

As Introduced

**126th General Assembly
Regular Session
2005-2006**

H. B. No. 73

Representative Trakas

—

A BILL

To amend sections 5747.01, 5747.011, 5747.012, 1
5747.02, and 5748.01, and to repeal sections 2
5747.24 and 5747.25 of the Revised Code to 3
establish new income tax domicile tests. 4

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

Section 1. That sections 5747.01, 5747.011, 5747.012, 5
5747.02, and 5748.01 of the Revised Code be amended to read as 6
follows: 7

Sec. 5747.01. Except as otherwise expressly provided or 8
clearly appearing from the context, any term used in this chapter 9
has the same meaning as when used in a comparable context in the 10
laws of the United States relating to federal income taxes. Any 11
reference in this chapter to the Internal Revenue Code includes 12
other laws of the United States relating to federal income taxes. 13

As used in this chapter: 14

(A) "Adjusted gross income" or "Ohio adjusted gross income" 15
means federal adjusted gross income, as defined and used in the 16
Internal Revenue Code, adjusted as provided in this section: 17

(1) Add interest or dividends on obligations or securities of 18
any state or of any political subdivision or authority of any 19

state, other than this state and its subdivisions and authorities. 20

(2) Add interest or dividends on obligations of any 21
authority, commission, instrumentality, territory, or possession 22
of the United States to the extent that the interest or dividends 23
are exempt from federal income taxes but not from state income 24
taxes. 25

(3) Deduct interest or dividends on obligations of the United 26
States and its territories and possessions or of any authority, 27
commission, or instrumentality of the United States to the extent 28
that the interest or dividends are included in federal adjusted 29
gross income but exempt from state income taxes under the laws of 30
the United States. 31

(4) Deduct disability and survivor's benefits to the extent 32
included in federal adjusted gross income. 33

(5) Deduct benefits under Title II of the Social Security Act 34
and tier 1 railroad retirement benefits to the extent included in 35
federal adjusted gross income under section 86 of the Internal 36
Revenue Code. 37

(6) In the case of a taxpayer who is a beneficiary of a trust 38
that makes an accumulation distribution as defined in section 665 39
of the Internal Revenue Code, add, for the beneficiary's taxable 40
years beginning before 2002 or after 2004, the portion, if any, of 41
such distribution that does not exceed the undistributed net 42
income of the trust for the three taxable years preceding the 43
taxable year in which the distribution is made to the extent that 44
the portion was not included in the trust's taxable income for any 45
of the trust's taxable years beginning in 2002, 2003, or 2004. 46
"Undistributed net income of a trust" means the taxable income of 47
the trust increased by (a)(i) the additions to adjusted gross 48
income required under division (A) of this section and (ii) the 49
personal exemptions allowed to the trust pursuant to section 50

642(b) of the Internal Revenue Code, and decreased by (b)(i) the
deductions to adjusted gross income required under division (A) of
this section, (ii) the amount of federal income taxes attributable
to such income, and (iii) the amount of taxable income that has
been included in the adjusted gross income of a beneficiary by
reason of a prior accumulation distribution. Any undistributed net
income included in the adjusted gross income of a beneficiary
shall reduce the undistributed net income of the trust commencing
with the earliest years of the accumulation period.

(7) 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 adjusted gross
income for the taxable year, had the targeted jobs credit allowed
and determined under sections 38, 51, and 52 of the Internal
Revenue Code not been in effect.

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

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

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

(11)(a) Deduct, to the extent not otherwise allowable as a
deduction or exclusion in computing federal or Ohio adjusted gross
income for the taxable year, the amount the taxpayer paid during
the taxable year for medical care insurance and qualified

long-term care insurance for the taxpayer, the taxpayer's spouse,
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
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 114
treasury regulations. The deduction otherwise allowed under 115
division (A)(12)(a) of this section shall be reduced to the extent 116
the reimbursement is attributable to an amount the taxpayer 117
deducted under this section in any taxable year. 118

(b) Add any amount not otherwise included in Ohio adjusted 119
gross income for any taxable year to the extent that the amount is 120
attributable to the recovery during the taxable year of any amount 121
deducted or excluded in computing federal or Ohio adjusted gross 122
income in any taxable year. 123

(13) Deduct any portion of the deduction described in section 124
1341(a)(2) of the Internal Revenue Code, for repaying previously 125
reported income received under a claim of right, that meets both 126
of the following requirements: 127

(a) It is allowable for repayment of an item that was 128
included in the taxpayer's adjusted gross income for a prior 129
taxable year and did not qualify for a credit under division (A) 130
or (B) of section 5747.05 of the Revised Code for that year; 131

(b) It does not otherwise reduce the taxpayer's adjusted 132
gross income for the current or any other taxable year. 133

(14) Deduct an amount equal to the deposits made to, and net 134
investment earnings of, a medical savings account during the 135
taxable year, in accordance with section 3924.66 of the Revised 136
Code. The deduction allowed by division (A)(14) of this section 137
does not apply to medical savings account deposits and earnings 138
otherwise deducted or excluded for the current or any other 139
taxable year from the taxpayer's federal adjusted gross income. 140

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

for, or to pay, eligible medical expenses, in accordance with 145
section 3924.66 of the Revised Code; 146

(b) Add the amounts distributed from a medical savings 147
account under division (A)(2) of section 3924.68 of the Revised 148
Code during the taxable year. 149

(16) Add any amount claimed as a credit under section 150
5747.059 of the Revised Code to the extent that such amount 151
satisfies either of the following: 152

(a) The amount was deducted or excluded from the computation 153
of the taxpayer's federal adjusted gross income as required to be 154
reported for the taxpayer's taxable year under the Internal 155
Revenue Code; 156

(b) The amount resulted in a reduction of the taxpayer's 157
federal adjusted gross income as required to be reported for any 158
of the taxpayer's taxable years under the Internal Revenue Code. 159

(17) Deduct the amount contributed by the taxpayer to an 160
individual development account program established by a county 161
department of job and family services pursuant to sections 329.11 162
to 329.14 of the Revised Code for the purpose of matching funds 163
deposited by program participants. On request of the tax 164
commissioner, the taxpayer shall provide any information that, in 165
the tax commissioner's opinion, is necessary to establish the 166
amount deducted under division (A)(17) of this section. 167

(18) Beginning in taxable year 2001, if the taxpayer is 168
married and files a joint return and the combined federal adjusted 169
gross income of the taxpayer and the taxpayer's spouse for the 170
taxable year does not exceed one hundred thousand dollars, or if 171
the taxpayer is single and has a federal adjusted gross income for 172
the taxable year not exceeding fifty thousand dollars, deduct 173
amounts paid during the taxable year for qualified tuition and 174
fees paid to an eligible institution for the taxpayer, the 175

taxpayer's spouse, or any dependent of the taxpayer, who is a
resident of this state and is enrolled in or attending a program
that culminates in a degree or diploma at an eligible institution.
The deduction may be claimed only to the extent that qualified
tuition and fees are not otherwise deducted or excluded for any
taxable year from federal or Ohio adjusted gross income. The
deduction may not be claimed for educational expenses for which
the taxpayer claims a credit under section 5747.27 of the Revised
Code.

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

(20)(a)(i) Add five-sixths of the amount of depreciation
expense allowed by subsection (k) of section 168 of the Internal
Revenue Code, including the taxpayer's proportionate or
distributive share of the amount of depreciation expense allowed
by that subsection to a pass-through entity in which the taxpayer
has a direct or indirect ownership interest.

(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.

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.

(b) Nothing in division (A)(20) of this section shall be construed to adjust or modify the adjusted basis of any asset.

(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.

(d) For the purposes of division (A) of this section, net operating loss carryback and carryforward shall not include five-sixths of the allowance of any net operating loss deduction carryback or carryforward to the taxable year to the extent such loss resulted from depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount.

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

(b) If the amount deducted under division (A)(21)(a) of this section is attributable to an add-back allocated under division (A)(20)(c) of this section, the amount deducted shall be situated to the same location. Otherwise, the add-back shall be apportioned

using the apportionment factors for the taxable year in which the
deduction is taken, subject to one or more of the four alternative
methods of apportionment enumerated in section 5747.21 of the
Revised Code.

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

(B) "Business income" means income, including gain or loss,
arising from transactions, activities, and sources in the regular
course of a trade or business and includes income, gain, or loss
from real property, tangible property, and intangible property if
the acquisition, rental, management, and disposition of the
property constitute integral parts of the regular course of a
trade or business operation. "Business income" includes income,
including gain or loss, from a partial or complete liquidation of
a business, including, but not limited to, gain or loss from the
sale or other disposition of goodwill.

(C) "Nonbusiness income" means all income other than business
income and may include, but is not limited to, compensation, rents
and royalties from real or tangible personal property, capital
gains, interest, dividends and distributions, patent or copyright
royalties, or lottery winnings, prizes, and awards.

(D) "Compensation" means any form of remuneration paid to an
employee for personal services.

(E) "Fiduciary" means a guardian, trustee, executor,
administrator, receiver, conservator, or any other person acting
in any fiduciary capacity for any individual, trust, or estate.

(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.	269 270
(G) "Individual" means any natural person.	271
(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	272 273
(I) "Resident" means any of the following, provided that division (I) (3) (4) of this section applies only to taxable years of a trust beginning in 2002, 2003, or 2004:	274 275 276
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	277 278
(2) <u>An individual who lives in and maintains a permanent place of abode in this state, and who does not maintain a permanent place of abode elsewhere, unless such individual, in the aggregate, lives more than one hundred eighty-three days of the taxable year outside this state;</u>	279 280 281 282 283
(3) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code and any election under section 5747.25 of the Revised Code are not controlling for purposes of division (I)(2) of this section.;	284 285 286 287 288
(3) (4) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part.	289 290 291
For the purposes of division (I) (3) (4) of this section:	292
(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I) (3) (4)(d) of this section, that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred, or caused to be transferred, directly or indirectly, to the trust by any of the following:	293 294 295 296 297 298

(i) A person, a court, or a governmental entity or instrumentality on account of the death of a decedent, but only if the trust is described in division (I) (3) <u>(4)</u> (e)(i) or (ii) of this section;	299 300 301 302
(ii) A person who was domiciled in this state for the purposes of this chapter when the person directly or indirectly transferred assets to an irrevocable trust, but only if at least one of the trust's qualifying beneficiaries is domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year;	303 304 305 306 307 308
(iii) A person who was domiciled in this state for the purposes of this chapter when the trust document or instrument or part of the trust document or instrument became irrevocable, but only if at least one of the trust's qualifying beneficiaries is a resident domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year.	309 310 311 312 313 314
(b) A trust is irrevocable to the extent that the transferor is not considered to be the owner of the net assets of the trust under sections 671 to 678 of the Internal Revenue Code.	315 316 317
(c) With respect to a trust other than a charitable lead trust, "qualifying beneficiary" has the same meaning as "potential current beneficiary" as defined in section 1361(e)(2) of the Internal Revenue Code, and with respect to a charitable lead trust "qualifying beneficiary" is any current, future, or contingent beneficiary, but with respect to any trust "qualifying beneficiary" excludes a person or a governmental entity or instrumentality to any of which a contribution would qualify for the charitable deduction under section 170 of the Internal Revenue Code.	318 319 320 321 322 323 324 325 326 327
(d) For the purposes of division (I) (3) <u>(4)</u> (a) of this section, the extent to which a trust consists directly or	328 329

indirectly, in whole or in part, of assets, net of any related 330
liabilities, that were transferred directly or indirectly, in 331
whole or part, to the trust by any of the sources enumerated in 332
that division shall be ascertained by multiplying the fair market 333
value of the trust's assets, net of related liabilities, by the 334
qualifying ratio, which shall be computed as follows: 335

(i) The first time the trust receives assets, the numerator 336
of the qualifying ratio is the fair market value of those assets 337
at that time, net of any related liabilities, from sources 338
enumerated in division (I)~~(3)~~(4)(a) of this section. The 339
denominator of the qualifying ratio is the fair market value of 340
all the trust's assets at that time, net of any related 341
liabilities. 342

(ii) Each subsequent time the trust receives assets, a 343
revised qualifying ratio shall be computed. The numerator of the 344
revised qualifying ratio is the sum of (1) the fair market value 345
of the trust's assets immediately prior to the subsequent 346
transfer, net of any related liabilities, multiplied by the 347
qualifying ratio last computed without regard to the subsequent 348
transfer, and (2) the fair market value of the subsequently 349
transferred assets at the time transferred, net of any related 350
liabilities, from sources enumerated in division (I)~~(3)~~(4)(a) of 351
this section. The denominator of the revised qualifying ratio is 352
the fair market value of all the trust's assets immediately after 353
the subsequent transfer, net of any related liabilities. 354

(e) For the purposes of division (I)~~(3)~~(4)(a)(i) of this 355
section: 356

(i) A trust is described in division (I)~~(3)~~(4)(e)(i) of this 357
section if the trust is a testamentary trust and the testator of 358
that testamentary trust was domiciled in this state at the time of 359
the testator's death for purposes of the taxes levied under 360
Chapter 5731. of the Revised Code. 361

(ii) A trust is described in division (I)~~(3)~~(4)(e)(ii) of 362
this section if the transfer is a qualifying transfer described in 363
any of divisions (I)~~(3)~~(4)(f)(i) to (vi) of this section, the 364
trust is an irrevocable inter vivos trust, and at least one of the 365
trust's qualifying beneficiaries is domiciled in this state for 366
purposes of this chapter during all or some portion of the trust's 367
current taxable year. 368

(f) For the purposes of division (I)~~(3)~~(4)(e)(ii) of this 369
section, a "qualifying transfer" is a transfer of assets, net of 370
any related liabilities, directly or indirectly to a trust, if the 371
transfer is described in any of the following: 372

(i) The transfer is made to a trust, created by the decedent 373
before the decedent's death and while the decedent was domiciled 374
in this state for the purposes of this chapter, and, prior to the 375
death of the decedent, the trust became irrevocable while the 376
decedent was domiciled in this state for the purposes of this 377
chapter. 378

(ii) The transfer is made to a trust to which the decedent, 379
prior to the decedent's death, had directly or indirectly 380
transferred assets, net of any related liabilities, while the 381
decedent was domiciled in this state for the purposes of this 382
chapter, and prior to the death of the decedent the trust became 383
irrevocable while the decedent was domiciled in this state for the 384
purposes of this chapter. 385

(iii) The transfer is made on account of a contractual 386
relationship existing directly or indirectly between the 387
transferor and either the decedent or the estate of the decedent 388
at any time prior to the date of the decedent's death, and the 389
decedent was domiciled in this state at the time of death for 390
purposes of the taxes levied under Chapter 5731. of the Revised 391
Code. 392

(iv) The transfer is made to a trust on account of a 393
contractual relationship existing directly or indirectly between 394
the transferor and another person who at the time of the 395
decedent's death was domiciled in this state for purposes of this 396
chapter. 397

(v) The transfer is made to a trust on account of the will of 398
a testator. 399

(vi) The transfer is made to a trust created by or caused to 400
be created by a court, and the trust was directly or indirectly 401
created in connection with or as a result of the death of an 402
individual who, for purposes of the taxes levied under Chapter 403
5731. of the Revised Code, was domiciled in this state at the time 404
of the individual's death. 405

(g) The tax commissioner may adopt rules to ascertain the 406
part of a trust residing in this state. 407

(J) "Nonresident" means an individual or estate that is not a 408
resident. An individual who is a resident for only part of a 409
taxable year is a nonresident for the remainder of that taxable 410
year. 411

(K) "Pass-through entity" has the same meaning as in section 412
5733.04 of the Revised Code. 413

(L) "Return" means the notifications and reports required to 414
be filed pursuant to this chapter for the purpose of reporting the 415
tax due and includes declarations of estimated tax when so 416
required. 417

(M) "Taxable year" means the calendar year or the taxpayer's 418
fiscal year ending during the calendar year, or fractional part 419
thereof, upon which the adjusted gross income is calculated 420
pursuant to this chapter. 421

(N) "Taxpayer" means any person subject to the tax imposed by 422

section 5747.02 of the Revised Code or any pass-through entity 423
that makes the election under division (D) of section 5747.08 of 424
the Revised Code. 425

(O) "Dependents" means dependents as defined in the Internal 426
Revenue Code and as claimed in the taxpayer's federal income tax 427
return for the taxable year or which the taxpayer would have been 428
permitted to claim had the taxpayer filed a federal income tax 429
return. 430

(P) "Principal county of employment" means, in the case of a 431
nonresident, the county within the state in which a taxpayer 432
performs services for an employer or, if those services are 433
performed in more than one county, the county in which the major 434
portion of the services are performed. 435

(Q) As used in sections 5747.50 to 5747.55 of the Revised 436
Code: 437

(1) "Subdivision" means any county, municipal corporation, 438
park district, or township. 439

(2) "Essential local government purposes" includes all 440
functions that any subdivision is required by general law to 441
exercise, including like functions that are exercised under a 442
charter adopted pursuant to the Ohio Constitution. 443

(R) "Overpayment" means any amount already paid that exceeds 444
the figure determined to be the correct amount of the tax. 445

(S) "Taxable income" or "Ohio taxable income" applies only to 446
estates and trusts, and means federal taxable income, as defined 447
and used in the Internal Revenue Code, adjusted as follows: 448

(1) Add interest or dividends, net of ordinary, necessary, 449
and reasonable expenses not deducted in computing federal taxable 450
income, on obligations or securities of any state or of any 451
political subdivision or authority of any state, other than this 452

state and its subdivisions and authorities, but only to the extent 453
that such net amount is not otherwise includible in Ohio taxable 454
income and is described in either division (S)(1)(a) or (b) of 455
this section: 456

(a) The net amount is not attributable to the S portion of an 457
electing small business trust and has not been distributed to 458
beneficiaries for the taxable year; 459

(b) The net amount is attributable to the S portion of an 460
electing small business trust for the taxable year. 461

(2) Add interest or dividends, net of ordinary, necessary, 462
and reasonable expenses not deducted in computing federal taxable 463
income, on obligations of any authority, commission, 464
instrumentality, territory, or possession of the United States to 465
the extent that the interest or dividends are exempt from federal 466
income taxes but not from state income taxes, but only to the 467
extent that such net amount is not otherwise includible in Ohio 468
taxable income and is described in either division (S)(1)(a) or 469
(b) of this section; 470

(3) Add the amount of personal exemption allowed to the 471
estate pursuant to section 642(b) of the Internal Revenue Code; 472

(4) Deduct interest or dividends, net of related expenses 473
deducted in computing federal taxable income, on obligations of 474
the United States and its territories and possessions or of any 475
authority, commission, or instrumentality of the United States to 476
the extent that the interest or dividends are exempt from state 477
taxes under the laws of the United States, but only to the extent 478
that such amount is included in federal taxable income and is 479
described in either division (S)(1)(a) or (b) of this section; 480

(5) Deduct the amount of wages and salaries, if any, not 481
otherwise allowable as a deduction but that would have been 482
allowable as a deduction in computing federal taxable income for 483

the taxable year, had the targeted jobs credit allowed under 484
sections 38, 51, and 52 of the Internal Revenue Code not been in 485
effect, but only to the extent such amount relates either to 486
income included in federal taxable income for the taxable year or 487
to income of the S portion of an electing small business trust for 488
the taxable year; 489

(6) Deduct any interest or interest equivalent, net of 490
related expenses deducted in computing federal taxable income, on 491
public obligations and purchase obligations, but only to the 492
extent that such net amount relates either to income included in 493
federal taxable income for the taxable year or to income of the S 494
portion of an electing small business trust for the taxable year; 495

(7) Add any loss or deduct any gain resulting from sale, 496
exchange, or other disposition of public obligations to the extent 497
that such loss has been deducted or such gain has been included in 498
computing either federal taxable income or income of the S portion 499
of an electing small business trust for the taxable year; 500

(8) Except in the case of the final return of an estate, add 501
any amount deducted by the taxpayer on both its Ohio estate tax 502
return pursuant to section 5731.14 of the Revised Code, and on its 503
federal income tax return in determining federal taxable income; 504

(9)(a) Deduct any amount included in federal taxable income 505
solely because the amount represents a reimbursement or refund of 506
expenses that in a previous year the decedent had deducted as an 507
itemized deduction pursuant to section 63 of the Internal Revenue 508
Code and applicable treasury regulations. The deduction otherwise 509
allowed under division (S)(9)(a) of this section shall be reduced 510
to the extent the reimbursement is attributable to an amount the 511
taxpayer or decedent deducted under this section in any taxable 512
year. 513

(b) Add any amount not otherwise included in Ohio taxable 514

income for any taxable year to the extent that the amount is 515
attributable to the recovery during the taxable year of any amount 516
deducted or excluded in computing federal or Ohio taxable income 517
in any taxable year, but only to the extent such amount has not 518
been distributed to beneficiaries for the taxable year. 519

(10) Deduct any portion of the deduction described in section 520
1341(a)(2) of the Internal Revenue Code, for repaying previously 521
reported income received under a claim of right, that meets both 522
of the following requirements: 523

(a) It is allowable for repayment of an item that was 524
included in the taxpayer's taxable income or the decedent's 525
adjusted gross income for a prior taxable year and did not qualify 526
for a credit under division (A) or (B) of section 5747.05 of the 527
Revised Code for that year. 528

(b) It does not otherwise reduce the taxpayer's taxable 529
income or the decedent's adjusted gross income for the current or 530
any other taxable year. 531

(11) Add any amount claimed as a credit under section 532
5747.059 of the Revised Code to the extent that the amount 533
satisfies either of the following: 534

(a) The amount was deducted or excluded from the computation 535
of the taxpayer's federal taxable income as required to be 536
reported for the taxpayer's taxable year under the Internal 537
Revenue Code; 538

(b) The amount resulted in a reduction in the taxpayer's 539
federal taxable income as required to be reported for any of the 540
taxpayer's taxable years under the Internal Revenue Code. 541

(12) Deduct any amount, net of related expenses deducted in 542
computing federal taxable income, that a trust is required to 543
report as farm income on its federal income tax return, but only 544

if the assets of the trust include at least ten acres of land 545
satisfying the definition of "land devoted exclusively to 546
agricultural use" under section 5713.30 of the Revised Code, 547
regardless of whether the land is valued for tax purposes as such 548
land under sections 5713.30 to 5713.38 of the Revised Code. If the 549
trust is a pass-through entity investor, section 5747.231 of the 550
Revised Code applies in ascertaining if the trust is eligible to 551
claim the deduction provided by division (S)(12) of this section 552
in connection with the pass-through entity's farm income. 553

Except for farm income attributable to the S portion of an 554
electing small business trust, the deduction provided by division 555
(S)(12) of this section is allowed only to the extent that the 556
trust has not distributed such farm income. Division (S)(12) of 557
this section applies only to taxable years of a trust beginning in 558
2002, 2003, or 2004. 559

(13) Add the net amount of income described in section 641(c) 560
of the Internal Revenue Code to the extent that amount is not 561
included in federal taxable income. 562

(14) Add or deduct the amount the taxpayer would be required 563
to add or deduct under division (A)(20) or (21) of this section if 564
the taxpayer's Ohio taxable income were computed in the same 565
manner as an individual's Ohio adjusted gross income is computed 566
under this section. In the case of a trust, division (S)(14) of 567
this section applies only to any of the trust's taxable years 568
beginning in 2002, 2003, or 2004. 569

(T) "School district income" and "school district income tax" 570
have the same meanings as in section 5748.01 of the Revised Code. 571

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 572
of this section, "public obligations," "purchase obligations," and 573
"interest or interest equivalent" have the same meanings as in 574
section 5709.76 of the Revised Code. 575

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

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

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

(Y) "Month" means a calendar month.

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

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

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

include: 607

(a) Expenses for any course or activity involving sports, 608
games, or hobbies unless the course or activity is part of the 609
individual's degree or diploma program; 610

(b) The cost of books, room and board, student activity fees, 611
athletic fees, insurance expenses, or other expenses unrelated to 612
the individual's academic course of instruction; 613

(c) Tuition, fees, or other expenses paid or reimbursed 614
through an employer, scholarship, grant in aid, or other 615
educational benefit program. 616

(BB)(1) "Modified business income" means the business income 617
included in a trust's Ohio taxable income after such taxable 618
income is first reduced by the qualifying trust amount, if any. 619

(2) "Qualifying trust amount" of a trust means capital gains 620
and losses from the sale, exchange, or other disposition of equity 621
or ownership interests in, or debt obligations of, a qualifying 622
investee to the extent included in the trust's Ohio taxable 623
income, but only if the following requirements are satisfied: 624

(a) The book value of the qualifying investee's physical 625
assets in this state and everywhere, as of the last day of the 626
qualifying investee's fiscal or calendar year ending immediately 627
prior to the date on which the trust recognizes the gain or loss, 628
is available to the trust. 629

(b) The requirements of section 5747.011 of the Revised Code 630
are satisfied for the trust's taxable year in which the trust 631
recognizes the gain or loss. 632

Any gain or loss that is not a qualifying trust amount is 633
modified business income, qualifying investment income, or 634
modified nonbusiness income, as the case may be. 635

(3) "Modified nonbusiness income" means a trust's Ohio 636

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.

(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:

(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:

(i) The trust's modified business income;

(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.

(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
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 668
a resident as ascertained in accordance with division (I)~~(3)~~(4)(d) 669
of this section, its modified nonbusiness income. 670

(ii) With respect to a trust or portion of a trust that is 671
not a resident as ascertained in accordance with division 672
(I)~~(3)~~(4)(d) of this section, the amount of its modified 673
nonbusiness income satisfying the descriptions in divisions (B)(2) 674
to (5) of section 5747.20 of the Revised Code. 675

If the allocation and apportionment of a trust's income under 676
divisions (BB)(4)(a) and (c) of this section do not fairly 677
represent the modified Ohio taxable income of the trust in this 678
state, the alternative methods described in division (C) of 679
section 5747.21 of the Revised Code may be applied in the manner 680
and to the same extent provided in that section. 681

(5)(a) Except as set forth in division (BB)(5)(b) of this 682
section, "qualifying investee" means a person in which a trust has 683
an equity or ownership interest, or a person or unit of government 684
the debt obligations of either of which are owned by a trust. For 685
the purposes of division (BB)(2)(a) of this section and for the 686
purpose of computing the fraction described in division (BB)(4)(b) 687
of this section, all of the following apply: 688

(i) If the qualifying investee is a member of a qualifying 689
controlled group on the last day of the qualifying investee's 690
fiscal or calendar year ending immediately prior to the date on 691
which the trust recognizes the gain or loss, then "qualifying 692
investee" includes all persons in the qualifying controlled group 693
on such last day. 694

(ii) If the qualifying investee, or if the qualifying 695
investee and any members of the qualifying controlled group of 696
which the qualifying investee is a member on the last day of the 697
qualifying investee's fiscal or calendar year ending immediately 698

prior to the date on which the trust recognizes the gain or loss, 699
separately or cumulatively own, directly or indirectly, on the 700
last day of the qualifying investee's fiscal or calendar year 701
ending immediately prior to the date on which the trust recognizes 702
the qualifying trust amount, more than fifty per cent of the 703
equity of a pass-through entity, then the qualifying investee and 704
the other members are deemed to own the proportionate share of the 705
pass-through entity's physical assets which the pass-through 706
entity directly or indirectly owns on the last day of the 707
pass-through entity's calendar or fiscal year ending within or 708
with the last day of the qualifying investee's fiscal or calendar 709
year ending immediately prior to the date on which the trust 710
recognizes the qualifying trust amount. 711

(iii) For the purposes of division (BB)(5)(a)(iii) of this 712
section, "upper level pass-through entity" means a pass-through 713
entity directly or indirectly owning any equity of another 714
pass-through entity, and "lower level pass-through entity" means 715
that other pass-through entity. 716

An upper level pass-through entity, whether or not it is also 717
a qualifying investee, is deemed to own, on the last day of the 718
upper level pass-through entity's calendar or fiscal year, the 719
proportionate share of the lower level pass-through entity's 720
physical assets that the lower level pass-through entity directly 721
or indirectly owns on the last day of the lower level pass-through 722
entity's calendar or fiscal year ending within or with the last 723
day of the upper level pass-through entity's fiscal or calendar 724
year. If the upper level pass-through entity directly and 725
indirectly owns less than fifty per cent of the equity of the 726
lower level pass-through entity on each day of the upper level 727
pass-through entity's calendar or fiscal year in which or with 728
which ends the calendar or fiscal year of the lower level 729
pass-through entity and if, based upon clear and convincing 730

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 able to learn of the information by the due date plus extensions, if any, for filing the return for the taxable year in which the trust recognizes the gain or loss.

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

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

(EE) Any term used in this chapter that is not otherwise 761
defined in this section and that is not used in a comparable 762
context in the Internal Revenue Code and other statutes of the 763
United States relating to federal income taxes has the same 764
meaning as in section 5733.40 of the Revised Code. 765

Sec. 5747.011. (A) As used in this section: 766

(1) "Qualifying closely-held C corporation" means a person 767
classified for federal income tax purposes as an association taxed 768
as a corporation and that has more than fifty per cent of the 769
value of its outstanding stock or equity owned, directly or 770
indirectly, by or for not more than five qualifying persons. For 771
the purposes of this division, the ownership of stock shall be 772
determined under the rules set forth in section 544 of the 773
Internal Revenue Code. 774

(2) "Qualifying person" means an individual; an organization 775
described in section 401(a), 501(c)(17), or 509(a) of the Internal 776
Revenue Code; or a portion of a trust permanently set aside or to 777
be used exclusively for the purposes described in section 642(c) 778
of the Internal Revenue Code or a corresponding provision of a 779
prior federal income tax law. 780

(3) "Qualifying limited liability company" means a limited 781
liability company that is not classified for federal income tax 782
purposes as an association taxed as a corporation. 783

(4) "Ownership interest" means the equity or ownership 784
interest in, or debt obligation of, a "qualifying investee" as 785
defined in section 5747.01 of the Revised Code. 786

(5) "Qualifying individual beneficiary" has the same meaning 787
as qualifying beneficiary as used in division (I)~~(3)~~(4)(c) of 788
section 5747.01 of the Revised Code, but is limited to 789
individuals. 790

(6) "Family" of an individual means only the individual's spouse; the individual's ancestors, limited to the individual's parents, grandparents, and great grandparents; the siblings of such ancestors, whether by the whole or half blood or by legal adoption; the lineal descendants of such ancestors and siblings; persons legally adopted by such ancestors or by such siblings; and the spouses of such ancestors, siblings, legally adopted persons, and lineal descendants.

(B) The requirements of this division apply for purposes of division (BB)(2)(b) of section 5747.01 of the Revised Code and for the purposes of division (D) of section 5747.012 of the Revised Code. Gain or loss included in a trust's Ohio taxable income is not a qualifying trust amount unless the trust's ownership interest in the qualifying investee is at least five per cent of the total outstanding ownership interests in such qualifying investee at any time during the ten-year period ending on the last day of the trust's taxable year in which the sale, exchange, or other disposition occurs. Nothing in this section negates the requirements in division (BB)(2) of section 5747.01 of the Revised Code.

For the purpose of ascertaining whether the trust's ownership interest in a qualifying investee is at least five per cent of the total outstanding ownership interests in such qualifying investee, the following apply:

(1) On each day, an ownership interest owned, directly or indirectly, by or for a qualifying closely-held C corporation, an S corporation, a partnership other than a publicly traded partnership, a qualifying limited liability company, an estate, or a trust that is irrevocable as defined in division (I)~~(3)~~(4)(b) of section 5747.01 of the Revised Code is considered as being owned proportionately on the same day by the equity investors of such qualifying closely-held C corporation, S corporation, partnership,

or qualifying limited liability company, or by the beneficiaries 823
of such estate or trust, as the case may be. For the purposes of 824
division (B)(1) of this section, a beneficiary's proportionate 825
share of an ownership interest held by a trust shall be 826
ascertained in accordance with section 544(a)(1) of the Internal 827
Revenue Code. 828

(2) On each day, a trust, hereinafter referred to as the 829
first trust, is considered as owning any ownership interest owned, 830
directly or indirectly, by or for another trust, hereinafter 831
referred to as the second trust, if on the same day the second 832
trust has at least one individual trustee who is either (a) a 833
trustee of the first trust, or (b) a member of a family that 834
includes at least one of the trustees of the first trust. 835

(3) On each day, a trust, hereinafter referred to as the 836
first trust, is considered as owning any ownership interest owned, 837
directly or indirectly, by or for another trust, hereinafter 838
referred to as the second trust, if on the same day the second 839
trust has at least one qualifying individual beneficiary who is 840
either (a) a qualifying individual beneficiary of the first trust 841
or (b) a member of a family which includes a qualifying individual 842
beneficiary of the first trust. 843

(4) An ownership interest constructively owned by a person by 844
reason of the application of division (B)(1) of this section 845
shall, for the purpose of applying divisions (B)(1) to (3) of this 846
section, be treated as actually owned by that person. 847

(5) An ownership interest constructively owned by a trust by 848
reason of the application of division (B)(2) or (3) of this 849
section shall not be treated as actually owned by that trust for 850
purposes of applying divisions (B)(1) to (3) of this section. 851

(6) If an ownership interest may be considered as owned by a 852
trust under division (B)(1) or (2) of this section, the ownership 853

interest shall be considered owned by that trust under division 854
(B)(2) of this section. 855

(7) If an ownership interest may be considered as owned by a 856
trust under division (B)(1) or (3) of this section, the ownership 857
interest shall be considered owned by that trust under division 858
(B)(3) of this section. 859

Sec. 5747.012. This section applies for the purposes of 860
divisions (BB)(3) and (BB)(4)(a)(ii) of section 5747.01 of the 861
Revised Code. 862

(A) As used in this section: 863

(1)(a) Except as set forth in division (A)(1)(b) of this 864
section, "qualifying investment income" means the portion of a 865
qualifying investment pass-through entity's net income 866
attributable to transaction fees in connection with the 867
acquisition, ownership, or disposition of intangible property; 868
loan fees; financing fees; consent fees; waiver fees; application 869
fees; net management fees; dividend income; interest income; net 870
capital gains from the sale or exchange or other disposition of 871
intangible property; and all types and classifications of income 872
attributable to distributive shares of income from other 873
pass-through entities. 874

(b)(i) Notwithstanding division (A)(1)(a) of this section, 875
"qualifying investment income" does not include any part of the 876
qualifying investment pass-through entity's net capital gain 877
which, after the application of section 5747.231 of the Revised 878
Code with respect to a trust, would also constitute a qualifying 879
trust amount. 880

(ii) Notwithstanding division (A)(1)(a) of this section, 881
"qualifying investment income" does not include any part of the 882
qualifying investment pass-through entity's net income 883

attributable to the portion of a distributive share of income 884
directly or indirectly from another pass-through entity to the 885
extent such portion constitutes the other pass-through entity's 886
net capital gain which, after the application of section 5747.231 887
of the Revised Code with respect to a trust, would also constitute 888
a qualifying trust amount. 889

(2) "Qualifying investment pass-through entity" means an 890
investment pass-through entity, as defined in section 5733.401 of 891
the Revised Code, subject to the following qualifications: 892

(a) "Forty per cent" shall be substituted for "ninety per 893
cent" wherever "ninety per cent" appears in section 5733.401 of 894
the Revised Code. 895

(b) The pass-through entity must have been formed or 896
organized prior to June 5, 2002. 897

(c) The qualifying section 5747.012 trust or related persons 898
to the qualifying section 5747.012 trust must directly or 899
indirectly own at least five per cent of the equity of the 900
investment pass-through entity each day of the entity's fiscal or 901
calendar year ending within or with the last day of the qualifying 902
section 5747.012 trust's taxable year; 903

(d) During the investment pass-through entity's calendar or 904
fiscal year ending within or with the last day of the qualifying 905
section 5747.012 trust's taxable year, related persons of or to 906
the qualifying section 5747.012 trust must, on each day of the 907
investment pass-through entity's year, own directly, or own 908
through equity investments in other pass-through entities, more 909
than sixty per cent of the equity of the investment pass-through 910
entity. 911

(B) "Qualifying section 5747.012 trust" means a trust 912
satisfying one of the following: 913

(1) The trust was created prior to, and was irrevocable on, 914
June 5, 2002; or 915

(2) If the trust was created after June 4, 2002, or if the 916
trust became irrevocable after June 4, 2002, then at least eighty 917
per cent of the assets transferred to the trust must have been 918
previously owned by related persons to the trust or by a trust 919
created prior to June 5, 2002, under which the creator did not 920
retain the power to change beneficiaries, amend the trust, or 921
revoke the trust. For purposes of division (B)(2) of this section, 922
the power to substitute property of equal value shall not be 923
considered to be a power to change beneficiaries, amend the trust, 924
or revoke the trust. 925

(C) For the purposes of this section, "related persons" means 926
the family of a qualifying individual beneficiary, as defined in 927
division (A)(5) of section 5747.011 of the Revised Code. For the 928
purposes of this division, "family" has the same meaning as in 929
division (A)(6) of section 5747.011 of the Revised Code. 930

(D) For the purposes of applying divisions (A)(2)(c), 931
(A)(2)(d), and (B)(2) of this section, the related persons or the 932
qualifying section 5747.012 trust, as the case may be, shall be 933
deemed to own the equity of the investment pass-through entity 934
after the application of division (B) of section 5747.011 of the 935
Revised Code. 936

(E) "Irrevocable" has the same meaning as in division 937
(I)~~(3)~~(4)(b) of section 5747.01 of the Revised Code. 938

(F) Nothing in this section requires any item of income, 939
gain, or loss not satisfying the definition of qualifying 940
investment income to be treated as modified nonbusiness income. 941
Any item of income, gain, or loss that is not qualifying 942
investment income is modified business income, modified 943
nonbusiness income, or a qualifying trust amount, as the case may 944

be.

945

Sec. 5747.02. (A) For the purpose of providing revenue for the support of schools and local government functions, to provide relief to property taxpayers, to provide revenue for the general revenue fund, and to meet the expenses of administering the tax levied by this chapter, there is hereby levied on every individual, trust, and estate residing in or earning or receiving income in this state, on every individual, trust, and estate earning or receiving lottery winnings, prizes, or awards pursuant to Chapter 3770. of the Revised Code, and on every individual, trust, and estate otherwise having nexus with or in this state under the Constitution of the United States, an annual tax measured in the case of individuals by Ohio adjusted gross income less an exemption for the taxpayer, the taxpayer's spouse, and each dependent as provided in section 5747.025 of the Revised Code; measured in the case of trusts by modified Ohio taxable income under division (D) of this section; and measured in the case of estates by Ohio taxable income. The tax imposed by this section on the balance thus obtained is hereby levied as follows:

OHIO ADJUSTED GROSS INCOME LESS		964
EXEMPTIONS (INDIVIDUALS)		
OR		965
MODIFIED OHIO		966
TAXABLE INCOME (TRUSTS)		967
OR		968
OHIO TAXABLE INCOME (ESTATES)	TAX	969
\$5,000 or less	.743%	970
More than \$5,000 but not more than \$10,000	\$37.15 plus 1.486% of the amount in excess of \$5,000	971
More than \$10,000 but not more than \$15,000	\$111.45 plus 2.972% of the amount in excess of \$10,000	972
More than \$15,000 but not more	\$260.05 plus 3.715% of the	973

than \$20,000	amount in excess of \$15,000	
More than \$20,000 but not more than \$40,000	\$445.80 plus 4.457% of the amount in excess of \$20,000	974
More than \$40,000 but not more than \$80,000	\$1,337.20 plus 5.201% of the amount in excess of \$40,000	975
More than \$80,000 but not more than \$100,000	\$3,417.60 plus 5.943% of the amount in excess of \$80,000	976
More than \$100,000 but not more than \$200,000	\$4,606.20 plus 6.9% of the amount in excess of \$100,000	977
More than \$200,000	\$11,506.20 plus 7.5% of the amount in excess of \$200,000	978

In July of each year, beginning in 2005, the tax commissioner shall adjust the income amounts prescribed in this division by multiplying the percentage increase in the gross domestic product deflator computed that year under section 5747.025 of the Revised Code by each of the income amounts resulting from the adjustment under this division in the preceding year, adding the resulting product to the corresponding income amount resulting from the adjustment in the preceding year, and rounding the resulting sum to the nearest multiple of fifty dollars. The tax commissioner also shall recompute each of the tax dollar amounts to the extent necessary to reflect the adjustment of the income amounts. The rates of taxation shall not be adjusted.

The adjusted amounts apply to taxable years beginning in the calendar year in which the adjustments are made. The tax commissioner shall not make such adjustments in any year in which the amount resulting from the adjustment would be less than the amount resulting from the adjustment in the preceding year.

(B) If the director of budget and management makes a certification to the tax commissioner under division (B) of section 131.44 of the Revised Code, the amount of tax as determined under division (A) of this section shall be reduced by

the percentage prescribed in that certification for taxable years 1000
beginning in the calendar year in which that certification is 1001
made. 1002

(C) The levy of this tax on income does not prevent a 1003
municipal corporation, a joint economic development zone created 1004
under section 715.691, or a joint economic development district 1005
created under section 715.70 or 715.71 or sections 715.72 to 1006
715.81 of the Revised Code from levying a tax on income. 1007

(D) This division applies only to taxable years of a trust 1008
beginning in 2002, 2003, or 2004. 1009

(1) The tax imposed by this section on a trust shall be 1010
computed by multiplying the Ohio modified taxable income of the 1011
trust by the rates prescribed by division (A)(2) of this section. 1012

(2) A credit is allowed against the tax computed under 1013
division (D) of this section equal to the lesser of (1) the tax 1014
paid to another state or the District of Columbia on the trust's 1015
modified nonbusiness income, other than the portion of the trust's 1016
nonbusiness income that is qualifying investment income as defined 1017
in section 5747.012 of the Revised Code, or (2) the effective tax 1018
rate, based on modified Ohio taxable income, multiplied by the 1019
trust's modified nonbusiness income other than the portion of 1020
trust's nonbusiness income that is qualifying investment income. 1021
The credit applies before any other applicable credits. 1022

(3) The credits enumerated in divisions (A)(1) to (13) of 1023
section 5747.98 of the Revised Code do not apply to a trust 1024
subject to this division. Any credits enumerated in other 1025
divisions of section 5747.98 of the Revised Code apply to a trust 1026
subject to this division. To the extent that the trust distributes 1027
income for the taxable year for which a credit is available to the 1028
trust, the credit shall be shared by the trust and its 1029
beneficiaries. The tax commissioner and the trust shall be guided 1030

by applicable regulations of the United States treasury regarding 1031
the sharing of credits. 1032

(E) For the purposes of this section, "trust" means any trust 1033
described in Subchapter J of Chapter 1 of the Internal Revenue 1034
Code, excluding trusts that are not irrevocable as defined in 1035
division (I)~~(3)~~(4)(b) of section 5747.01 of the Revised Code and 1036
that have no modified Ohio taxable income for the taxable year, 1037
charitable remainder trusts, qualified funeral trusts and preneed 1038
funeral contract trusts established pursuant to section 1111.19 of 1039
the Revised Code that are not qualified funeral trusts, endowment 1040
and perpetual care trusts, qualified settlement trusts and funds, 1041
designated settlement trusts and funds, and trusts exempted from 1042
taxation under section 501(a) of the Internal Revenue Code. 1043

Sec. 5748.01. As used in this chapter: 1044

(A) "School district income tax" means an income tax adopted 1045
under one of the following: 1046

(1) Former section 5748.03 of the Revised Code as it existed 1047
prior to its repeal by Amended Substitute House Bill No. 291 of 1048
the 115th general assembly; 1049

(2) Section 5748.03 of the Revised Code as enacted in 1050
Substitute Senate Bill No. 28 of the 118th general assembly; 1051

(3) Section 5748.08 of the Revised Code as enacted in Amended 1052
Substitute Senate Bill No. 17 of the 122nd general assembly. 1053

(B) "Individual" means an individual subject to the tax 1054
levied by section 5747.02 of the Revised Code. 1055

(C) "Estate" means an estate subject to the tax levied by 1056
section 5747.02 of the Revised Code. 1057

(D) "Taxable year" means a taxable year as defined in 1058
division (M) of section 5747.01 of the Revised Code. 1059

(E) "Taxable income" means:	1060
(1) In the case of an individual, adjusted gross income for the taxable year as defined in division (A) of section 5747.01 of the Revised Code, less the exemptions provided by section 5747.02 of the Revised Code;	1061 1062 1063 1064
(2) In the case of an estate, taxable income for the taxable year as defined in division (S) of section 5747.01 of the Revised Code.	1065 1066 1067
(F) Except as provided in section 5747.25 of the Revised Code, "resident" <u>"Resident"</u> of the school district means:	1068 1069
(1) An individual who is a resident of this state as defined in division (I) of section 5747.01 of the Revised Code during all or a portion of the taxable year and who, during all or a portion of such period of state residency, is domiciled in the school district or lives in and maintains a permanent place of abode in the school district;	1070 1071 1072 1073 1074 1075
(2) An estate of a decedent who, at the time of death, was domiciled in the school district.	1076 1077
(G) "School district income" means:	1078
(1) With respect to an individual, the portion of the taxable income of an individual that is received by the individual during the portion of the taxable year that the individual is a resident of the school district and the school district income tax is in effect in that school district. An individual may have school district income with respect to more than one school district.	1079 1080 1081 1082 1083 1084
(2) With respect to an estate, the taxable income of the estate for the portion of the taxable year that the school district income tax is in effect in that school district.	1085 1086 1087
(H) "Taxpayer" means an individual or estate having school district income upon which a school district income tax is	1088 1089

imposed.	1090
(I) "School district purposes" means any of the purposes for	1091
which a tax may be levied pursuant to section 5705.21 of the	1092
Revised Code.	1093
Section 2. That existing sections 5747.01, 5747.011,	1094
5747.012, 5747.02, and 5748.01, and sections 5747.24 and 5747.25	1095
of the Revised Code are hereby repealed.	1096
Section 3. Sections 1 and 2 of this act apply to taxable	1097
years beginning on or after January 1, 2005.	1098