

As Introduced

**127th General Assembly
Regular Session
2007-2008**

H. B. No. 304

Representative Driehaus

—

A B I L L

To amend section 5747.01 of the Revised Code to 1
exclude from income taxation discharges of 2
indebtedness attributable to canceled residential 3
mortgage obligations. 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
that is not otherwise defined in this section has the same meaning 9
as when used in a comparable context in the laws of the United 10
States relating to federal income taxes or if not used in a 11
comparable context in those laws, has the same meaning as in 12
section 5733.40 of the Revised Code. Any reference in this chapter 13
to the Internal Revenue Code includes other laws of the United 14
States relating to federal income taxes. 15

As used in this chapter: 16

(A) "Adjusted gross income" or "Ohio adjusted gross income" 17
means federal adjusted gross income, as defined and used in the 18
Internal Revenue Code, adjusted as provided in this section: 19

(1) Add interest or dividends on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities.	20 21 22
(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.	23 24 25 26 27
(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.	28 29 30 31 32 33
(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.	34 35
(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.	36 37 38 39
(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, 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 or thereafter. "Undistributed net income of a trust" means the taxable income of the trust increased by (a)(i) the additions to adjusted gross	40 41 42 43 44 45 46 47 48 49 50

income required under division (A) of this section and (ii) the 51
personal exemptions allowed to the trust pursuant to section 52
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 53
deductions to adjusted gross income required under division (A) of 54
this section, (ii) the amount of federal income taxes attributable 55
to such income, and (iii) the amount of taxable income that has 56
been included in the adjusted gross income of a beneficiary by 57
reason of a prior accumulation distribution. Any undistributed net 58
income included in the adjusted gross income of a beneficiary 59
shall reduce the undistributed net income of the trust commencing 60
with the earliest years of the accumulation period. 61

(7) Deduct the amount of wages and salaries, if any, not 62
otherwise allowable as a deduction but that would have been 63
allowable as a deduction in computing federal adjusted gross 64
income for the taxable year, had the targeted jobs credit allowed 65
and determined under sections 38, 51, and 52 of the Internal 66
Revenue Code not been in effect. 67

(8) Deduct any interest or interest equivalent on public 68
obligations and purchase obligations to the extent that the 69
interest or interest equivalent is included in federal adjusted 70
gross income. 71

(9) Add any loss or deduct any gain resulting from the sale, 72
exchange, or other disposition of public obligations to the extent 73
that the loss has been deducted or the gain has been included in 74
computing federal adjusted gross income. 75

(10) Deduct or add amounts, as provided under section 5747.70 76
of the Revised Code, related to contributions to variable college 77
savings program accounts made or tuition units purchased pursuant 78
to Chapter 3334. of the Revised Code. 79

(11)(a) Deduct, to the extent not otherwise allowable as a 80
deduction or exclusion in computing federal or Ohio adjusted gross 81

income for the taxable year, the amount the taxpayer paid during 82
the taxable year for medical care insurance and qualified 83
long-term care insurance for the taxpayer, the taxpayer's spouse, 84
and dependents. No deduction for medical care insurance under 85
division (A)(11) of this section shall be allowed either to any 86
taxpayer who is eligible to participate in any subsidized health 87
plan maintained by any employer of the taxpayer or of the 88
taxpayer's spouse, or to any taxpayer who is entitled to, or on 89
application would be entitled to, benefits under part A of Title 90
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 91
301, as amended. For the purposes of division (A)(11)(a) of this 92
section, "subsidized health plan" means a health plan for which 93
the employer pays any portion of the plan's cost. The deduction 94
allowed under division (A)(11)(a) of this section shall be the net 95
of any related premium refunds, related premium reimbursements, or 96
related insurance premium dividends received during the taxable 97
year. 98

(b) Deduct, to the extent not otherwise deducted or excluded 99
in computing federal or Ohio adjusted gross income during the 100
taxable year, the amount the taxpayer paid during the taxable 101
year, not compensated for by any insurance or otherwise, for 102
medical care of the taxpayer, the taxpayer's spouse, and 103
dependents, to the extent the expenses exceed seven and one-half 104
per cent of the taxpayer's federal adjusted gross income. 105

(c) For purposes of division (A)(11) of this section, 106
"medical care" has the meaning given in section 213 of the 107
Internal Revenue Code, subject to the special rules, limitations, 108
and exclusions set forth therein, and "qualified long-term care" 109
has the same meaning given in section 7702B(c) of the Internal 110
Revenue Code. 111

(12)(a) Deduct any amount included in federal adjusted gross 112
income solely because the amount represents a reimbursement or 113

refund of expenses that in any year the taxpayer had deducted as 114
an itemized deduction pursuant to section 63 of the Internal 115
Revenue Code and applicable United States department of the 116
treasury regulations. The deduction otherwise allowed under 117
division (A)(12)(a) of this section shall be reduced to the extent 118
the reimbursement is attributable to an amount the taxpayer 119
deducted under this section in any taxable year. 120

(b) Add any amount not otherwise included in Ohio adjusted 121
gross income for any taxable year to the extent that the amount is 122
attributable to the recovery during the taxable year of any amount 123
deducted or excluded in computing federal or Ohio adjusted gross 124
income in any taxable year. 125

(13) Deduct any portion of the deduction described in section 126
1341(a)(2) of the Internal Revenue Code, for repaying previously 127
reported income received under a claim of right, that meets both 128
of the following requirements: 129

(a) It is allowable for repayment of an item that was 130
included in the taxpayer's adjusted gross income for a prior 131
taxable year and did not qualify for a credit under division (A) 132
or (B) of section 5747.05 of the Revised Code for that year; 133

(b) It does not otherwise reduce the taxpayer's adjusted 134
gross income for the current or any other taxable year. 135

(14) Deduct an amount equal to the deposits made to, and net 136
investment earnings of, a medical savings account during the 137
taxable year, in accordance with section 3924.66 of the Revised 138
Code. The deduction allowed by division (A)(14) of this section 139
does not apply to medical savings account deposits and earnings 140
otherwise deducted or excluded for the current or any other 141
taxable year from the taxpayer's federal adjusted gross income. 142

(15)(a) Add an amount equal to the funds withdrawn from a 143
medical savings account during the taxable year, and the net 144

investment earnings on those funds, when the funds withdrawn were 145
used for any purpose other than to reimburse an account holder 146
for, or to pay, eligible medical expenses, in accordance with 147
section 3924.66 of the Revised Code; 148

(b) Add the amounts distributed from a medical savings 149
account under division (A)(2) of section 3924.68 of the Revised 150
Code during the taxable year. 151

(16) Add any amount claimed as a credit under section 152
5747.059 of the Revised Code to the extent that such amount 153
satisfies either of the following: 154

(a) The amount was deducted or excluded from the computation 155
of the taxpayer's federal adjusted gross income as required to be 156
reported for the taxpayer's taxable year under the Internal 157
Revenue Code; 158

(b) The amount resulted in a reduction of the taxpayer's 159
federal adjusted gross income as required to be reported for any 160
of the taxpayer's taxable years under the Internal Revenue Code. 161

(17) Deduct the amount contributed by the taxpayer to an 162
individual development account program established by a county 163
department of job and family services pursuant to sections 329.11 164
to 329.14 of the Revised Code for the purpose of matching funds 165
deposited by program participants. On request of the tax 166
commissioner, the taxpayer shall provide any information that, in 167
the tax commissioner's opinion, is necessary to establish the 168
amount deducted under division (A)(17) of this section. 169

(18) Beginning in taxable year 2001 but not for any taxable 170
year beginning after December 31, 2005, if the taxpayer is married 171
and files a joint return and the combined federal adjusted gross 172
income of the taxpayer and the taxpayer's spouse for the taxable 173
year does not exceed one hundred thousand dollars, or if the 174
taxpayer is single and has a federal adjusted gross income for the 175

taxable year not exceeding fifty thousand dollars, deduct amounts 176
paid during the taxable year for qualified tuition and fees paid 177
to an eligible institution for the taxpayer, the taxpayer's 178
spouse, or any dependent of the taxpayer, who is a resident of 179
this state and is enrolled in or attending a program that 180
culminates in a degree or diploma at an eligible institution. The 181
deduction may be claimed only to the extent that qualified tuition 182
and fees are not otherwise deducted or excluded for any taxable 183
year from federal or Ohio adjusted gross income. The deduction may 184
not be claimed for educational expenses for which the taxpayer 185
claims a credit under section 5747.27 of the Revised Code. 186

(19) Add any reimbursement received during the taxable year 187
of any amount the taxpayer deducted under division (A)(18) of this 188
section in any previous taxable year to the extent the amount is 189
not otherwise included in Ohio adjusted gross income. 190

(20)(a)(i) Add five-sixths of the amount of depreciation 191
expense allowed by subsection (k) of section 168 of the Internal 192
Revenue Code, including the taxpayer's proportionate or 193
distributive share of the amount of depreciation expense allowed 194
by that subsection to a pass-through entity in which the taxpayer 195
has a direct or indirect ownership interest. 196

(ii) Add five-sixths of the amount of qualifying section 179 197
depreciation expense, including a person's proportionate or 198
distributive share of the amount of qualifying section 179 199
depreciation expense allowed to any pass-through entity in which 200
the person has a direct or indirect ownership. For the purposes of 201
this division, "qualifying section 179 depreciation expense" means 202
the difference between (I) the amount of depreciation expense 203
directly or indirectly allowed to the taxpayer under section 179 204
of the Internal Revenue Code, and (II) the amount of depreciation 205
expense directly or indirectly allowed to the taxpayer under 206
section 179 of the Internal Revenue Code as that section existed 207

on December 31, 2002. 208

The tax commissioner, under procedures established by the 209
commissioner, may waive the add-backs related to a pass-through 210
entity if the taxpayer owns, directly or indirectly, less than 211
five per cent of the pass-through entity. 212

(b) Nothing in division (A)(20) of this section shall be 213
construed to adjust or modify the adjusted basis of any asset. 214

(c) To the extent the add-back required under division 215
(A)(20)(a) of this section is attributable to property generating 216
nonbusiness income or loss allocated under section 5747.20 of the 217
Revised Code, the add-back shall be situated to the same location 218
as the nonbusiness income or loss generated by the property for 219
the purpose of determining the credit under division (A) of 220
section 5747.05 of the Revised Code. Otherwise, the add-back shall 221
be apportioned, subject to one or more of the four alternative 222
methods of apportionment enumerated in section 5747.21 of the 223
Revised Code. 224

(d) For the purposes of division (A) of this section, net 225
operating loss carryback and carryforward shall not include 226
five-sixths of the allowance of any net operating loss deduction 227
carryback or carryforward to the taxable year to the extent such 228
loss resulted from depreciation allowed by section 168(k) of the 229
Internal Revenue Code and by the qualifying section 179 230
depreciation expense amount. 231

(21)(a) If the taxpayer was required to add an amount under 232
division (A)(20)(a) of this section for a taxable year, deduct 233
one-fifth of the amount so added for each of the five succeeding 234
taxable years. 235

(b) If the amount deducted under division (A)(21)(a) of this 236
section is attributable to an add-back allocated under division 237
(A)(20)(c) of this section, the amount deducted shall be situated 238

to the same location. Otherwise, the add-back shall be apportioned 239
using the apportionment factors for the taxable year in which the 240
deduction is taken, subject to one or more of the four alternative 241
methods of apportionment enumerated in section 5747.21 of the 242
Revised Code. 243

(c) No deduction is available under division (A)(21)(a) of 244
this section with regard to any depreciation allowed by section 245
168(k) of the Internal Revenue Code and by the qualifying section 246
179 depreciation expense amount to the extent that such 247
depreciation resulted in or increased a federal net operating loss 248
carryback or carryforward to a taxable year to which division 249
(A)(20)(d) of this section does not apply. 250

(22) Deduct, to the extent not otherwise deducted or excluded 251
in computing federal or Ohio adjusted gross income for the taxable 252
year, the amount the taxpayer received during the taxable year as 253
reimbursement for life insurance premiums under section 5919.31 of 254
the Revised Code. 255

(23) Deduct, to the extent not otherwise deducted or excluded 256
in computing federal or Ohio adjusted gross income for the taxable 257
year, the amount the taxpayer received during the taxable year as 258
a death benefit paid by the adjutant general under section 5919.33 259
of the Revised Code. 260

(24) Deduct, to the extent included in federal adjusted gross 261
income and not otherwise allowable as a deduction or exclusion in 262
computing federal or Ohio adjusted gross income for the taxable 263
year, military pay and allowances received by the taxpayer during 264
the taxable year for active duty service in the United States 265
army, air force, navy, marine corps, or coast guard or reserve 266
components thereof or the national guard. The deduction may not be 267
claimed for military pay and allowances received by the taxpayer 268
while the taxpayer is stationed in this state. 269

(25) Deduct, to the extent not otherwise allowable as a 270
deduction or exclusion in computing federal or Ohio adjusted gross 271
income for the taxable year and not otherwise compensated for by 272
any other source, the amount of qualified organ donation expenses 273
incurred by the taxpayer during the taxable year, not to exceed 274
ten thousand dollars. A taxpayer may deduct qualified organ 275
donation expenses only once for all taxable years beginning with 276
taxable years beginning in 2007. 277

For the purposes of division (A)(25) of this section: 278

(a) "Human organ" means all or any portion of a human liver, 279
pancreas, kidney, intestine, or lung, and any portion of human 280
bone marrow. 281

(b) "Qualified organ donation expenses" means travel 282
expenses, lodging expenses, and wages and salary forgone by a 283
taxpayer in connection with the taxpayer's donation, while living, 284
of one or more of the taxpayer's human organs to another human 285
being. 286

(26)(a) For taxable years beginning in 2008 but not for any 287
taxable year beginning after December 31, 2012, deduct qualified 288
mortgage cancellation income to the extent included in federal 289
adjusted gross income and not otherwise allowable as a deduction 290
or exclusion in computing federal or Ohio adjusted gross income 291
for the taxable year. The deduction allowed under this division 292
shall not exceed the excess, if any, of the outstanding principal 293
amount of indebtedness on the taxpayer's principal residence 294
immediately before its discharge over the sum of: 295

(i) The amount realized from the sale of the real property 296
securing such indebtedness, reduced by the cost of such sale; and 297

(ii) The outstanding principal amount of any other 298
indebtedness secured by the real property. 299

If the real property securing such indebtedness includes more 300

than the taxpayer's principal residence, the deduction under this 301
division shall be limited to that portion of the income arising 302
from the discharge of only that indebtedness that is secured by 303
the taxpayer's principal residence. The tax commissioner may 304
prescribe by rule the method for computing such portion. 305

(b) As used in division (A)(26) of this section: 306

(i) "Qualified mortgage cancellation income" means income 307
recognized for the taxable year under the Internal Revenue Code 308
arising from the discharge, in whole or in part, of indebtedness 309
on a taxpayer's principal residence to the extent such 310
indebtedness is from a first mortgage. "Qualified mortgage 311
cancellation income" does not include income arising from the 312
discharge of a second or inferior mortgage or a home equity loan. 313

(ii) "Principal residence" means a dwelling, including a unit 314
in a multiple-unit dwelling or a manufactured home or mobile home, 315
owned and occupied as the taxpayer's principal home, together with 316
so much of the land surrounding it, not exceeding one acre, as is 317
reasonably necessary for the use of the dwelling or unit as a 318
home. 319

(B) "Business income" means income, including gain or loss, 320
arising from transactions, activities, and sources in the regular 321
course of a trade or business and includes income, gain, or loss 322
from real property, tangible property, and intangible property if 323
the acquisition, rental, management, and disposition of the 324
property constitute integral parts of the regular course of a 325
trade or business operation. "Business income" includes income, 326
including gain or loss, from a partial or complete liquidation of 327
a business, including, but not limited to, gain or loss from the 328
sale or other disposition of goodwill. 329

(C) "Nonbusiness income" means all income other than business 330
income and may include, but is not limited to, compensation, rents 331

and royalties from real or tangible personal property, capital 332
gains, interest, dividends and distributions, patent or copyright 333
royalties, or lottery winnings, prizes, and awards. 334

(D) "Compensation" means any form of remuneration paid to an 335
employee for personal services. 336

(E) "Fiduciary" means a guardian, trustee, executor, 337
administrator, receiver, conservator, or any other person acting 338
in any fiduciary capacity for any individual, trust, or estate. 339

(F) "Fiscal year" means an accounting period of twelve months 340
ending on the last day of any month other than December. 341

(G) "Individual" means any natural person. 342

(H) "Internal Revenue Code" means the "Internal Revenue Code 343
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 344

(I) "Resident" means any of the following, provided that 345
division (I)(3) of this section applies only to taxable years of a 346
trust beginning in 2002 or thereafter: 347

(1) An individual who is domiciled in this state, subject to 348
section 5747.24 of the Revised Code; 349

(2) The estate of a decedent who at the time of death was 350
domiciled in this state. The domicile tests of section 5747.24 of 351
the Revised Code are not controlling for purposes of division 352
(I)(2) of this section. 353

(3) A trust that, in whole or part, resides in this state. If 354
only part of a trust resides in this state, the trust is a 355
resident only with respect to that part. 356

For the purposes of division (I)(3) of this section: 357

(a) A trust resides in this state for the trust's current 358
taxable year to the extent, as described in division (I)(3)(d) of 359
this section, that the trust consists directly or indirectly, in 360
whole or in part, of assets, net of any related liabilities, that 361

were transferred, or caused to be transferred, directly or 362
indirectly, to the trust by any of the following: 363

(i) A person, a court, or a governmental entity or 364
instrumentality on account of the death of a decedent, but only if 365
the trust is described in division (I)(3)(e)(i) or (ii) of this 366
section; 367

(ii) A person who was domiciled in this state for the 368
purposes of this chapter when the person directly or indirectly 369
transferred assets to an irrevocable trust, but only if at least 370
one of the trust's qualifying beneficiaries is domiciled in this 371
state for the purposes of this chapter during all or some portion 372
of the trust's current taxable year; 373

(iii) A person who was domiciled in this state for the 374
purposes of this chapter when the trust document or instrument or 375
part of the trust document or instrument became irrevocable, but 376
only if at least one of the trust's qualifying beneficiaries is a 377
resident domiciled in this state for the purposes of this chapter 378
during all or some portion of the trust's current taxable year. If 379
a trust document or instrument became irrevocable upon the death 380
of a person who at the time of death was domiciled in this state 381
for purposes of this chapter, that person is a person described in 382
division (I)(3)(a)(iii) of this section. 383

(b) A trust is irrevocable to the extent that the transferor 384
is not considered to be the owner of the net assets of the trust 385
under sections 671 to 678 of the Internal Revenue Code. 386

(c) With respect to a trust other than a charitable lead 387
trust, "qualifying beneficiary" has the same meaning as "potential 388
current beneficiary" as defined in section 1361(e)(2) of the 389
Internal Revenue Code, and with respect to a charitable lead trust 390
"qualifying beneficiary" is any current, future, or contingent 391
beneficiary, but with respect to any trust "qualifying 392

beneficiary" excludes a person or a governmental entity or 393
instrumentality to any of which a contribution would qualify for 394
the charitable deduction under section 170 of the Internal Revenue 395
Code. 396

(d) For the purposes of division (I)(3)(a) of this section, 397
the extent to which a trust consists directly or indirectly, in 398
whole or in part, of assets, net of any related liabilities, that 399
were transferred directly or indirectly, in whole or part, to the 400
trust by any of the sources enumerated in that division shall be 401
ascertained by multiplying the fair market value of the trust's 402
assets, net of related liabilities, by the qualifying ratio, which 403
shall be computed as follows: 404

(i) The first time the trust receives assets, the numerator 405
of the qualifying ratio is the fair market value of those assets 406
at that time, net of any related liabilities, from sources 407
enumerated in division (I)(3)(a) of this section. The denominator 408
of the qualifying ratio is the fair market value of all the 409
trust's assets at that time, net of any related liabilities. 410

(ii) Each subsequent time the trust receives assets, a 411
revised qualifying ratio shall be computed. The numerator of the 412
revised qualifying ratio is the sum of (1) the fair market value 413
of the trust's assets immediately prior to the subsequent 414
transfer, net of any related liabilities, multiplied by the 415
qualifying ratio last computed without regard to the subsequent 416
transfer, and (2) the fair market value of the subsequently 417
transferred assets at the time transferred, net of any related 418
liabilities, from sources enumerated in division (I)(3)(a) of this 419
section. The denominator of the revised qualifying ratio is the 420
fair market value of all the trust's assets immediately after the 421
subsequent transfer, net of any related liabilities. 422

(iii) Whether a transfer to the trust is by or from any of 423
the sources enumerated in division (I)(3)(a) of this section shall 424

be ascertained without regard to the domicile of the trust's 425
beneficiaries. 426

(e) For the purposes of division (I)(3)(a)(i) of this 427
section: 428

(i) A trust is described in division (I)(3)(e)(i) of this 429
section if the trust is a testamentary trust and the testator of 430
that testamentary trust was domiciled in this state at the time of 431
the testator's death for purposes of the taxes levied under 432
Chapter 5731. of the Revised Code. 433

(ii) A trust is described in division (I)(3)(e)(ii) of this 434
section if the transfer is a qualifying transfer described in any 435
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 436
irrevocable inter vivos trust, and at least one of the trust's 437
qualifying beneficiaries is domiciled in this state for purposes 438
of this chapter during all or some portion of the trust's current 439
taxable year. 440

(f) For the purposes of division (I)(3)(e)(ii) of this 441
section, a "qualifying transfer" is a transfer of assets, net of 442
any related liabilities, directly or indirectly to a trust, if the 443
transfer is described in any of the following: 444

(i) The transfer is made to a trust, created by the decedent 445
before the decedent's death and while the decedent was domiciled 446
in this state for the purposes of this chapter, and, prior to the 447
death of the decedent, the trust became irrevocable while the 448
decedent was domiciled in this state for the purposes of this 449
chapter. 450

(ii) The transfer is made to a trust to which the decedent, 451
prior to the decedent's death, had directly or indirectly 452
transferred assets, net of any related liabilities, while the 453
decedent was domiciled in this state for the purposes of this 454
chapter, and prior to the death of the decedent the trust became 455

irrevocable while the decedent was domiciled in this state for the 456
purposes of this chapter. 457

(iii) The transfer is made on account of a contractual 458
relationship existing directly or indirectly between the 459
transferor and either the decedent or the estate of the decedent 460
at any time prior to the date of the decedent's death, and the 461
decedent was domiciled in this state at the time of death for 462
purposes of the taxes levied under Chapter 5731. of the Revised 463
Code. 464

(iv) The transfer is made to a trust on account of a 465
contractual relationship existing directly or indirectly between 466
the transferor and another person who at the time of the 467
decedent's death was domiciled in this state for purposes of this 468
chapter. 469

(v) The transfer is made to a trust on account of the will of 470
a testator. 471

(vi) The transfer is made to a trust created by or caused to 472
be created by a court, and the trust was directly or indirectly 473
created in connection with or as a result of the death of an 474
individual who, for purposes of the taxes levied under Chapter 475
5731. of the Revised Code, was domiciled in this state at the time 476
of the individual's death. 477

(g) The tax commissioner may adopt rules to ascertain the 478
part of a trust residing in this state. 479

(J) "Nonresident" means an individual or estate that is not a 480
resident. An individual who is a resident for only part of a 481
taxable year is a nonresident for the remainder of that taxable 482
year. 483

(K) "Pass-through entity" has the same meaning as in section 484
5733.04 of the Revised Code. 485

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

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

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

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

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

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

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

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

(R) "Overpayment" means any amount already paid that exceeds 516
the figure determined to be the correct amount of the tax. 517

(S) "Taxable income" or "Ohio taxable income" applies only to 518
estates and trusts, and means federal taxable income, as defined 519
and used in the Internal Revenue Code, adjusted as follows: 520

(1) Add interest or dividends, net of ordinary, necessary, 521
and reasonable expenses not deducted in computing federal taxable 522
income, on obligations or securities of any state or of any 523
political subdivision or authority of any state, other than this 524
state and its subdivisions and authorities, but only to the extent 525
that such net amount is not otherwise includible in Ohio taxable 526
income and is described in either division (S)(1)(a) or (b) of 527
this section: 528

(a) The net amount is not attributable to the S portion of an 529
electing small business trust and has not been distributed to 530
beneficiaries for the taxable year; 531

(b) The net amount is attributable to the S portion of an 532
electing small business trust for the taxable year. 533

(2) Add interest or dividends, net of ordinary, necessary, 534
and reasonable expenses not deducted in computing federal taxable 535
income, on obligations of any authority, commission, 536
instrumentality, territory, or possession of the United States to 537
the extent that the interest or dividends are exempt from federal 538
income taxes but not from state income taxes, but only to the 539
extent that such net amount is not otherwise includible in Ohio 540
taxable income and is described in either division (S)(1)(a) or 541
(b) of this section; 542

(3) Add the amount of personal exemption allowed to the 543
estate pursuant to section 642(b) of the Internal Revenue Code; 544

(4) Deduct interest or dividends, net of related expenses 545
deducted in computing federal taxable income, on obligations of 546

the United States and its territories and possessions or of any 547
authority, commission, or instrumentality of the United States to 548
the extent that the interest or dividends are exempt from state 549
taxes under the laws of the United States, but only to the extent 550
that such amount is included in federal taxable income and is 551
described in either division (S)(1)(a) or (b) of this section; 552

(5) Deduct the amount of wages and salaries, if any, not 553
otherwise allowable as a deduction but that would have been 554
allowable as a deduction in computing federal taxable income for 555
the taxable year, had the targeted jobs credit allowed under 556
sections 38, 51, and 52 of the Internal Revenue Code not been in 557
effect, but only to the extent such amount relates either to 558
income included in federal taxable income for the taxable year or 559
to income of the S portion of an electing small business trust for 560
the taxable year; 561

(6) Deduct any interest or interest equivalent, net of 562
related expenses deducted in computing federal taxable income, on 563
public obligations and purchase obligations, but only to the 564
extent that such net amount relates either to income included in 565
federal taxable income for the taxable year or to income of the S 566
portion of an electing small business trust for the taxable year; 567

(7) Add any loss or deduct any gain resulting from sale, 568
exchange, or other disposition of public obligations to the extent 569
that such loss has been deducted or such gain has been included in 570
computing either federal taxable income or income of the S portion 571
of an electing small business trust for the taxable year; 572

(8) Except in the case of the final return of an estate, add 573
any amount deducted by the taxpayer on both its Ohio estate tax 574
return pursuant to section 5731.14 of the Revised Code, and on its 575
federal income tax return in determining federal taxable income; 576

(9)(a) Deduct any amount included in federal taxable income 577

solely because the amount represents a reimbursement or refund of 578
expenses that in a previous year the decedent had deducted as an 579
itemized deduction pursuant to section 63 of the Internal Revenue 580
Code and applicable treasury regulations. The deduction otherwise 581
allowed under division (S)(9)(a) of this section shall be reduced 582
to the extent the reimbursement is attributable to an amount the 583
taxpayer or decedent deducted under this section in any taxable 584
year. 585

(b) Add any amount not otherwise included in Ohio taxable 586
income for any taxable year to the extent that the amount is 587
attributable to the recovery during the taxable year of any amount 588
deducted or excluded in computing federal or Ohio taxable income 589
in any taxable year, but only to the extent such amount has not 590
been distributed to beneficiaries for the taxable year. 591

(10) Deduct any portion of the deduction described in section 592
1341(a)(2) of the Internal Revenue Code, for repaying previously 593
reported income received under a claim of right, that meets both 594
of the following requirements: 595

(a) It is allowable for repayment of an item that was 596
included in the taxpayer's taxable income or the decedent's 597
adjusted gross income for a prior taxable year and did not qualify 598
for a credit under division (A) or (B) of section 5747.05 of the 599
Revised Code for that year. 600

(b) It does not otherwise reduce the taxpayer's taxable 601
income or the decedent's adjusted gross income for the current or 602
any other taxable year. 603

(11) Add any amount claimed as a credit under section 604
5747.059 of the Revised Code to the extent that the amount 605
satisfies either of the following: 606

(a) The amount was deducted or excluded from the computation 607
of the taxpayer's federal taxable income as required to be 608

reported for the taxpayer's taxable year under the Internal Revenue Code; 609
610

(b) The amount resulted in a reduction in the taxpayer's federal taxable income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code. 611
612
613

(12) Deduct any amount, net of related expenses deducted in computing federal taxable income, that a trust is required to report as farm income on its federal income tax return, but only if the assets of the trust include at least ten acres of land satisfying the definition of "land devoted exclusively to agricultural use" under section 5713.30 of the Revised Code, regardless of whether the land is valued for tax purposes as such land under sections 5713.30 to 5713.38 of the Revised Code. If the trust is a pass-through entity investor, section 5747.231 of the Revised Code applies in ascertaining if the trust is eligible to claim the deduction provided by division (S)(12) of this section in connection with the pass-through entity's farm income. 614
615
616
617
618
619
620
621
622
623
624
625

Except for farm income attributable to the S portion of an electing small business trust, the deduction provided by division (S)(12) of this section is allowed only to the extent that the trust has not distributed such farm income. Division (S)(12) of this section applies only to taxable years of a trust beginning in 2002 or thereafter. 626
627
628
629
630
631

(13) Add the net amount of income described in section 641(c) of the Internal Revenue Code to the extent that amount is not included in federal taxable income. 632
633
634

(14) Add or deduct the amount the taxpayer would be required to add or deduct under division (A)(20) or (21) of this section if the taxpayer's Ohio taxable income were computed in the same manner as an individual's Ohio adjusted gross income is computed under this section. In the case of a trust, division (S)(14) of 635
636
637
638
639

this section applies only to any of the trust's taxable years 640
beginning in 2002 or thereafter. 641

(T) "School district income" and "school district income tax" 642
have the same meanings as in section 5748.01 of the Revised Code. 643

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 644
of this section, "public obligations," "purchase obligations," and 645
"interest or interest equivalent" have the same meanings as in 646
section 5709.76 of the Revised Code. 647

(V) "Limited liability company" means any limited liability 648
company formed under Chapter 1705. of the Revised Code or under 649
the laws of any other state. 650

(W) "Pass-through entity investor" means any person who, 651
during any portion of a taxable year of a pass-through entity, is 652
a partner, member, shareholder, or equity investor in that 653
pass-through entity. 654

(X) "Banking day" has the same meaning as in section 1304.01 655
of the Revised Code. 656

(Y) "Month" means a calendar month. 657

(Z) "Quarter" means the first three months, the second three 658
months, the third three months, or the last three months of the 659
taxpayer's taxable year. 660

(AA)(1) "Eligible institution" means a state university or 661
state institution of higher education as defined in section 662
3345.011 of the Revised Code, or a private, nonprofit college, 663
university, or other post-secondary institution located in this 664
state that possesses a certificate of authorization issued by the 665
Ohio board of regents pursuant to Chapter 1713. of the Revised 666
Code or a certificate of registration issued by the state board of 667
career colleges and schools under Chapter 3332. of the Revised 668
Code. 669

(2) "Qualified tuition and fees" means tuition and fees 670
imposed by an eligible institution as a condition of enrollment or 671
attendance, not exceeding two thousand five hundred dollars in 672
each of the individual's first two years of post-secondary 673
education. If the individual is a part-time student, "qualified 674
tuition and fees" includes tuition and fees paid for the academic 675
equivalent of the first two years of post-secondary education 676
during a maximum of five taxable years, not exceeding a total of 677
five thousand dollars. "Qualified tuition and fees" does not 678
include: 679

(a) Expenses for any course or activity involving sports, 680
games, or hobbies unless the course or activity is part of the 681
individual's degree or diploma program; 682

(b) The cost of books, room and board, student activity fees, 683
athletic fees, insurance expenses, or other expenses unrelated to 684
the individual's academic course of instruction; 685

(c) Tuition, fees, or other expenses paid or reimbursed 686
through an employer, scholarship, grant in aid, or other 687
educational benefit program. 688

(BB)(1) "Modified business income" means the business income 689
included in a trust's Ohio taxable income after such taxable 690
income is first reduced by the qualifying trust amount, if any. 691

(2) "Qualifying trust amount" of a trust means capital gains 692
and losses from the sale, exchange, or other disposition of equity 693
or ownership interests in, or debt obligations of, a qualifying 694
investee to the extent included in the trust's Ohio taxable 695
income, but only if the following requirements are satisfied: 696

(a) The book value of the qualifying investee's physical 697
assets in this state and everywhere, as of the last day of the 698
qualifying investee's fiscal or calendar year ending immediately 699
prior to the date on which the trust recognizes the gain or loss, 700

is available to the trust. 701

(b) The requirements of section 5747.011 of the Revised Code 702
are satisfied for the trust's taxable year in which the trust 703
recognizes the gain or loss. 704

Any gain or loss that is not a qualifying trust amount is 705
modified business income, qualifying investment income, or 706
modified nonbusiness income, as the case may be. 707

(3) "Modified nonbusiness income" means a trust's Ohio 708
taxable income other than modified business income, other than the 709
qualifying trust amount, and other than qualifying investment 710
income, as defined in section 5747.012 of the Revised Code, to the 711
extent such qualifying investment income is not otherwise part of 712
modified business income. 713

(4) "Modified Ohio taxable income" applies only to trusts, 714
and means the sum of the amounts described in divisions (BB)(4)(a) 715
to (c) of this section: 716

(a) The fraction, calculated under section 5747.013, and 717
applying section 5747.231 of the Revised Code, multiplied by the 718
sum of the following amounts: 719

(i) The trust's modified business income; 720

(ii) The trust's qualifying investment income, as defined in 721
section 5747.012 of the Revised Code, but only to the extent the 722
qualifying investment income does not otherwise constitute 723
modified business income and does not otherwise constitute a 724
qualifying trust amount. 725

(b) The qualifying trust amount multiplied by a fraction, the 726
numerator of which is the sum of the book value of the qualifying 727
investee's physical assets in this state on the last day of the 728
qualifying investee's fiscal or calendar year ending immediately 729
prior to the day on which the trust recognizes the qualifying 730

trust amount, and the denominator of which is the sum of the book 731
value of the qualifying investee's total physical assets 732
everywhere on the last day of the qualifying investee's fiscal or 733
calendar year ending immediately prior to the day on which the 734
trust recognizes the qualifying trust amount. If, for a taxable 735
year, the trust recognizes a qualifying trust amount with respect 736
to more than one qualifying investee, the amount described in 737
division (BB)(4)(b) of this section shall equal the sum of the 738
products so computed for each such qualifying investee. 739

(c)(i) With respect to a trust or portion of a trust that is 740
a resident as ascertained in accordance with division (I)(3)(d) of 741
this section, its modified nonbusiness income. 742

(ii) With respect to a trust or portion of a trust that is 743
not a resident as ascertained in accordance with division 744
(I)(3)(d) of this section, the amount of its modified nonbusiness 745
income satisfying the descriptions in divisions (B)(2) to (5) of 746
section 5747.20 of the Revised Code, except as otherwise provided 747
in division (BB)(4)(c)(ii) of this section. With respect to a 748
trust or portion of a trust that is not a resident as ascertained 749
in accordance with division (I)(3)(d) of this section, the trust's 750
portion of modified nonbusiness income recognized from the sale, 751
exchange, or other disposition of a debt interest in or equity 752
interest in a section 5747.212 entity, as defined in section 753
5747.212 of the Revised Code, without regard to division (A) of 754
that section, shall not be allocated to this state in accordance 755
with section 5747.20 of the Revised Code but shall be apportioned 756
to this state in accordance with division (B) of section 5747.212 757
of the Revised Code without regard to division (A) of that 758
section. 759

If the allocation and apportionment of a trust's income under 760
divisions (BB)(4)(a) and (c) of this section do not fairly 761
represent the modified Ohio taxable income of the trust in this 762

state, the alternative methods described in division (C) of 763
section 5747.21 of the Revised Code may be applied in the manner 764
and to the same extent provided in that section. 765

(5)(a) Except as set forth in division (BB)(5)(b) of this 766
section, "qualifying investee" means a person in which a trust has 767
an equity or ownership interest, or a person or unit of government 768
the debt obligations of either of which are owned by a trust. For 769
the purposes of division (BB)(2)(a) of this section and for the 770
purpose of computing the fraction described in division (BB)(4)(b) 771
of this section, all of the following apply: 772

(i) If the qualifying investee is a member of a qualifying 773
controlled group on the last day of the qualifying investee's 774
fiscal or calendar year ending immediately prior to the date on 775
which the trust recognizes the gain or loss, then "qualifying 776
investee" includes all persons in the qualifying controlled group 777
on such last day. 778

(ii) If the qualifying investee, or if the qualifying 779
investee and any members of the qualifying controlled group of 780
which the qualifying investee is a member on the last day of the 781
qualifying investee's fiscal or calendar year ending immediately 782
prior to the date on which the trust recognizes the gain or loss, 783
separately or cumulatively own, directly or indirectly, on the 784
last day of the qualifying investee's fiscal or calendar year 785
ending immediately prior to the date on which the trust recognizes 786
the qualifying trust amount, more than fifty per cent of the 787
equity of a pass-through entity, then the qualifying investee and 788
the other members are deemed to own the proportionate share of the 789
pass-through entity's physical assets which the pass-through 790
entity directly or indirectly owns on the last day of the 791
pass-through entity's calendar or fiscal year ending within or 792
with the last day of the qualifying investee's fiscal or calendar 793
year ending immediately prior to the date on which the trust 794

recognizes the qualifying trust amount. 795

(iii) For the purposes of division (BB)(5)(a)(iii) of this 796
section, "upper level pass-through entity" means a pass-through 797
entity directly or indirectly owning any equity of another 798
pass-through entity, and "lower level pass-through entity" means 799
that other pass-through entity. 800

An upper level pass-through entity, whether or not it is also 801
a qualifying investee, is deemed to own, on the last day of the 802
upper level pass-through entity's calendar or fiscal year, the 803
proportionate share of the lower level pass-through entity's 804
physical assets that the lower level pass-through entity directly 805
or indirectly owns on the last day of the lower level pass-through 806
entity's calendar or fiscal year ending within or with the last 807
day of the upper level pass-through entity's fiscal or calendar 808
year. If the upper level pass-through entity directly and 809
indirectly owns less than fifty per cent of the equity of the 810
lower level pass-through entity on each day of the upper level 811
pass-through entity's calendar or fiscal year in which or with 812
which ends the calendar or fiscal year of the lower level 813
pass-through entity and if, based upon clear and convincing 814
evidence, complete information about the location and cost of the 815
physical assets of the lower pass-through entity is not available 816
to the upper level pass-through entity, then solely for purposes 817
of ascertaining if a gain or loss constitutes a qualifying trust 818
amount, the upper level pass-through entity shall be deemed as 819
owning no equity of the lower level pass-through entity for each 820
day during the upper level pass-through entity's calendar or 821
fiscal year in which or with which ends the lower level 822
pass-through entity's calendar or fiscal year. Nothing in division 823
(BB)(5)(a)(iii) of this section shall be construed to provide for 824
any deduction or exclusion in computing any trust's Ohio taxable 825
income. 826

(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)(1) For the purposes of division (EE) of this section:

(a) "Qualifying person" means any person other than a qualifying corporation.

(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:

(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year;

(ii) A subsidiary that is wholly owned by any corporation that has made an election under subchapter S, chapter one,

subtitle A of the Internal Revenue Code for its taxable year 857
ending within, or on the last day of, the investor's taxable year. 858

(2) For the purposes of this chapter, unless expressly stated 859
otherwise, no qualifying person indirectly owns any asset directly 860
or indirectly owned by any qualifying corporation. 861

(FF) For purposes of this chapter and Chapter 5751. of the 862
Revised Code: 863

(1) "Trust" does not include a qualified pre-income tax 864
trust. 865

(2) A "qualified pre-income tax trust" is any pre-income tax 866
trust that makes a qualifying pre-income tax trust election as 867
described in division (FF)(3) of this section. 868

(3) A "qualifying pre-income tax trust election" is an 869
election by a pre-income tax trust to subject to the tax imposed 870
by section 5751.02 of the Revised Code the pre-income tax trust 871
and all pass-through entities of which the trust owns or controls, 872
directly, indirectly, or constructively through related interests, 873
five per cent or more of the ownership or equity interests. The 874
trustee shall notify the tax commissioner in writing of the 875
election on or before April 15, 2006. The election, if timely 876
made, shall be effective on and after January 1, 2006, and shall 877
apply for all tax periods and tax years until revoked by the 878
trustee of the trust. 879

(4) A "pre-income tax trust" is a trust that satisfies all of 880
the following requirements: 881

(a) The document or instrument creating the trust was 882
executed by the grantor before January 1, 1972; 883

(b) The trust became irrevocable upon the creation of the 884
trust; and 885

(c) The grantor was domiciled in this state at the time the 886

trust was created. 887

Section 2. That existing section 5747.01 of the Revised Code 888

is hereby repealed. 889