all of the following apply:

(i) If the qualifying investee is a member of a qualifying

controlled group on the last day of the qualifying investee's 698
fiscal or calendar year ending immediately prior to the date on 699
which the trust recognizes the gain or loss, then "qualifying 700
investee" includes all persons in the qualifying controlled group 701
on such last day. 702

(ii) If the qualifying investee, or if the qualifying 703
investee and any members of the qualifying controlled group of 704
which the qualifying investee is a member on the last day of the 705
qualifying investee's fiscal or calendar year ending immediately 706
prior to the date on which the trust recognizes the gain or loss, 707
separately or cumulatively own, directly or indirectly, on the 708
last day of the qualifying investee's fiscal or calendar year 709
ending immediately prior to the date on which the trust recognizes 710
the qualifying trust amount, more than fifty per cent of the 711
equity of a pass-through entity, then the qualifying investee and 712
the other members are deemed to own the proportionate share of the 713
pass-through entity's physical assets which the pass-through 714
entity directly or indirectly owns on the last day of the 715
pass-through entity's calendar or fiscal year ending within or 716
with the last day of the qualifying investee's fiscal or calendar 717
year ending immediately prior to the date on which the trust 718
recognizes the qualifying trust amount. 719

(iii) For the purposes of division (BB)(5)(a)(iii) of this 720
section, "upper level pass-through entity" means a pass-through 721
entity directly or indirectly owning any equity of another 722
pass-through entity, and "lower level pass-through entity" means 723
that other pass-through entity. 724

An upper level pass-through entity, whether or not it is also 725
a qualifying investee, is deemed to own, on the last day of the 726
upper level pass-through entity's calendar or fiscal year, the 727
proportionate share of the lower level pass-through entity's 728
physical assets that the lower level pass-through entity directly 729

or indirectly owns on the last day of the lower level pass-through
entity's calendar or fiscal 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 calendar or fiscal year in which or with
which ends the calendar or fiscal 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 pass-through entity is not available
to the upper level pass-through entity, then solely for purposes
of ascertaining if a gain or loss constitutes a qualifying trust
amount, 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 calendar or fiscal year. Nothing in division
(BB)(5)(a)(iii) of this section shall be construed to provide for
any deduction or exclusion in computing any trust's Ohio taxable
income.

(b) With respect to a trust that is not a resident for the
taxable year and with respect to a part of a trust that is not a
resident for the taxable year, "qualifying investee" for that
taxable year does not include a C corporation if both of the
following apply:

(i) During the taxable year the trust or part of the trust
recognizes a gain or loss from the sale, exchange, or other
disposition of equity or ownership interests in, or debt
obligations of, the C corporation.

(ii) Such gain or loss constitutes nonbusiness income.

(6) "Available" means information is such that a person is 761
able to learn of the information by the due date plus extensions, 762
if any, for filing the return for the taxable year in which the 763
trust recognizes the gain or loss. 764

(CC) "Qualifying controlled group" has the same meaning as in 765
section 5733.04 of the Revised Code. 766

(DD) "Related member" has the same meaning as in section 767
5733.042 of the Revised Code. 768

(EE) Any term used in this chapter that is not otherwise 769
defined in this section and that is not used in a comparable 770
context in the Internal Revenue Code and other statutes of the 771
United States relating to federal income taxes has the same 772
meaning as in section 5733.40 of the Revised Code. 773

Section 2. That existing section 5747.01 of the Revised Code 774
is hereby repealed. 775

Section 3. The amendment by this act of section 5747.01 of 776
the Revised Code applies to taxable years beginning on or after 777
January 1, 2005. 778