

As Introduced

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S. B. No. 191

Senator Coughlin

Cosponsors: Senators Schuler, Mumper, Buehrer, Schaffer

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A B I L L

To amend section 5747.01 of the Revised Code to 1
exempt from the personal income tax local, state, 2
and federal government employee and military 3
retirement benefits. 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 included in federal adjusted gross 270
income, pensions, annuities, allowances, benefits, or other 271
payments made: 272

(a) On account of age and service retirement pursuant to 273
Chapter 145., 742., 3307., 3309., or 5505. of the Revised Code; 274

(b) Pursuant to subchapter III, Chapter 83 or subchapter II, 275
Chapter 84 of Title 5 of the United States Code; or 276

(c) As retired military personnel pay for service in the 277
United States army, navy, air force, coast guard, or marine corps 278
or reserve components thereof, or the national guard. 279

The deduction under division (A)(25) of this section shall 280
not exceed four thousand dollars for taxable years beginning in 281
2007, seven thousand dollars for taxable years beginning in 2008, 282
and ten thousand dollars for taxable years beginning in or after 283
2009. 284

A taxpayer shall not deduct under division (A)(25) of this 285
section any amount deducted under division (A)(4) of this section. 286

(B) "Business income" means income, including gain or loss, 287
arising from transactions, activities, and sources in the regular 288
course of a trade or business and includes income, gain, or loss 289
from real property, tangible property, and intangible property if 290
the acquisition, rental, management, and disposition of the 291
property constitute integral parts of the regular course of a 292
trade or business operation. "Business income" includes income, 293
including gain or loss, from a partial or complete liquidation of 294
a business, including, but not limited to, gain or loss from the 295
sale or other disposition of goodwill. 296

(C) "Nonbusiness income" means all income other than business 297
income and may include, but is not limited to, compensation, rents 298
and royalties from real or tangible personal property, capital 299
gains, interest, dividends and distributions, patent or copyright 300

royalties, or lottery winnings, prizes, and awards.	301
(D) "Compensation" means any form of remuneration paid to an employee for personal services.	302 303
(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.	304 305 306
(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.	307 308
(G) "Individual" means any natural person.	309
(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	310 311
(I) "Resident" means any of the following, provided that division (I)(3) of this section applies only to taxable years of a trust beginning in 2002 or thereafter:	312 313 314
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	315 316
(2) 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 are not controlling for purposes of division (I)(2) of this section.	317 318 319 320
(3) 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.	321 322 323
For the purposes of division (I)(3) of this section:	324
(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I)(3)(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:	325 326 327 328 329 330

(i) A person, a court, or a governmental entity or 331
instrumentality on account of the death of a decedent, but only if 332
the trust is described in division (I)(3)(e)(i) or (ii) of this 333
section; 334

(ii) A person who was domiciled in this state for the 335
purposes of this chapter when the person directly or indirectly 336
transferred assets to an irrevocable trust, but only if at least 337
one of the trust's qualifying beneficiaries is domiciled in this 338
state for the purposes of this chapter during all or some portion 339
of the trust's current taxable year; 340

(iii) A person who was domiciled in this state for the 341
purposes of this chapter when the trust document or instrument or 342
part of the trust document or instrument became irrevocable, but 343
only if at least one of the trust's qualifying beneficiaries is a 344
resident domiciled in this state for the purposes of this chapter 345
during all or some portion of the trust's current taxable year. If 346
a trust document or instrument became irrevocable upon the death 347
of a person who at the time of death was domiciled in this state 348
for purposes of this chapter, that person is a person described in 349
division (I)(3)(a)(iii) of this section. 350

(b) A trust is irrevocable to the extent that the transferor 351
is not considered to be the owner of the net assets of the trust 352
under sections 671 to 678 of the Internal Revenue Code. 353

(c) With respect to a trust other than a charitable lead 354
trust, "qualifying beneficiary" has the same meaning as "potential 355
current beneficiary" as defined in section 1361(e)(2) of the 356
Internal Revenue Code, and with respect to a charitable lead trust 357
"qualifying beneficiary" is any current, future, or contingent 358
beneficiary, but with respect to any trust "qualifying 359
beneficiary" excludes a person or a governmental entity or 360
instrumentality to any of which a contribution would qualify for 361
the charitable deduction under section 170 of the Internal Revenue 362

Code. 363

(d) For the purposes of division (I)(3)(a) of this section, 364
the extent to which a trust consists directly or indirectly, in 365
whole or in part, of assets, net of any related liabilities, that 366
were transferred directly or indirectly, in whole or part, to the 367
trust by any of the sources enumerated in that division shall be 368
ascertained by multiplying the fair market value of the trust's 369
assets, net of related liabilities, by the qualifying ratio, which 370
shall be computed as follows: 371

(i) The first time the trust receives assets, the numerator 372
of the qualifying ratio is the fair market value of those assets 373
at that time, net of any related liabilities, from sources 374
enumerated in division (I)(3)(a) of this section. The denominator 375
of the qualifying ratio is the fair market value of all the 376
trust's assets at that time, net of any related liabilities. 377

(ii) Each subsequent time the trust receives assets, a 378
revised qualifying ratio shall be computed. The numerator of the 379
revised qualifying ratio is the sum of (1) the fair market value 380
of the trust's assets immediately prior to the subsequent 381
transfer, net of any related liabilities, multiplied by the 382
qualifying ratio last computed without regard to the subsequent 383
transfer, and (2) the fair market value of the subsequently 384
transferred assets at the time transferred, net of any related 385
liabilities, from sources enumerated in division (I)(3)(a) of this 386
section. The denominator of the revised qualifying ratio is the 387
fair market value of all the trust's assets immediately after the 388
subsequent transfer, net of any related liabilities. 389

(iii) Whether a transfer to the trust is by or from any of 390
the sources enumerated in division (I)(3)(a) of this section shall 391
be ascertained without regard to the domicile of the trust's 392
beneficiaries. 393

(e) For the purposes of division (I)(3)(a)(i) of this section: 394
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(i) A trust is described in division (I)(3)(e)(i) of this section if the trust is a testamentary trust and the testator of that testamentary trust was domiciled in this state at the time of the testator's death for purposes of the taxes levied under Chapter 5731. of the Revised Code. 396
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(ii) A trust is described in division (I)(3)(e)(ii) of this section if the transfer is a qualifying transfer described in any of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an irrevocable inter vivos trust, and at least one of the trust's qualifying beneficiaries is domiciled in this state for purposes of this chapter during all or some portion of the trust's current taxable year. 401
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(f) For the purposes of division (I)(3)(e)(ii) of this section, a "qualifying transfer" is a transfer of assets, net of any related liabilities, directly or indirectly to a trust, if the transfer is described in any of the following: 408
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(i) The transfer is made to a trust, created by the decedent before the decedent's death and while the decedent was domiciled in this state for the purposes of this chapter, and, prior to the death of the decedent, the trust became irrevocable while the decedent was domiciled in this state for the purposes of this chapter. 412
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(ii) The transfer is made to a trust to which the decedent, prior to the decedent's death, had directly or indirectly transferred assets, net of any related liabilities, while the decedent was domiciled in this state for the purposes of this chapter, and prior to the death of the decedent the trust became irrevocable while the decedent was domiciled in this state for the purposes of this chapter. 418
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(iii) The transfer is made on account of a contractual relationship existing directly or indirectly between the transferor and either the decedent or the estate of the decedent at any time prior to the date of the decedent's death, and the decedent was domiciled in this state at the time of death for purposes of the taxes levied under Chapter 5731. of the Revised Code.

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

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

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

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

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

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

(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. 456

(M) "Taxable year" means the calendar year or the taxpayer's 457
fiscal year ending during the calendar year, or fractional part 458
thereof, upon which the adjusted gross income is calculated 459
pursuant to this chapter. 460

(N) "Taxpayer" means any person subject to the tax imposed by 461
section 5747.02 of the Revised Code or any pass-through entity 462
that makes the election under division (D) of section 5747.08 of 463
the Revised Code. 464

(O) "Dependents" means dependents as defined in the Internal 465
Revenue Code and as claimed in the taxpayer's federal income tax 466
return for the taxable year or which the taxpayer would have been 467
permitted to claim had the taxpayer filed a federal income tax 468
return. 469

(P) "Principal county of employment" means, in the case of a 470
nonresident, the county within the state in which a taxpayer 471
performs services for an employer or, if those services are 472
performed in more than one county, the county in which the major 473
portion of the services are performed. 474

(Q) As used in sections 5747.50 to 5747.55 of the Revised 475
Code: 476

(1) "Subdivision" means any county, municipal corporation, 477
park district, or township. 478

(2) "Essential local government purposes" includes all 479
functions that any subdivision is required by general law to 480
exercise, including like functions that are exercised under a 481
charter adopted pursuant to the Ohio Constitution. 482

(R) "Overpayment" means any amount already paid that exceeds 483
the figure determined to be the correct amount of the tax. 484

(S) "Taxable income" or "Ohio taxable income" applies only to 485

estates and trusts, and means federal taxable income, as defined 486
and used in the Internal Revenue Code, adjusted as follows: 487

(1) Add interest or dividends, net of ordinary, necessary, 488
and reasonable expenses not deducted in computing federal taxable 489
income, on obligations or securities of any state or of any 490
political subdivision or authority of any state, other than this 491
state and its subdivisions and authorities, but only to the extent 492
that such net amount is not otherwise includible in Ohio taxable 493
income and is described in either division (S)(1)(a) or (b) of 494
this section: 495

(a) The net amount is not attributable to the S portion of an 496
electing small business trust and has not been distributed to 497
beneficiaries for the taxable year; 498

(b) The net amount is attributable to the S portion of an 499
electing small business trust for the taxable year. 500

(2) Add interest or dividends, net of ordinary, necessary, 501
and reasonable expenses not deducted in computing federal taxable 502
income, on obligations of any authority, commission, 503
instrumentality, territory, or possession of the United States to 504
the extent that the interest or dividends are exempt from federal 505
income taxes but not from state income taxes, but only to the 506
extent that such net amount is not otherwise includible in Ohio 507
taxable income and is described in either division (S)(1)(a) or 508
(b) of this section; 509

(3) Add the amount of personal exemption allowed to the 510
estate pursuant to section 642(b) of the Internal Revenue Code; 511

(4) Deduct interest or dividends, net of related expenses 512
deducted in computing federal taxable income, on obligations of 513
the United States and its territories and possessions or of any 514
authority, commission, or instrumentality of the United States to 515
the extent that the interest or dividends are exempt from state 516

taxes under the laws of the United States, but only to the extent 517
that such amount is included in federal taxable income and is 518
described in either division (S)(1)(a) or (b) of this section; 519

(5) Deduct the amount of wages and salaries, if any, not 520
otherwise allowable as a deduction but that would have been 521
allowable as a deduction in computing federal taxable income for 522
the taxable year, had the targeted jobs credit allowed under 523
sections 38, 51, and 52 of the Internal Revenue Code not been in 524
effect, but only to the extent such amount relates either to 525
income included in federal taxable income for the taxable year or 526
to income of the S portion of an electing small business trust for 527
the taxable year; 528

(6) Deduct any interest or interest equivalent, net of 529
related expenses deducted in computing federal taxable income, on 530
public obligations and purchase obligations, but only to the 531
extent that such net amount relates either to income included in 532
federal taxable income for the taxable year or to income of the S 533
portion of an electing small business trust for the taxable year; 534

(7) Add any loss or deduct any gain resulting from sale, 535
exchange, or other disposition of public obligations to the extent 536
that such loss has been deducted or such gain has been included in 537
computing either federal taxable income or income of the S portion 538
of an electing small business trust for the taxable year; 539

(8) Except in the case of the final return of an estate, add 540
any amount deducted by the taxpayer on both its Ohio estate tax 541
return pursuant to section 5731.14 of the Revised Code, and on its 542
federal income tax return in determining federal taxable income; 543

(9)(a) Deduct any amount included in federal taxable income 544
solely because the amount represents a reimbursement or refund of 545
expenses that in a previous year the decedent had deducted as an 546
itemized deduction pursuant to section 63 of the Internal Revenue 547

Code and applicable treasury regulations. The deduction otherwise 548
allowed under division (S)(9)(a) of this section shall be reduced 549
to the extent the reimbursement is attributable to an amount the 550
taxpayer or decedent deducted under this section in any taxable 551
year. 552

(b) Add any amount not otherwise included in Ohio taxable 553
income for any taxable year to the extent that the amount is 554
attributable to the recovery during the taxable year of any amount 555
deducted or excluded in computing federal or Ohio taxable income 556
in any taxable year, but only to the extent such amount has not 557
been distributed to beneficiaries for the taxable year. 558

(10) Deduct any portion of the deduction described in section 559
1341(a)(2) of the Internal Revenue Code, for repaying previously 560
reported income received under a claim of right, that meets both 561
of the following requirements: 562

(a) It is allowable for repayment of an item that was 563
included in the taxpayer's taxable income or the decedent's 564
adjusted gross income for a prior taxable year and did not qualify 565
for a credit under division (A) or (B) of section 5747.05 of the 566
Revised Code for that year. 567

(b) It does not otherwise reduce the taxpayer's taxable 568
income or the decedent's adjusted gross income for the current or 569
any other taxable year. 570

(11) Add any amount claimed as a credit under section 571
5747.059 of the Revised Code to the extent that the amount 572
satisfies either of the following: 573

(a) The amount was deducted or excluded from the computation 574
of the taxpayer's federal taxable income as required to be 575
reported for the taxpayer's taxable year under the Internal 576
Revenue Code; 577

(b) The amount resulted in a reduction in the taxpayer's 578

federal taxable income as required to be reported for any of the 579
taxpayer's taxable years under the Internal Revenue Code. 580

(12) Deduct any amount, net of related expenses deducted in 581
computing federal taxable income, that a trust is required to 582
report as farm income on its federal income tax return, but only 583
if the assets of the trust include at least ten acres of land 584
satisfying the definition of "land devoted exclusively to 585
agricultural use" under section 5713.30 of the Revised Code, 586
regardless of whether the land is valued for tax purposes as such 587
land under sections 5713.30 to 5713.38 of the Revised Code. If the 588
trust is a pass-through entity investor, section 5747.231 of the 589
Revised Code applies in ascertaining if the trust is eligible to 590
claim the deduction provided by division (S)(12) of this section 591
in connection with the pass-through entity's farm income. 592

Except for farm income attributable to the S portion of an 593
electing small business trust, the deduction provided by division 594
(S)(12) of this section is allowed only to the extent that the 595
trust has not distributed such farm income. Division (S)(12) of 596
this section applies only to taxable years of a trust beginning in 597
2002 or thereafter. 598

(13) Add the net amount of income described in section 641(c) 599
of the Internal Revenue Code to the extent that amount is not 600
included in federal taxable income. 601

(14) Add or deduct the amount the taxpayer would be required 602
to add or deduct under division (A)(20) or (21) of this section if 603
the taxpayer's Ohio taxable income were computed in the same 604
manner as an individual's Ohio adjusted gross income is computed 605
under this section. In the case of a trust, division (S)(14) of 606
this section applies only to any of the trust's taxable years 607
beginning in 2002 or thereafter. 608

(T) "School district income" and "school district income tax" 609

have the same meanings as in section 5748.01 of the Revised Code. 610

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 611
of this section, "public obligations," "purchase obligations," and 612
"interest or interest equivalent" have the same meanings as in 613
section 5709.76 of the Revised Code. 614

(V) "Limited liability company" means any limited liability 615
company formed under Chapter 1705. of the Revised Code or under 616
the laws of any other state. 617

(W) "Pass-through entity investor" means any person who, 618
during any portion of a taxable year of a pass-through entity, is 619
a partner, member, shareholder, or equity investor in that 620
pass-through entity. 621

(X) "Banking day" has the same meaning as in section 1304.01 622
of the Revised Code. 623

(Y) "Month" means a calendar month. 624

(Z) "Quarter" means the first three months, the second three 625
months, the third three months, or the last three months of the 626
taxpayer's taxable year. 627

(AA)(1) "Eligible institution" means a state university or 628
state institution of higher education as defined in section 629
3345.011 of the Revised Code, or a private, nonprofit college, 630
university, or other post-secondary institution located in this 631
state that possesses a certificate of authorization issued by the 632
Ohio board of regents pursuant to Chapter 1713. of the Revised 633
Code or a certificate of registration issued by the state board of 634
career colleges and schools under Chapter 3332. of the Revised 635
Code. 636

(2) "Qualified tuition and fees" means tuition and fees 637
imposed by an eligible institution as a condition of enrollment or 638
attendance, not exceeding two thousand five hundred dollars in 639

each of the individual's first two years of post-secondary 640
education. If the individual is a part-time student, "qualified 641
tuition and fees" includes tuition and fees paid for the academic 642
equivalent of the first two years of post-secondary education 643
during a maximum of five taxable years, not exceeding a total of 644
five thousand dollars. "Qualified tuition and fees" does not 645
include: 646

(a) Expenses for any course or activity involving sports, 647
games, or hobbies unless the course or activity is part of the 648
individual's degree or diploma program; 649

(b) The cost of books, room and board, student activity fees, 650
athletic fees, insurance expenses, or other expenses unrelated to 651
the individual's academic course of instruction; 652

(c) Tuition, fees, or other expenses paid or reimbursed 653
through an employer, scholarship, grant in aid, or other 654
educational benefit program. 655

(BB)(1) "Modified business income" means the business income 656
included in a trust's Ohio taxable income after such taxable 657
income is first reduced by the qualifying trust amount, if any. 658

(2) "Qualifying trust amount" of a trust means capital gains 659
and losses from the sale, exchange, or other disposition of equity 660
or ownership interests in, or debt obligations of, a qualifying 661
investee to the extent included in the trust's Ohio taxable 662
income, but only if the following requirements are satisfied: 663

(a) The book value of the qualifying investee's physical 664
assets in this state and everywhere, as of the last day of the 665
qualifying investee's fiscal or calendar year ending immediately 666
prior to the date on which the trust recognizes the gain or loss, 667
is available to the trust. 668

(b) The requirements of section 5747.011 of the Revised Code 669
are satisfied for the trust's taxable year in which the trust 670

recognizes the gain or loss. 671

Any gain or loss that is not a qualifying trust amount is 672
modified business income, qualifying investment income, or 673
modified nonbusiness income, as the case may be. 674

(3) "Modified nonbusiness income" means a trust's Ohio 675
taxable income other than modified business income, other than the 676
qualifying trust amount, and other than qualifying investment 677
income, as defined in section 5747.012 of the Revised Code, to the 678
extent such qualifying investment income is not otherwise part of 679
modified business income. 680

(4) "Modified Ohio taxable income" applies only to trusts, 681
and means the sum of the amounts described in divisions (BB)(4)(a) 682
to (c) of this section: 683

(a) The fraction, calculated under section 5747.013, and 684
applying section 5747.231 of the Revised Code, multiplied by the 685
sum of the following amounts: 686

(i) The trust's modified business income; 687

(ii) The trust's qualifying investment income, as defined in 688
section 5747.012 of the Revised Code, but only to the extent the 689
qualifying investment income does not otherwise constitute 690
modified business income and does not otherwise constitute a 691
qualifying trust amount. 692

(b) The qualifying trust amount multiplied by a fraction, the 693
numerator of which is the sum of the book value of the qualifying 694
investee's physical assets in this state on the last day of the 695
qualifying investee's fiscal or calendar year ending immediately 696
prior to the day on which the trust recognizes the qualifying 697
trust amount, and the denominator of which is the sum of the book 698
value of the qualifying investee's total physical assets 699
everywhere on the last day of the qualifying investee's fiscal or 700
calendar year ending immediately prior to the day on which the 701

trust recognizes the qualifying trust amount. If, for a taxable 702
year, the trust recognizes a qualifying trust amount with respect 703
to more than one qualifying investee, the amount described in 704
division (BB)(4)(b) of this section shall equal the sum of the 705
products so computed for each such qualifying investee. 706

(c)(i) With respect to a trust or portion of a trust that is 707
a resident as ascertained in accordance with division (I)(3)(d) of 708
this section, its modified nonbusiness income. 709

(ii) With respect to a trust or portion of a trust that is 710
not a resident as ascertained in accordance with division 711
(I)(3)(d) of this section, the amount of its modified nonbusiness 712
income satisfying the descriptions in divisions (B)(2) to (5) of 713
section 5747.20 of the Revised Code, except as otherwise provided 714
in division (BB)(4)(c)(ii) of this section. With respect to a 715
trust or portion of a trust that is not a resident as ascertained 716
in accordance with division (I)(3)(d) of this section, the trust's 717
portion of modified nonbusiness income recognized from the sale, 718
exchange, or other disposition of a debt interest in or equity 719
interest in a section 5747.212 entity, as defined in section 720
5747.212 of the Revised Code, without regard to division (A) of 721
that section, shall not be allocated to this state in accordance 722
with section 5747.20 of the Revised Code but shall be apportioned 723
to this state in accordance with division (B) of section 5747.212 724
of the Revised Code without regard to division (A) of that 725
section. 726

If the allocation and apportionment of a trust's income under 727
divisions (BB)(4)(a) and (c) of this section do not fairly 728
represent the modified Ohio taxable income of the trust in this 729
state, the alternative methods described in division (C) of 730
section 5747.21 of the Revised Code may be applied in the manner 731
and to the same extent provided in that section. 732

(5)(a) Except as set forth in division (BB)(5)(b) of this 733

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

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

(ii) If the qualifying investee, or if the qualifying investee and any members of the qualifying controlled group of which the qualifying investee is a member on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the gain or loss, separately or cumulatively own, directly or indirectly, on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the qualifying trust amount, more than fifty per cent of the equity of a pass-through entity, then the qualifying investee and the other members are deemed to own the proportionate share of the pass-through entity's physical assets which the pass-through entity directly or indirectly owns on the last day of the pass-through entity's calendar or fiscal year ending within or with the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the qualifying trust amount.

(iii) For the purposes of division (BB)(5)(a)(iii) of this section, "upper level pass-through entity" means a pass-through entity directly or indirectly owning any equity of another

pass-through entity, and "lower level pass-through entity" means 766
that other pass-through entity. 767

An upper level pass-through entity, whether or not it is also 768
a qualifying investee, is deemed to own, on the last day of the 769
upper level pass-through entity's calendar or fiscal year, the 770
proportionate share of the lower level pass-through entity's 771
physical assets that the lower level pass-through entity directly 772
or indirectly owns on the last day of the lower level pass-through 773
entity's calendar or fiscal year ending within or with the last 774
day of the upper level pass-through entity's fiscal or calendar 775
year. If the upper level pass-through entity directly and 776
indirectly owns less than fifty per cent of the equity of the 777
lower level pass-through entity on each day of the upper level 778
pass-through entity's calendar or fiscal year in which or with 779
which ends the calendar or fiscal year of the lower level 780
pass-through entity and if, based upon clear and convincing 781
evidence, complete information about the location and cost of the 782
physical assets of the lower pass-through entity is not available 783
to the upper level pass-through entity, then solely for purposes 784
of ascertaining if a gain or loss constitutes a qualifying trust 785
amount, the upper level pass-through entity shall be deemed as 786
owning no equity of the lower level pass-through entity for each 787
day during the upper level pass-through entity's calendar or 788
fiscal year in which or with which ends the lower level 789
pass-through entity's calendar or fiscal year. Nothing in division 790
(BB)(5)(a)(iii) of this section shall be construed to provide for 791
any deduction or exclusion in computing any trust's Ohio taxable 792
income. 793

(b) With respect to a trust that is not a resident for the 794
taxable year and with respect to a part of a trust that is not a 795
resident for the taxable year, "qualifying investee" for that 796
taxable year does not include a C corporation if both of the 797

following apply:	798
(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.	799 800 801 802
(ii) Such gain or loss constitutes nonbusiness income.	803
(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.	804 805 806 807
(CC) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code.	808 809
(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code.	810 811
(EE)(1) For the purposes of division (EE) of this section:	812
(a) "Qualifying person" means any person other than a qualifying corporation.	813 814
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	815 816 817
(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;	818 819 820 821
(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 ending within, or on the last day of, the investor's taxable year.	822 823 824 825
(2) For the purposes of this chapter, unless expressly stated otherwise, no qualifying person indirectly owns any asset directly	826 827

or indirectly owned by any qualifying corporation. 828

(FF) For purposes of this chapter and Chapter 5751. of the 829
Revised Code: 830

(1) "Trust" does not include a qualified pre-income tax 831
trust. 832

(2) A "qualified pre-income tax trust" is any pre-income tax 833
trust that makes a qualifying pre-income tax trust election as 834
described in division (FF)(3) of this section. 835

(3) A "qualifying pre-income tax trust election" is an 836
election by a pre-income tax trust to subject to the tax imposed 837
by section 5751.02 of the Revised Code the pre-income tax trust 838
and all pass-through entities of which the trust owns or controls, 839
directly, indirectly, or constructively through related interests, 840
five per cent or more of the ownership or equity interests. The 841
trustee shall notify the tax commissioner in writing of the 842
election on or before April 15, 2006. The election, if timely 843
made, shall be effective on and after January 1, 2006, and shall 844
apply for all tax periods and tax years until revoked by the 845
trustee of the trust. 846

(4) A "pre-income tax trust" is a trust that satisfies all of 847
the following requirements: 848

(a) The document or instrument creating the trust was 849
executed by the grantor before January 1, 1972; 850

(b) The trust became irrevocable upon the creation of the 851
trust; and 852

(c) The grantor was domiciled in this state at the time the 853
trust was created. 854

Section 2. That existing section 5747.01 of the Revised Code 855
is hereby repealed. 856