

As Introduced

**127th General Assembly
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S. B. No. 32

Senator Bocchieri

Cosponsors: Senators Cafaro, Mason, Gardner

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A B I L L

To amend sections 122.16, 5733.01, 5733.98, 5747.32, 1
5747.98, 5751.01, and 5751.98 and to enact 2
sections 3745.15, 3745.16, 3745.17, 5733.58, 3
5747.71, 5751.54, and 5751.55 of the Revised Code 4
to promote the production of alternative fuels, 5
the application of clean coal energy generation 6
methods, and the redevelopment of brownfield sites 7
by granting tax incentives for those activities 8
and by expediting the environmental permit 9
approval process for the construction of certain 10
facilities on brownfield sites. 11

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

Section 1. That sections 122.16, 5733.01, 5733.98, 5747.32, 12
5747.98, 5751.01, and 5751.98 be amended and sections 3745.15, 13
3745.16, 3745.17, 5733.58, 5747.71, 5751.54, and 5751.55 of the 14
Revised Code be enacted to read as follows: 15

Sec. 122.16. (A) As used in this section: 16

(1) "Distressed area" means either a municipal corporation 17
that has a population of at least fifty thousand or a county, that 18
meets two of the following criteria: 19

(a) Its average rate of unemployment, during the most recent five-year period for which data are available, is equal to at least one hundred twenty-five per cent of the average rate of unemployment for the United States for the same period.

(b) It has a per capita income equal to or below eighty per cent of the median county per capita income of the United States as determined by the most recently available figures from the United States census bureau.

(c)(i) In the case of a municipal corporation, at least twenty per cent of the residents have a total income for the most recent census year that is below the official poverty line.

(ii) In the case of a county, in intercensal years, the county has a ratio of transfer payment income to total county income equal to or greater than twenty-five per cent.

(2) "Eligible area" means a distressed area, a labor surplus area, an inner city area, or a situational distress area.

(3) "Eligible costs associated with a voluntary action" means costs incurred ~~during the qualifying period~~ in performing a remedy or remedial activities, as defined in section 3746.01 of the Revised Code, and any costs incurred ~~during the qualifying period~~ in performing both a phase I and phase II property assessment, as defined in the rules adopted under section 3746.04 of the Revised Code, provided that the performance of the phase I and phase II property assessment resulted in the implementation of the remedy or remedial activities.

(4) "Inner city area" means, in a municipal corporation that has a population of at least one hundred thousand and does not meet the criteria of a labor surplus area or a distressed area, targeted investment areas established by the municipal corporation within its boundaries that are comprised of the most recent census block tracts that individually have at least twenty per cent of

their population at or below the state poverty level or other 51
census block tracts contiguous to such census block tracts. 52

(5) "Labor surplus area" means an area designated as a labor 53
surplus area by the United States department of labor. 54

(6) "Official poverty line" has the same meaning as in 55
division (A) of section 3923.51 of the Revised Code. 56

(7) "Partner" includes a member of a limited liability 57
company formed under Chapter 1705. of the Revised Code or under 58
the laws of any other state if the limited liability company ~~is~~ 59
~~not treated as a corporation for purposes of Chapter 5733. of the~~ 60
~~Revised Code and~~ is not classified as an association taxable as a 61
corporation for federal income tax purposes. 62

(8) "Partnership" includes a limited liability company formed 63
under Chapter 1705. of the Revised Code or under the laws of any 64
other state if the limited liability company ~~is not treated as a~~ 65
~~corporation for purposes of Chapter 5733. of the Revised Code and~~ 66
is not classified as an association taxable as a corporation for 67
federal income tax purposes. 68

(9) ~~"Qualifying period" means the period that begins July 1,~~ 69
~~1996, and ends June 30, 1999. "Qualifying facility" means a~~ 70
facility owned by the person that incurs eligible costs associated 71
with a voluntary action and at which or from which any of the 72
following occur: petroleum or a petroleum-derived substance is 73
refined into motor fuel as defined in section 5735.01 of the 74
Revised Code; petroleum or a petroleum distillate is stored, 75
distributed, processed, or otherwise handled; an alternative fuel 76
as defined in section 5751.54 of the Revised Code is produced or 77
refined; or clean coal technology as defined in section 5751.54 of 78
the Revised Code is utilized in the manufacture, refinement, 79
rectification, or combination of tangible personal property. 80

(10) "S corporation" means a corporation that has made an 81

election under subchapter S of chapter one of subtitle A of the Internal Revenue Code for its taxable year under the Internal Revenue Code;

(11) "Situational distress area" means a county or a municipal corporation that has experienced or is experiencing a closing or downsizing of a major employer that will adversely affect the economy of the county or municipal corporation. In order for a county or municipal corporation to be designated as a situational distress area, the governing body of the county or municipal corporation shall submit a petition to the director of development in the form prescribed by the director. A county or municipal corporation may be designated as a situational distress area for a period not exceeding thirty-six months.

The petition shall include written documentation that demonstrates all of the following:

(a) The number of jobs lost by the closing or downsizing;

(b) The impact that the job loss has on the unemployment rate of the county or municipal corporation as measured by the director of job and family services;

(c) The annual payroll associated with the job loss;

(d) The amount of state and local taxes associated with the job loss;

(e) The impact that the closing or downsizing has on the suppliers located in the county or municipal corporation.

(12) "Voluntary action" has the same meaning as in section 3746.01 of the Revised Code.

(13) "Taxpayer" means ~~a corporation subject to the tax imposed by section 5733.06 of the Revised Code or any person subject to the tax imposed by section 5747.02~~ or under Chapter 5751. of the Revised Code.

(14) "Governing body" means the board of county commissioners 112
of a county, the board of township trustees of a township, or the 113
legislative authority of a municipal corporation. 114

(15) "Eligible site" means property for which a covenant not 115
to sue has been issued under section 3746.12 of the Revised Code. 116

(B)(1) A taxpayer, partnership, or S corporation that has 117
been issued, under section 3746.12 of the Revised Code, a covenant 118
not to sue for a site by the director of environmental protection 119
~~during the qualifying period~~ may apply to the director of 120
development, in the manner prescribed by the director, to enter 121
into an agreement under which the applicant agrees to ~~economically~~ 122
~~redevelop the site in a manner that will create employment~~ 123
~~opportunities by constructing or causing to be constructed a~~ 124
qualifying facility at the site and a credit will be granted to 125
the applicant against the tax imposed by section ~~5733.06 or~~ 126
5747.02 or under Chapter 5751. of the Revised Code. The 127
application shall state the eligible costs associated with a 128
voluntary action incurred by the applicant. The application shall 129
be accompanied by proof, in a form prescribed by the director of 130
development, that the covenant not to sue has been issued. 131

The applicant shall request the certified professional that 132
submitted the no further action letter for the eligible site under 133
section 3746.11 of the Revised Code to submit an affidavit to the 134
director of development verifying the eligible costs associated 135
with the voluntary action at that site. 136

~~The director shall review the applications in the order they~~ 137
~~are received.~~ If the director determines that the applicant meets 138
the requirements of this section, the director may enter into an 139
agreement granting a credit against the tax imposed by section 140
~~5733.06 or~~ 5747.02 or under Chapter 5751. of the Revised Code. In 141
making the determination, the director may consider the extent to 142
which political subdivisions and other units of government will 143

cooperate with the applicant to redevelop the eligible site. The 144
agreement shall state the amount of the tax credit and the 145
reporting requirements described in division (F) of this section. 146

(2) The maximum annual amount of credits the director of 147
development may grant under such agreements shall be ~~as follows:~~ 148

1996	\$5,000,000	149
1997	\$10,000,000	150
1998	\$10,000,000	151
1999	\$5,000,000	152

~~For fifteen million dollars. For any year in which the~~ 153
director of development does not grant tax credits under this 154
section equal to ~~the maximum annual amount~~ fifteen million 155
dollars, the amount not granted for that year shall be added to 156
the maximum annual amount that may be granted for the following 157
year. ~~However, the director shall not grant any tax credits under~~ 158
~~this section after June 30, 1999.~~ 159

(C)(1) If the covenant not to sue was issued in connection 160
with a site that is not located in an eligible area, the credit 161
amount is equal to ~~the lesser of five hundred thousand dollars or~~ 162
ten per cent of the eligible costs associated with a voluntary 163
action incurred by the taxpayer, partnership, or S corporation. 164

(2) If a covenant not to sue was issued in connection with a 165
site that is located in an eligible area, the credit amount is 166
equal to ~~the lesser of seven hundred fifty thousand dollars or~~ 167
fifteen per cent of the eligible costs associated with a voluntary 168
action incurred by the taxpayer, partnership, or S corporation. 169

(3) A taxpayer, partnership, or S corporation that has been 170
issued covenants not to sue under section 3746.12 of the Revised 171
Code for more than one site may apply to the director of 172
development to enter into more than one agreement granting a 173
credit against the tax imposed by section ~~5733.06 or~~ 5747.02 or 174

under Chapter 5751. of the Revised Code. 175

(4) For each year for which a taxpayer, partnership, or S 176
corporation has been granted a credit under an agreement entered 177
into under this section, the director of development shall issue a 178
certificate to the taxpayer, partnership, or S corporation 179
indicating the amount of the credit the taxpayer, the partners of 180
the partnership, or the shareholders of the S corporation may 181
claim for that year, not including any amount that may be carried 182
forward from previous years under section ~~5733.34~~ ~~or~~ 5747.32 or 183
5751.55 of the Revised Code. 184

(D)(1) Each agreement entered into under this section shall 185
incorporate a commitment by the taxpayer, partnership, or S 186
corporation not to permit the use of an eligible site to cause the 187
relocation of employment positions to that site from elsewhere in 188
this state, except as otherwise provided in division (D)(2) of 189
this section. The commitment shall be binding on the taxpayer, 190
partnership, or S corporation for the lesser of five years from 191
the date the agreement is entered into or the number of years the 192
taxpayer, partnership, or S corporation is entitled to claim the 193
tax credit under the agreement. 194

(2) An eligible site may be the site of employment positions 195
relocated from elsewhere in this state, if the director of 196
development determines both of the following: 197

(a) That the site from which the employment positions would 198
be relocated is inadequate to meet market and industry conditions, 199
expansion plans, consolidation plans, or other business 200
considerations affecting the relocating employer; 201

(b) That the governing body of the county, township, or 202
municipal corporation from which the employment positions would be 203
relocated has been notified of the possible relocation. 204

For purposes of this section, the movement of an employment 205

position from one political subdivision to another political 206
subdivision shall be considered a relocation of an employment 207
position, but the transfer of an individual employee from one 208
political subdivision to another political subdivision shall not 209
be considered a relocation of an employment position as long as 210
the individual's employment position in the first political 211
subdivision is refilled. 212

(E) A taxpayer, partnership, or S corporation that has 213
entered into an agreement granting a credit against the tax 214
imposed by section ~~5733.06~~ or 5747.02 or under Chapter 5751. of 215
the Revised Code that subsequently recovers in a lawsuit or 216
settlement of a lawsuit at least seventy-five per cent of the 217
eligible costs associated with a voluntary action shall not claim 218
any credit amount remaining, including any amounts carried forward 219
from prior years, beginning with the taxable year in which the 220
judgment in the lawsuit is entered or the settlement is finally 221
agreed to. 222

Any amount of credit that a taxpayer, partnership, or S 223
corporation may not claim by reason of this division shall not be 224
considered to have been granted for the purpose of determining the 225
total amount of credits that may be issued under division (B)(2) 226
of this section. 227

(F) Each year for which a taxpayer, partnership, or S 228
corporation claims a credit under section ~~5733.34~~ or 5747.32 or 229
5751.55 of the Revised Code, the taxpayer, partnership, or S 230
corporation shall report the following to the director of 231
development: 232

(1) The status of all cost recovery litigation described in 233
division (E) of this section to which it was a party during the 234
previous year; 235

(2) Confirmation that the covenant not to sue has not been 236

revoked or has not been voided;	237
(3) Confirmation that the taxpayer, partnership, or S corporation has not permitted the eligible site to be used in such a manner as to cause the relocation of employment positions from elsewhere in this state in violation of the commitment required under division (D) of this section;	238 239 240 241 242
(4) Any other information the director of development requires to perform the director's duties under this section.	243 244
(G) The director of development shall annually certify, by the first day of January of each year during the qualifying period , the eligible areas for the calendar year that includes that first day of January.	245 246 247 248
(H) The director of development, in accordance with Chapter 119. of the Revised Code, shall adopt rules necessary to implement this section, including rules prescribing forms required for administering this section.	249 250 251 252
<u>Sec. 3745.15.</u> (A) As used in this section and in section 3745.16 of the Revised Code:	253 254
(1) <u>"Alternative fuel" and "former brownfield site" have the same meanings as in section 5751.54 of the Revised Code;</u>	255 256
(2) <u>"Brownfield" has the same meaning as in section 122.65 of the Revised Code;</u>	257 258
(3) <u>"Qualifying fuel refinery" means a refinery or other facility designed to produce alternative fuel or a refinery or other facility designed to utilize clean coal technology as a source of energy in the refinement of petroleum or the production of alternative fuel;</u>	259 260 261 262 263
(4) <u>"Qualifying petroleum handling facility" means a facility at which petroleum or a petroleum distillate is stored, processed, or otherwise handled or from which petroleum or a petroleum</u>	264 265 266

distillate is distributed, including mobile facilities, but not 267
including a facility of a retail dealer, as defined in section 268
5735.01 of the Revised Code, at which motor fuel is dispensed. 269

(B) This section applies to applications for a permit to 270
install, or a modification of such a permit, under rules adopted 271
under division (F) of section 3704.03 of the Revised Code, and to 272
applications for the approval of plans under section 6111.44, 273
6111.45, or 6111.46 of the Revised Code, with respect to a 274
qualifying fuel refinery or qualifying petroleum handling facility 275
located or to be located on a brownfield or former brownfield 276
site. 277

Not later than ten business days after receipt of such an 278
application, the director of environmental protection shall send 279
to the applicant written acknowledgement of receipt of the 280
application. The written acknowledgement shall contain a 281
completeness determination indicating either that the application 282
contains all the information that is necessary to perform a 283
technical review or that the application is incomplete. If the 284
application is incomplete, the written acknowledgement also shall 285
provide a description of the information that is missing from the 286
application. 287

If the director fails to make the completeness determination 288
and provide written notice of that determination not later than 289
ten business days after receipt of the application, the 290
application is deemed to be complete in all material respects as 291
of the eleventh business day after receipt of the application by 292
the director or the director's agent or authorized representative. 293

Sec. 3745.16. (A) This section applies to the applications 294
for a permit to install, or a modification of such a permit, and 295
to the applications for the approval of plans received by the 296
director of environmental protection under section 3745.15 of the 297

Revised Code. 298

(B)(1) For the purposes of this section, a complete 299
application is an application that has been determined or deemed 300
to be complete under section 3745.15 of the Revised Code. Not 301
later than one hundred eighty days after receipt of a complete 302
application, the director of environmental protection shall either 303
issue or deny the permit or modification or approve or disapprove 304
the plans, as applicable. The director shall send written 305
notification to the applicant of the issuance or denial or the 306
approval or disapproval. If the director fails to issue or deny 307
the permit or modification or approve or disapprove the plans 308
within one hundred eighty days after receiving a complete 309
application, the director and the director's authorized 310
representatives shall not collect the applicable permit to install 311
fee established under division (F) or (I) of section 3745.11 of 312
the Revised Code or the applicable plan approval fee established 313
under division (L)(2) of section 3745.11 of the Revised Code, as 314
the case may be. 315

(2) If, within the one-hundred-eighty-day period, the 316
director fails to issue or deny a permit to install or a 317
modification of such a permit, or fails to approve or disapprove 318
such plans, the applicant has a cause of action to obtain a 319
judgment that orders the director to take a final action on the 320
application. 321

(C) Upon the written request of the applicant, the director, 322
in writing, may extend the time provided under division (B)(1) of 323
this section for issuing or denying a permit to install or a 324
modification of such a permit, or for approving or disapproving 325
plans, for the additional time specified in the applicant's 326
request for the extension. If the time for the issuance or denial 327
of a permit or for approving or disapproving plans is extended 328

under this division, the prohibition against the collection of the 329
applicable permit to install fee or plan approval fee in division 330
(B)(1) of this section does not apply unless the prohibition is 331
included in a written agreement providing for the extension of 332
time. 333

(D) Upon the written request of the person who is responsible 334
for a qualifying fuel refinery or qualifying petroleum handling 335
facility, the director may consolidate or group applications for 336
the issuance of permits to install under rules adopted under 337
division (F) of section 3704.03 of the Revised Code, or 338
modifications or renewals of those permits, for individual air 339
contaminant sources located at the refinery or facility in order 340
to reduce the unnecessary paperwork and administrative burden to 341
the applicant and the director in connection with the issuance of 342
those permits, modifications, or renewals. Applicable fees that 343
are payable to the director under section 3745.11 of the Revised 344
Code shall not be reduced by reason of any such consolidation or 345
grouping of applications for permits, modifications, or renewals. 346

Sec. 3745.17. The director of environmental protection shall 347
identify and prescribe, and revise as appropriate, the forms of 348
technologies that qualify as clean coal technologies for the 349
purposes of sections 3745.15 and 3745.16 of the Revised Code and 350
the tax credits allowed under sections 5733.58, 5747.71, and 351
5751.54 of the Revised Code. 352

Sec. 5733.01. (A) The tax provided by this chapter for 353
domestic corporations shall be the amount charged against each 354
corporation organized for profit under the laws of this state and 355
each nonprofit corporation organized pursuant to Chapter 1729. of 356
the Revised Code, except as provided in sections 5733.09 and 357
5733.10 of the Revised Code, for the privilege of exercising its 358
franchise during the calendar year in which that amount is 359

payable, and the tax provided by this chapter for foreign 360
corporations shall be the amount charged against each corporation 361
organized for profit and each nonprofit corporation organized or 362
operating in the same or similar manner as nonprofit corporations 363
organized under Chapter 1729. of the Revised Code, under the laws 364
of any state or country other than this state, except as provided 365
in sections 5733.09 and 5733.10 of the Revised Code, for the 366
privilege of doing business in this state, owning or using a part 367
or all of its capital or property in this state, holding a 368
certificate of compliance with the laws of this state authorizing 369
it to do business in this state, or otherwise having nexus in or 370
with this state under the Constitution of the United States, 371
during the calendar year in which that amount is payable. 372

(B) A corporation is subject to the tax imposed by section 373
5733.06 of the Revised Code for each calendar year that it is so 374
organized, doing business, owning or using a part or all of its 375
capital or property, holding a certificate of compliance, or 376
otherwise having nexus in or with this state under the 377
Constitution of the United States, on the first day of January of 378
that calendar year. 379

(C) Any corporation subject to this chapter that is not 380
subject to the federal income tax shall file its returns and 381
compute its tax liability as required by this chapter in the same 382
manner as if that corporation were subject to the federal income 383
tax. 384

(D) For purposes of this chapter, a federally chartered 385
financial institution shall be deemed to be organized under the 386
laws of the state within which its principal office is located. 387

(E) For purposes of this chapter, any person, as defined in 388
section 5701.01 of the Revised Code, shall be treated as a 389
corporation if the person is classified for federal income tax 390
purposes as an association taxable as a corporation, and an equity 391

interest in the person shall be treated as capital stock of the 392
person. 393

(F) For the purposes of this chapter, "disregarded entity" 394
has the same meaning as in division (D) of section 5745.01 of the 395
Revised Code. 396

(1) A person's interest in a disregarded entity, whether held 397
directly or indirectly, shall be treated as the person's ownership 398
of the assets and liabilities of the disregarded entity, and the 399
income, including gain or loss, shall be included in the person's 400
net income under this chapter. 401

(2) Any sale, exchange, or other disposition of the person's 402
interest in the disregarded entity, whether held directly or 403
indirectly, shall be treated as a sale, exchange, or other 404
disposition of the person's share of the disregarded entity's 405
underlying assets or liabilities, and the gain or loss from such 406
sale, exchange, or disposition shall be included in the person's 407
net income under this chapter. 408

(3) The disregarded entity's payroll, property, and sales 409
factors shall be included in the person's factors. 410

(G) The tax a corporation is required to pay under this 411
chapter shall be as follows: 412

(1)(a) For financial institutions, the greater of the minimum 413
payment required under division (E) of section 5733.06 of the 414
Revised Code or the difference between all taxes charged the 415
financial institution under this chapter, without regard to 416
division (G)(2) of this section, less any credits allowable 417
against such tax. 418

(b) A corporation satisfying the description in division 419
(E)(5), (6), (7), (8), or (10) of section 5751.01 of the Revised 420
Code that is not a financial institution, insurance company, or 421
dealer in intangibles is subject to the taxes imposed under this 422

chapter as a corporation and not subject to tax as a financial 423
institution, and shall pay the greater of the minimum payment 424
required under division (E) of section 5733.06 of the Revised Code 425
or the difference between all the taxes charged under this 426
chapter, without regard to division (G)(2) of this section, less 427
any credits allowable against such tax. 428

(2) For all corporations other than those persons described 429
in division (G)(1)(a) or (b) of this section, the amount under 430
division (G)(2)(a) of this section applicable to the tax year 431
specified less the amount under division (G)(2)(b) of this 432
section: 433

(a)(i) For tax year 2005, the greater of the minimum payment 434
required under division (E) of section 5733.06 of the Revised Code 435
or the difference between all taxes charged the corporation under 436
this chapter and any credits allowable against such tax; 437

(ii) For tax year 2006, the greater of the minimum payment 438
required under division (E) of section 5733.06 of the Revised Code 439
or four-fifths of the difference between all taxes charged the 440
corporation under this chapter and any credits allowable against 441
such tax except the qualifying pass-through entity tax credit 442
described in division (A)(30) and the refundable credits described 443
in divisions (A)(31), ~~(32), (33), and (34)~~ to (35) of section 444
5733.98 of the Revised Code; 445

(iii) For tax year 2007, the greater of the minimum payment 446
required under division (E) of section 5733.06 of the Revised Code 447
or three-fifths of the difference between all taxes charged the 448
corporation under this chapter and any credits allowable against 449
such tax except the qualifying pass-through entity tax credit 450
described in division (A)(30) and the refundable credits described 451
in divisions (A)(31), ~~(32), (33), and (34)~~ to (35) of section 452
5733.98 of the Revised Code; 453

(iv) For tax year 2008, the greater of the minimum payment 454
required under division (E) of section 5733.06 of the Revised Code 455
or two-fifths of the difference between all taxes charged the 456
corporation under this chapter and any credits allowable against 457
such tax except the qualifying pass-through entity tax credit 458
described in division (A)(30) and the refundable credits described 459
in divisions (A)(31), ~~(32), (33), and (34)~~ to (35) of section 460
5733.98 of the Revised Code; 461

(v) For tax year 2009, the greater of the minimum payment 462
required under division (E) of section 5733.06 of the Revised Code 463
or one-fifth of the difference between all taxes charged the 464
corporation under this chapter and any credits allowable against 465
such tax except the qualifying pass-through entity tax credit 466
described in division (A)(30) and the refundable credits described 467
in divisions (A)(31), (32), ~~and (33)~~, and (35) of section 5733.98 468
of the Revised Code; 469

(vi) For tax year 2010 and each tax year thereafter, no tax. 470

(b) A corporation shall subtract from the amount calculated 471
under division (G)(2)(a)(ii), (iii), (iv), or (v) of this section 472
any qualifying pass-through entity tax credit described in 473
division (A)(30) and any refundable credits described in divisions 474
(A)(31), (32), (33), ~~and (34)~~, and (35) of section 5733.98 of the 475
Revised Code to which the corporation is entitled. Any unused 476
qualifying pass-through entity tax credit is not refundable. 477

(c) For the purposes of computing the amount of a credit that 478
may be carried forward to a subsequent tax year under division 479
(G)(2) of this section, a credit is utilized against the tax for a 480
tax year to the extent the credit applies against the tax for that 481
tax year, even if the difference is then multiplied by the 482
applicable fraction under division (G)(2)(a) of this section. 483

(3) Nothing in division (G) of this section eliminates or 484

reduces the tax imposed by section 5733.41 of the Revised Code on 485
a qualifying pass-through entity. 486

Sec. 5733.58. (A) As used in this section: 487

(1) "Alternative fuel," "former brownfield site," and "clean 488
coal technology" have the same meanings as in section 5751.54 of 489
the Revised Code. 490

(2) "Qualifying facility" means: 491

(a) In the case of a qualifying refiner, a refinery located 492
wholly or partly on a former brownfield site in this state at 493
which alternative fuel is produced. 494

(b) In the case of a qualifying manufacturer, a facility 495
located wholly or partly on a former brownfield site in this state 496
at which clean coal technology is utilized to produce energy for 497
the manufacture, refinement, rectification, or combination of 498
tangible personal property, including motor fuel. 499

(c) In the case of a qualifying petroleum handler, a facility 500
located wholly or partly on a former brownfield site in this state 501
at which petroleum or a petroleum distillate is stored, processed, 502
or otherwise handled or from which petroleum or a petroleum 503
distillate is distributed, including mobile facilities when 504
located on a former brownfield site, but not including a facility 505
of a retail dealer, as defined in section 5735.01 of the Revised 506
Code, at which motor fuel is dispensed. 507

(3) "Qualifying refiner" means a taxpayer that owns and 508
operates a qualifying facility at some time during the taxpayer's 509
taxable year. 510

(4) "Qualifying manufacturer" means a taxpayer that is a 511
manufacturer, as defined in section 5711.16 of the Revised Code, 512
that, at some time during the taxpayer's taxable year, owns and 513
operates a qualifying facility. "Qualifying manufacturer" does not 514

include an electric company or a combined company. 515

(5) "Qualifying petroleum handler" means a taxpayer that owns 516
and operates a qualifying facility at some time during the 517
taxpayer's taxable year. 518

(6) "Credit percentage" means: 519

(a) In the case of a qualifying refiner, the percentage that 520
the amount of alternative fuel produced by the refiner at a 521
qualifying facility is of the amount of all motor fuel refined by 522
the refiner in this state. 523

(b) In the case of a qualifying manufacturer, the percentage 524
that the heat output generated at a qualifying facility utilizing 525
clean coal technology is of the equivalent of the total heat 526
output generated anywhere to provide energy for manufacturing, 527
refining, rectifying, or combining tangible personal property, 528
including motor fuel, at all the manufacturer's facilities in this 529
state. For the purposes of this division, heat output shall be 530
measured by British thermal units or other appropriate unit 531
allowed by the tax commissioner. To the extent energy at the 532
manufacturer's facilities in this state is provided to the 533
facility in a form for which the heat output used to generate it 534
is not known to the manufacturer, the heat output shall be 535
estimated using appropriate conversion factors to reflect the heat 536
output required to generate that form of energy. 537

(c) In the case of a qualifying petroleum handler, the 538
percentage that the amount of petroleum or petroleum distillate 539
stored, processed, or otherwise handled at, or distributed from, a 540
qualifying facility is of the total amount of petroleum or 541
petroleum distillate stored, processed, or otherwise handled at, 542
or distributed from, the qualifying petroleum handler's facilities 543
in this state at which petroleum or petroleum distillate is 544
stored, processed, or otherwise handled or from which a petroleum 545

or petroleum distillate is distributed. 546

(7) "Motor fuel" has the same meaning as in section 5735.01 547
of the Revised Code. 548

(B) To encourage the redevelopment of brownfield sites with 549
facilities producing alternative fuels, utilizing clean coal 550
technology, or handling or distributing petroleum or petroleum 551
distillates, there is hereby allowed a refundable credit against 552
the tax imposed under section 5733.06 of the Revised Code for a 553
qualifying refiner, qualifying manufacturer, or qualifying 554
petroleum handler for tax years 2007, 2008, and 2009. The credit 555
equals the credit percentage multiplied by the tax otherwise due 556
under section 5733.06 of the Revised Code before deducting any 557
other credit, subject to any reduction under division (B)(1), (2), 558
or (3) of this section. If the reduction under division (B)(4) of 559
this section applies to a taxpayer, the reductions in divisions 560
(B)(1), (2), and (3) of this section do not apply to that 561
taxpayer. 562

(1) If a qualifying refiner is engaged in another business in 563
this state other than refining motor fuel, the credit shall be 564
multiplied by a fraction, the numerator of which is the portion of 565
the taxpayer's sales factor numerator, as computed under division 566
(B)(2)(c) of section 5733.05 of the Revised Code, attributable to 567
receipts from the sale of motor fuel refined by the taxpayer in 568
this state, and the denominator of which is the sales factor 569
numerator computed under that division. 570

(2) If a qualifying manufacturer is engaged in another 571
business in this state other than manufacturing, refining, 572
rectifying, or combining tangible personal property, the credit 573
shall be multiplied by a fraction, the numerator of which is the 574
portion of the taxpayer's sales factor numerator, as computed 575
under division (B)(2)(c) of section 5733.05 of the Revised Code, 576
attributable to receipts from the sale of tangible personal 577

property manufactured, refined, rectified, or combined in this 578
state, and the denominator of which is the sales factor numerator 579
computed under that division. 580

(3) If a qualifying petroleum handler is engaged in another 581
business in this state other than storing, processing, handling, 582
or distributing petroleum or a petroleum distillate, the credit 583
shall be multiplied by a fraction, the numerator of which is the 584
portion of the taxpayer's sales factor numerator, as computed 585
under division (B)(2)(c) of section 5733.05 of the Revised Code, 586
attributable to receipts from the storage, processing, handling, 587
or distribution of petroleum or a petroleum distillate in this 588
state, and the denominator of which is the sales factor numerator 589
computed under that division. 590

(4) If a taxpayer is two or more of a qualifying refiner, a 591
qualifying manufacturer, or a qualifying petroleum handler, the 592
credit shall be multiplied by a fraction, the numerator of which 593
is the portion of the taxpayer's sales factor numerator, as 594
computed under division (B)(2)(c) of section 5733.05 of the 595
Revised Code, attributable to receipts from the sale of tangible 596
personal property manufactured, refined, rectified, or combined in 597
this state, including motor fuel refined by the taxpayer in this 598
state, or from the storage, processing, handling, or distribution 599
of petroleum or a petroleum distillate in this state, and the 600
denominator of which is the sales factor numerator computed under 601
that division. For the purpose of this division, the storage, 602
processing, handling, or distribution of petroleum or a petroleum 603
distillate does not include the refinement of motor fuel. 604

(C) The credit shall be deducted in the order prescribed in 605
section 5733.98 of the Revised Code. If the amount of the credit 606
exceeds the amount of tax otherwise due under section 5733.06 of 607
the Revised Code after deducting other credits that precede the 608
credit under this section in that order, the excess shall be 609

refunded to the taxpayer. 610

Sec. 5733.98. (A) To provide a uniform procedure for 611
calculating the amount of tax imposed by section 5733.06 of the 612
Revised Code that is due under this chapter, a taxpayer shall 613
claim any credits to which it is entitled in the following order, 614
except as otherwise provided in section 5733.058 of the Revised 615
Code: 616

(1) For tax year 2005, the credit for taxes paid by a 617
qualifying pass-through entity allowed under section 5733.0611 of 618
the Revised Code; 619

(2) The credit allowed for financial institutions under 620
section 5733.45 of the Revised Code; 621

(3) The credit for qualifying affiliated groups under section 622
5733.068 of the Revised Code; 623

(4) The subsidiary corporation credit under section 5733.067 624
of the Revised Code; 625

(5) The savings and loan assessment credit under section 626
5733.063 of the Revised Code; 627

(6) The credit for recycling and litter prevention donations 628
under section 5733.064 of the Revised Code; 629

(7) The credit for employers that enter into agreements with 630
child day-care centers under section 5733.36 of the Revised Code; 631

(8) The credit for employers that reimburse employee child 632
care expenses under section 5733.38 of the Revised Code; 633

(9) The credit for maintaining railroad active grade crossing 634
warning devices under section 5733.43 of the Revised Code; 635

(10) The credit for purchases of lights and reflectors under 636
section 5733.44 of the Revised Code; 637

(11) The job retention credit under division (B) of section 638

5733.0610 of the Revised Code;	639
(12) The credit for losses on loans made under the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code if the taxpayer elected a nonrefundable credit under section 150.07 of the Revised Code;	640 641 642 643
(13) The credit for purchases of new manufacturing machinery and equipment under section 5733.31 or section 5733.311 of the Revised Code;	644 645 646
(14) The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;	647 648
(15) The job training credit under section 5733.42 of the Revised Code;	649 650
(16) The credit for qualified research expenses under section 5733.351 of the Revised Code;	651 652
(17) The enterprise zone credit under section 5709.66 of the Revised Code;	653 654
(18) The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;	655 656
(19) The credit for employers that establish on-site child day-care centers under section 5733.37 of the Revised Code;	657 658
(20) The ethanol plant investment credit under section 5733.46 of the Revised Code;	659 660
(21) The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;	661 662
(22) The export sales credit under section 5733.069 of the Revised Code;	663 664
(23) The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;	665 666
(24) The enterprise zone credits under section 5709.65 of the	667

Revised Code;	668
(25) The credit for using Ohio coal under section 5733.39 of the Revised Code;	669 670
(26) The credit for small telephone companies under section 5733.57 of the Revised Code;	671 672
(27) The credit for eligible nonrecurring 9-1-1 charges under section 5733.55 of the Revised Code;	673 674
(28) For tax year 2005, the credit for providing programs to aid the communicatively impaired under division (A) of section 5733.56 of the Revised Code;	675 676 677
(29) The research and development credit under section 5733.352 of the Revised Code;	678 679
(30) For tax years 2006 and subsequent tax years, the credit for taxes paid by a qualifying pass-through entity allowed under section 5733.0611 of the Revised Code;	680 681 682
(31) The refundable jobs creation credit under division (A) of section 5733.0610 of the Revised Code;	683 684
(32) The refundable credit for tax withheld under division (B)(2) of section 5747.062 of the Revised Code;	685 686
(33) The credit for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code if the taxpayer elected a refundable credit under section 150.07 of the Revised Code;	687 688 689 690
(34) For tax years 2006, 2007, and 2008, the refundable credit allowable under division (B) of section 5733.56 of the Revised Code;	691 692 693
<u>(35) The refundable credit for qualifying fuel refiners, qualifying manufacturers, and qualifying petroleum handlers under section 5733.58 of the Revised Code.</u>	694 695 696

(B) For any credit except the credits enumerated in divisions 697
(A) ~~(31), (32), (33), and (34)~~ to (35) of this section, the amount 698
of the credit for a tax year shall not exceed the tax due after 699
allowing for any other credit that precedes it in the order 700
required under this section. Any excess amount of a particular 701
credit may be carried forward if authorized under the section 702
creating that credit. 703

Sec. 5747.32. (A) As used in this section: 704

(1) "Partner" includes a member of a limited liability 705
company if the limited liability company ~~is not treated as a~~ 706
~~corporation for purposes of Chapter 5733. of the Revised Code and~~ 707
is not classified as an association taxable as a corporation for 708
federal income tax purposes. 709

(2) "S corporation" means a corporation that has made an 710
election under subchapter S of chapter one of subtitle A of the 711
Internal Revenue Code for its taxable year under the Internal 712
Revenue Code. 713

(B)(1) A nonrefundable credit is allowed against the tax 714
imposed by section 5747.02 of the Revised Code for a taxpayer that 715
has entered into an agreement with the director of development 716
under section 122.16 of the Revised Code, or for a taxpayer that 717
is a partner in a partnership or a shareholder in an S corporation 718
that has entered into such an agreement. If a taxpayer is a 719
partner in such a partnership or a shareholder in such an S 720
corporation, the taxpayer shall be allowed the taxpayer's 721
distributive share of the credit available through the partnership 722
or S corporation. 723

If an S corporation or partnership claims a credit under 724
section 5751.55 of the Revised Code with respect to an agreement 725
under section 122.16 of the Revised Code, a shareholder of the S 726
corporation or partner in the partnership may not claim a credit 727

under this section with respect to the same agreement. 728

(2) If a taxpayer, or a partnership or S corporation in which 729
the taxpayer is a partner or shareholder, enters into more than 730
one agreement under section 122.16 of the Revised Code, the 731
taxpayer may aggregate the amount of those credits each taxable 732
year. 733

(3) A taxpayer entitled to the credit allowed under this 734
section shall claim one-fifth of the credit amount for the taxable 735
year in which the agreement is entered into, and one-fifth of the 736
credit amount for each of the four succeeding taxable years. 737

(4) A taxpayer shall claim the credit in the order provided 738
under section 5747.98 of the Revised Code. The amount of the 739
credit that a taxpayer may claim each year shall be the amount 740
indicated on the certificate issued by the director of development 741
under section 122.16 of the Revised Code, or the taxpayer's 742
distributive share of that amount if the taxpayer is entitled to 743
the credit through a partnership or S corporation. The taxpayer 744
shall submit the certificate with the taxpayer's annual return 745
filed under section 5747.08 of the Revised Code. Each year, any 746
credit amount in excess of the tax due for that year under this 747
chapter, after allowing for all other credits preceding the credit 748
in that order, may be carried forward for no more than three 749
taxable years. 750

(5) A taxpayer shall not claim any credit amount remaining, 751
including any amounts carried forward from prior taxable years, 752
for any taxable year in which any of the following events occur, 753
or for any subsequent taxable year except as otherwise provided 754
under division (B)(6) of this section: 755

(a) The taxpayer, or a partnership or S corporation through 756
which the taxpayer is entitled to the credit, enters into a 757
compliance schedule agreement pursuant to division (B)(3) of 758

section 3746.12 of the Revised Code; 759

(b) The taxpayer, or a partnership or S corporation through 760
which the taxpayer is entitled to the credit, has its covenant not 761
to sue revoked pursuant to Chapter 3746. of the Revised Code and 762
rules adopted under that chapter; 763

(c) The covenant not to sue issued to the taxpayer, or a 764
partnership or S corporation through which the taxpayer is 765
entitled to the credit, is void pursuant to Chapter 3746. of the 766
Revised Code; 767

(d) The director of development has determined that the 768
taxpayer, or a partnership or S corporation through which the 769
taxpayer is entitled to the credit, has permitted the eligible 770
site to be used in such a manner as to cause the relocation of 771
employment positions from elsewhere in this state in violation of 772
the commitment required under division (D) of section 122.16 of 773
the Revised Code. 774

If a taxpayer claims credits through more than one 775
partnership or S corporation, division (B)(5) of this section 776
prohibits that taxpayer from claiming a credit through any of 777
those partnerships or S corporations that has entered into a 778
compliance schedule agreement, has had its covenant not to sue 779
revoked or voided, or has violated the commitment required in 780
division (D) of section 122.16 of the Revised Code. Division 781
(B)(5) of this section does not prohibit such a taxpayer from 782
claiming a credit through a partnership or S corporation that has 783
not entered into a compliance schedule agreement, has not had its 784
covenant not to sue revoked or voided, or has not violated the 785
commitment required in division (D) of section 122.16 of the 786
Revised Code. 787

(6) If a taxpayer has been prohibited from claiming the 788
credit or a portion of the credit by reason of division (B)(5)(a) 789

of this section, and the taxpayer, or a partnership or S 790
corporation in which the taxpayer is a partner or shareholder, 791
subsequently has returned the property to compliance with 792
applicable standards pursuant to the compliance schedule 793
agreement, the taxpayer may claim the credit for the taxable year 794
in which the director of environmental protection has determined 795
that the taxpayer, partnership, or S corporation has returned the 796
property to compliance with applicable standards and for each 797
subsequent taxable year for which the taxpayer is otherwise 798
allowed to claim the credit under division (B)(3) of this section. 799

Sec. 5747.71. (A) Any term used in this section that is 800
defined in section 5733.58 of the Revised Code has the same 801
meaning as defined in that section, except that references to 802
"taxpayer" in those definitions shall be construed to refer to a 803
pass-through entity for the purposes of this section. 804

(B) To encourage the redevelopment of brownfield sites with 805
facilities producing alternative fuels, utilizing clean coal 806
technology, or handling or distributing petroleum or petroleum 807
distillates, there is hereby allowed a refundable credit against 808
the tax imposed under section 5747.02 of the Revised Code for a 809
taxpayer that is an equity investor in a pass-through entity that 810
is a qualifying refiner, qualifying manufacturer, or qualifying 811
petroleum handler for the entity's entire taxable year beginning 812
on or after January 1, 2007. The credit equals the product 813
obtained by multiplying the following amounts: 814

(1) The taxpayer's distributive or proportionate share of any 815
net profit of the pass-through entity; 816

(2) The highest rate of tax imposed under section 5747.02 of 817
the Revised Code for the taxpayer's taxable year; 818

(3) The credit percentage that would apply to the 819
pass-through entity if the entity were a qualifying refiner, 820

qualifying manufacturer, or qualifying petroleum handler subject 821
to section 5733.58 of the Revised Code; and 822

(4) Any fraction that would apply under division (B)(1), (2), 823
(3), or (4) of section 5733.58 of the Revised Code if the entity 824
were a qualifying refiner, qualifying manufacturer, or qualifying 825
petroleum handler subject to that section. 826

(C) The credit shall be deducted in the order prescribed in 827
section 5747.98 of the Revised Code. If the amount of the credit 828
exceeds the amount of tax otherwise due under section 5747.02 of 829
the Revised Code after deducting other credits that precede the 830
credit allowed under this section in that order, the excess shall 831
be refunded to the taxpayer. 832

Sec. 5747.98. (A) To provide a uniform procedure for 833
calculating the amount of tax due under section 5747.02 of the 834
Revised Code, a taxpayer shall claim any credits to which the 835
taxpayer is entitled in the following order: 836

(1) The retirement income credit under division (B) of 837
section 5747.055 of the Revised Code; 838

(2) The senior citizen credit under division (C) of section 839
5747.05 of the Revised Code; 840

(3) The lump sum distribution credit under division (D) of 841
section 5747.05 of the Revised Code; 842

(4) The dependent care credit under section 5747.054 of the 843
Revised Code; 844

(5) The lump sum retirement income credit under division (C) 845
of section 5747.055 of the Revised Code; 846

(6) The lump sum retirement income credit under division (D) 847
of section 5747.055 of the Revised Code; 848

(7) The lump sum retirement income credit under division (E) 849

of section 5747.055 of the Revised Code;	850
(8) The low-income credit under section 5747.056 of the Revised Code;	851 852
(9) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	853 854
(10) The campaign contribution credit under section 5747.29 of the Revised Code;	855 856
(11) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	857 858
(12) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	859 860
(13) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	861 862
(14) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	863 864
(15) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;	865 866
(16) The credit for employers that reimburse employee child care expenses under section 5747.36 of the Revised Code;	867 868
(17) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	869 870
(18) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	871 872
(19) The job retention credit under division (B) of section 5747.058 of the Revised Code;	873 874
(20) The credit for losses on loans made under the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code if the taxpayer elected a nonrefundable credit under section 150.07 of the Revised Code;	875 876 877 878

(21) The credit for purchases of new manufacturing machinery and equipment under section 5747.26 or section 5747.261 of the Revised Code;	879 880 881
(22) The second credit for purchases of new manufacturing machinery and equipment and the credit for using Ohio coal under section 5747.31 of the Revised Code;	882 883 884
(23) The job training credit under section 5747.39 of the Revised Code;	885 886
(24) The enterprise zone credit under section 5709.66 of the Revised Code;	887 888
(25) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	889 890
(26) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	891 892
(27) The ethanol plant investment credit under section 5747.75 of the Revised Code;	893 894
(28) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	895 896
(29) The export sales credit under section 5747.057 of the Revised Code;	897 898
(30) The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;	899 900
(31) The enterprise zone credits under section 5709.65 of the Revised Code;	901 902
(32) The research and development credit under section 5747.331 of the Revised Code;	903 904
(33) The refundable jobs creation credit under division (A) of section 5747.058 of the Revised Code;	905 906
(34) The refundable credit for taxes paid by a qualifying	907

entity granted under section 5747.059 of the Revised Code; 908

(35) The refundable credits for taxes paid by a qualifying 909
pass-through entity granted under division (J) of section 5747.08 910
of the Revised Code; 911

(36) The refundable credit for tax withheld under division 912
(B)(1) of section 5747.062 of the Revised Code; 913

(37) The credit for losses on loans made to the Ohio venture 914
capital program under sections 150.01 to 150.10 of the Revised 915
Code if the taxpayer elected a refundable credit under section 916
150.07 of the Revised Code; 917

(38) The refundable credit for qualifying fuel refiners, 918
qualifying manufacturers, and qualifying petroleum handlers under 919
section 5747.71 of the Revised Code. 920

(B) For any credit, except the credits enumerated in 921
divisions (A)(33) to ~~(37)~~(38) of this section and the credit 922
granted under division (I) of section 5747.08 of the Revised Code, 923
the amount of the credit for a taxable year shall not exceed the 924
tax due after allowing for any other credit that precedes it in 925
the order required under this section. Any excess amount of a 926
particular credit may be carried forward if authorized under the 927
section creating that credit. Nothing in this chapter shall be 928
construed to allow a taxpayer to claim, directly or indirectly, a 929
credit more than once for a taxable year. 930

Sec. 5751.01. As used in this chapter: 931

(A) "Person" means, but is not limited to, individuals, 932
combinations of individuals of any form, receivers, assignees, 933
trustees in bankruptcy, firms, companies, joint-stock companies, 934
business trusts, estates, partnerships, limited liability 935
partnerships, limited liability companies, associations, joint 936
ventures, clubs, societies, for-profit corporations, S 937

corporations, qualified subchapter S subsidiaries, qualified 938
subchapter S trusts, trusts, entities that are disregarded for 939
federal income tax purposes, and any other entities. "Person" does 940
not include nonprofit organizations or the state, its agencies, 941
its instrumentalities, and its political subdivisions. 942

(B) "Consolidated elected taxpayer" means a group of two or 943
more persons treated as a single taxpayer for purposes of this 944
chapter as the result of an election made under section 5751.011 945
of the Revised Code. 946

(C) "Combined taxpayer" means a group of two or more persons 947
treated as a single taxpayer for purposes of this chapter under 948
section 5751.012 of the Revised Code. 949

(D) "Taxpayer" means any person, or any group of persons in 950
the case of a consolidated elected taxpayer or combined taxpayer 951
treated as one taxpayer, required to register or pay tax under 952
this chapter. "Taxpayer" does not include excluded persons. 953

(E) "Excluded person" means any of the following: 954

(1) Any person with not more than one hundred fifty thousand 955
dollars of taxable gross receipts during the calendar year. 956
Division (E)(1) of this section does not apply to a person that is 957
a member of a group that is a consolidated elected taxpayer or a 958
combined taxpayer; 959

(2) A public utility that paid the excise tax imposed by 960
section 5727.24 or 5727.30 of the Revised Code based on one or 961
more measurement periods that include the entire tax period under 962
this chapter, except that a public utility that is a combined 963
company is a taxpayer with regard to the following gross receipts: 964

(a) Taxable gross receipts directly attributed to a public 965
utility activity, but not directly attributed to an activity that 966
is subject to the excise tax imposed by section 5727.24 or 5727.30 967
of the Revised Code; 968

(b) Taxable gross receipts that cannot be directly attributed 969
to any activity, multiplied by a fraction whose numerator is the 970
taxable gross receipts described in division (E)(2)(a) of this 971
section and whose denominator is the total taxable gross receipts 972
that can be directly attributed to any activity; 973

(c) Except for any differences resulting from the use of an 974
accrual basis method of accounting for purposes of determining 975
gross receipts under this chapter and the use of the cash basis 976
method of accounting for purposes of determining gross receipts 977
under section 5727.24 of the Revised Code, the gross receipts 978
directly attributed to the activity of a natural gas company shall 979
be determined in a manner consistent with division (D) of section 980
5727.03 of the Revised Code. 981

As used in division (E)(2) of this section, "combined 982
company" and "public utility" have the same meanings as in section 983
5727.01 of the Revised Code. 984

(3) A financial institution, as defined in section 5725.01 of 985
the Revised Code, that paid the corporation franchise tax charged 986
by division (D) of section 5733.06 of the Revised Code based on 987
one or more taxable years that include the entire tax period under 988
this chapter; 989

(4) A dealer in intangibles, as defined in section 5725.01 of 990
the Revised Code, that paid the dealer in intangibles tax levied 991
by division (D) of section 5707.03 of the Revised Code based on 992
one or more measurement periods that include the entire tax period 993
under this chapter; 994

(5) A financial holding company as defined in the "Bank 995
Holding Company Act," 12 U.S.C. 1841(p); 996

(6) A bank holding company as defined in the "Bank Holding 997
Company Act," 12 U.S.C. 1841(a); 998

(7) A savings and loan holding company as defined in the 999

"Home Owners Loan Act," 12 U.S.C. 1467a(a)(1)(D) that is engaging 1000
only in activities or investments permissible for a financial 1001
holding company under 12 U.S.C. 1843(k); 1002

(8) A person directly or indirectly owned by one or more 1003
financial institutions, financial holding companies, bank holding 1004
companies, or savings and loan holding companies described in 1005
division (E)(3), (5), (6), or (7) of this section that is engaged 1006
in activities permissible for a financial holding company under 12 1007
U.S.C. 1843(k), except that any such person held pursuant to 1008
merchant banking authority under 12 U.S.C. 1843(k)(4)(H) or 12 1009
U.S.C. 1843(k)(4)(I) is not an excluded person, or a person 1010
directly or indirectly owned by one or more insurance companies 1011
described in division (E)(9) of this section that is authorized to 1012
do the business of insurance in this state. 1013

For the purposes of division (E)(8) of this section, a person 1014
owns another person under the following circumstances: 1015

(a) In the case of corporations issuing capital stock, one 1016
corporation owns another corporation if it owns fifty per cent or 1017
more of the other corporation's capital stock with current voting 1018
rights; 1019

(b) In the case of a limited liability company, one person 1020
owns the company if that person's membership interest, as defined 1021
in section 1705.01 of the Revised Code, is fifty per cent or more 1022
of the combined membership interests of all persons owning such 1023
interests in the company; 1024

(c) In the case of a partnership, trust, or other 1025
unincorporated business organization other than a limited 1026
liability company, one person owns the organization if, under the 1027
articles of organization or other instrument governing the affairs 1028
of the organization, that person has a beneficial interest in the 1029
organization's profits, surpluses, losses, or distributions of 1030

fifty per cent or more of the combined beneficial interests of all 1031
persons having such an interest in the organization; 1032

(d) In the case of multiple ownership, the ownership 1033
interests of more than one person may be aggregated to meet the 1034
fifty per cent ownership tests in this division only when each 1035
such owner is described in division (E)(3), (5), (6), or (7) of 1036
this section and is engaged in activities permissible for a 1037
financial holding company under 12 U.S.C. 1843(k) or is a person 1038
directly or indirectly owned by one or more insurance companies 1039
described in division (E)(9) of this section that is authorized to 1040
do the business of insurance in this state. 1041

(9) A domestic insurance company or foreign insurance 1042
company, as defined in section 5725.01 of the Revised Code, that 1043
paid the insurance company premiums tax imposed by section 5725.18 1044
or Chapter 5729. of the Revised Code based on one or more 1045
measurement periods that include the entire tax period under this 1046
chapter; 1047

(10) A person that solely facilitates or services one or more 1048
securitizations or similar transactions for any person described 1049
in division (E)(3), (5), (6), (7), (8), or (9) of this section. 1050
For purposes of this division, "securitization" means transferring 1051
one or more assets to one or more persons and then issuing 1052
securities backed by the right to receive payment from the asset 1053
or assets so transferred. 1054

(11) Except as otherwise provided in this division, a 1055
pre-income tax trust as defined in division (FF)(4) of section 1056
5747.01 of the Revised Code and any pass-through entity of which 1057
such pre-income tax trust owns or controls, directly, indirectly, 1058
or constructively through related interests, more than five per 1059
cent of the ownership or equity interests. If the pre-income tax 1060
trust has made a qualifying pre-income tax trust election under 1061
division (FF)(3) of section 5747.01 of the Revised Code, then the 1062

trust and the pass-through entities of which it owns or controls, 1063
directly, indirectly, or constructively through related interests, 1064
more than five per cent of the ownership or equity interests, 1065
shall not be excluded persons for purposes of the tax imposed 1066
under section 5751.02 of the Revised Code. 1067

(F) Except as otherwise provided in divisions (F)(2), (3), 1068
and (4) of this section, "gross receipts" means the total amount 1069
realized by a person, without deduction for the cost of goods sold 1070
or other expenses incurred, that contributes to the production of 1071
gross income of the person, including the fair market value of any 1072
property and any services received, and any debt transferred or 1073
forgiven as consideration. 1074

(1) The following are examples of gross receipts: 1075

(a) Amounts realized from the sale, exchange, or other 1076
disposition of the taxpayer's property to or with another; 1077

(b) Amounts realized from the taxpayer's performance of 1078
services for another; 1079

(c) Amounts realized from another's use or possession of the 1080
taxpayer's property or capital; 1081

(d) Any combination of the foregoing amounts. 1082

(2) "Gross receipts" excludes the following amounts: 1083

(a) Interest income except interest on credit sales; 1084

(b) Dividends and distributions from corporations, and 1085
distributive or proportionate shares of receipts and income from a 1086
pass-through entity as defined under section 5733.04 of the 1087
Revised Code; 1088

(c) Receipts from the sale, exchange, or other disposition of 1089
an asset described in section 1221 or 1231 of the Internal Revenue 1090
Code, without regard to the length of time the person held the 1091
asset. Notwithstanding section 1221 of the Internal Revenue Code, 1092

receipts from hedging transactions also are excluded to the extent 1093
the transactions are entered into primarily to protect a financial 1094
position, such as managing the risk of exposure to (i) foreign 1095
currency fluctuations that affect assets, liabilities, profits, 1096
losses, equity, or investments in foreign operations; (ii) 1097
interest rate fluctuations; or (iii) commodity price fluctuations. 1098
As used in division (F)(2)(c) of this section, "hedging 1099
transaction" has the same meaning as used in section 1221 of the 1100
Internal Revenue Code and also includes transactions accorded 1101
hedge accounting treatment under statement of financial accounting 1102
standards number 133 of the financial accounting standards board. 1103
For the purposes of division (F)(2)(c) of this section, the actual 1104
transfer of title of real or tangible personal property to another 1105
entity is not a hedging transaction. 1106

(d) Proceeds received attributable to the repayment, 1107
maturity, or redemption of the principal of a loan, bond, mutual 1108
fund, certificate of deposit, or marketable instrument; 1109

(e) The principal amount received under a repurchase 1110
agreement or on account of any transaction properly characterized 1111
as a loan to the person; 1112

(f) Contributions received by a trust, plan, or other 1113
arrangement, any of which is described in section 501(a) of the 1114
Internal Revenue Code, or to which Title 26, Subtitle A, Chapter 1115
1, Subchapter (D) of the Internal Revenue Code applies; 1116

(g) Compensation, whether current or deferred, and whether in 1117
cash or in kind, received or to be received by an employee, former 1118
employee, or the employee's legal successor for services rendered 1119
to or for an employer, including reimbursements received by or for 1120
an individual for medical or education expenses, health insurance 1121
premiums, or employee expenses, or on account of a dependent care 1122
spending account, legal services plan, any cafeteria plan 1123
described in section 125 of the Internal Revenue Code, or any 1124

similar employee reimbursement;	1125
(h) Proceeds received from the issuance of the taxpayer's own stock, options, warrants, puts, or calls, or from the sale of the taxpayer's treasury stock;	1126 1127 1128
(i) Proceeds received on the account of payments from life insurance policies;	1129 1130
(j) Gifts or charitable contributions received, membership dues received, and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; fundraising receipts received by any person when any excess receipts are donated or used exclusively for charitable purposes; and proceeds received by a nonprofit organization including proceeds realized with regard to its unrelated business taxable income;	1131 1132 1133 1134 1135 1136 1137 1138
(k) Damages received as the result of litigation in excess of amounts that, if received without litigation, would be gross receipts;	1139 1140 1141
(l) Property, money, and other amounts received or acquired by an agent on behalf of another in excess of the agent's commission, fee, or other remuneration;	1142 1143 1144
(m) Tax refunds, other tax benefit recoveries, and reimbursements for the tax imposed under this chapter made by entities that are part of the same combined taxpayer or consolidated elected taxpayer group, and reimbursements made by entities that are not members of a combined taxpayer or consolidated elected taxpayer group that are required to be made for economic parity among multiple owners of an entity whose tax obligation under this chapter is required to be reported and paid entirely by one owner, pursuant to the requirements of sections 5751.011 and 5751.012 of the Revised Code;	1145 1146 1147 1148 1149 1150 1151 1152 1153 1154
(n) Pension reversions;	1155

(o) Contributions to capital;	1156
(p) Sales or use taxes collected as a vendor or an out-of-state seller on behalf of the taxing jurisdiction from a consumer or other taxes the taxpayer is required by law to collect directly from a purchaser and remit to a local, state, or federal tax authority;	1157 1158 1159 1160 1161
(q) In the case of receipts from the sale of cigarettes or tobacco products by a wholesale dealer, retail dealer, distributor, manufacturer, or seller, all as defined in section 5743.01 of the Revised Code, an amount equal to the federal and state excise taxes paid by any person on or for such cigarettes or tobacco products under subtitle E of the Internal Revenue Code or Chapter 5743. of the Revised Code;	1162 1163 1164 1165 1166 1167 1168
(r) In the case of receipts from the sale of motor fuel by a licensed motor fuel dealer, licensed retail dealer, or licensed permissive motor fuel dealer, all as defined in section 5735.01 of the Revised Code, an amount equal to federal and state excise taxes paid by any person on such motor fuel under section 4081 of the Internal Revenue Code or Chapter 5735. of the Revised Code;	1169 1170 1171 1172 1173 1174
(s) In the case of receipts from the sale of beer or intoxicating liquor, as defined in section 4301.01 of the Revised Code, by a person holding a permit issued under Chapter 4301. or 4303. of the Revised Code, an amount equal to federal and state excise taxes paid by any person on or for such beer or intoxicating liquor under subtitle E of the Internal Revenue Code or Chapter 4301. or 4305. of the Revised Code;	1175 1176 1177 1178 1179 1180 1181
(t) Receipts realized by a new motor vehicle dealer or used motor vehicle dealer, as defined in section 4517.01 of the Revised Code, from the sale or other transfer of a motor vehicle, as defined in that section, to another motor vehicle dealer for the purpose of resale by the transferee motor vehicle dealer, but only	1182 1183 1184 1185 1186

if the sale or other transfer was based upon the transferee's need	1187
to meet a specific customer's preference for a motor vehicle;	1188
(u) Receipts from a financial institution described in	1189
division (E)(3) of this section for services provided to the	1190
financial institution in connection with the issuance, processing,	1191
servicing, and management of loans or credit accounts, if such	1192
financial institution and the recipient of such receipts have at	1193
least fifty per cent of their ownership interests owned or	1194
controlled, directly or constructively through related interests,	1195
by common owners;	1196
(v) Receipts realized from administering anti-neoplastic	1197
drugs and other cancer chemotherapy, biologicals, therapeutic	1198
agents, and supportive drugs in a physician's office to patients	1199
with cancer;	1200
(w) Funds received or used by a mortgage broker that is not a	1201
dealer in intangibles, other than fees or other consideration,	1202
pursuant to a table-funding mortgage loan or warehouse-lending	1203
mortgage loan. Terms used in division (F)(2)(w) of this section	1204
have the same meanings as in section 1322.01 of the Revised Code,	1205
except "mortgage broker" means a person assisting a buyer in	1206
obtaining a mortgage loan for a fee or other consideration paid by	1207
the buyer or a lender, or a person engaged in table-funding or	1208
warehouse-lending mortgage loans that are first lien mortgage	1209
loans.	1210
(x) Property, money, and other amounts received by a	1211
professional employer organization, as defined in section 4125.01	1212
of the Revised Code, from a client employer, as defined in that	1213
section, in excess of the administrative fee charged by the	1214
professional employer organization to the client employer;	1215
(y) In the case of amounts retained as commissions by a	1216
permit holder under Chapter 3769. of the Revised Code, an amount	1217

equal to the amounts specified under that chapter that must be 1218
paid to or collected by the tax commissioner as a tax and the 1219
amounts specified under that chapter to be used as purse money; 1220

(z) Qualifying distribution center receipts. 1221

(i) For purposes of division (F)(2)(z) of this section: 1222

(I) "Qualifying distribution center receipts" means receipts 1223
of a supplier from qualified property that is delivered to a 1224
qualified distribution center, multiplied by a quantity that 1225
equals one minus the Ohio delivery percentage. 1226

(II) "Qualified property" means tangible personal property 1227
delivered to a qualified distribution center that is shipped to 1228
that qualified distribution center solely for further shipping by 1229
the qualified distribution center to another location in this 1230
state or elsewhere. "Further shipping" includes storing and 1231
repackaging such property into smaller or larger bundles, so long 1232
as such property is not subject to further manufacturing or 1233
processing. 1234

(III) "Qualified distribution center" means a warehouse or 1235
other similar facility in this state that, for the qualifying 1236
year, is operated by a person that is not part of a combined 1237
taxpayer group and that has a qualifying certificate. However, all 1238
warehouses or other similar facilities that are operated by 1239
persons in the same taxpayer group and that are located within one 1240
mile of each other shall be treated as one qualified distribution 1241
center. 1242

(IV) "Qualifying year" means the calendar year to which the 1243
qualifying certificate applies. 1244

(V) "Qualifying period" means the period of the first day of 1245
July of the second year preceding the qualifying year through the 1246
thirtieth day of June of the year preceding the qualifying year. 1247

(VI) "Qualifying certificate" means an annual application 1248
approved by the tax commissioner from an operator of a 1249
distribution center that has filed an application as prescribed by 1250
the commissioner and paid the annual fee for the qualifying 1251
certificate on or before the first day of September prior to the 1252
qualifying year or forty-five days after the opening of the 1253
distribution center, whichever is later. The application and 1254
annual fee shall be filed and paid for each qualified distribution 1255
center. 1256

The applicant must substantiate to the commissioner's 1257
satisfaction that, for the qualifying period, all persons 1258
operating the distribution center have more than fifty per cent of 1259
the cost of the qualified property shipped to a location such that 1260
it would be situated outside this state under the provisions of 1261
division (E) of section 5751.033 of the Revised Code. The 1262
applicant must also substantiate that the distribution center 1263
cumulatively had costs from its suppliers equal to or exceeding 1264
five hundred million dollars during the qualifying period. (For 1265
purposes of division (F)(2)(z)(i)(VI) of this section, "supplier" 1266
excludes any person that is part of the consolidated elected 1267
taxpayer group, if applicable, of the operator of the qualified 1268
distribution center.) The commissioner may require the applicant 1269
to have an independent certified public accountant certify that 1270
the calculation of the minimum thresholds required for a qualified 1271
distribution center by the operator of a distribution center has 1272
been made in accordance with generally accepted accounting 1273
principles. The commissioner shall issue or deny the issuance of a 1274
certificate within sixty days after the receipt of the 1275
application. A denial is subject to appeal under section 5717.02 1276
of the Revised Code. If the operator files a timely appeal under 1277
section 5717.02 of the Revised Code, the operator shall be granted 1278
a qualifying certificate, provided that the operator is liable for 1279
any tax, interest, or penalty upon amounts claimed as qualifying 1280

distribution center receipts, other than those receipts exempt 1281
under division (C)(1) of section 5751.011 of the Revised Code, 1282
that would have otherwise not been owed by its suppliers if the 1283
qualifying certificate was valid. 1284

(VII) "Ohio delivery percentage" means the proportion of the 1285
total property delivered to a destination inside Ohio from the 1286
qualified distribution center during the qualifying period 1287
compared with total deliveries from such distribution center 1288
everywhere during the qualifying period. 1289

(ii) If the distribution center is new and was not open for 1290
the entire qualifying period, the operator of the distribution 1291
center may request that the commissioner grant a qualifying 1292
certificate. If the certificate is granted and it is later 1293
determined that more than fifty per cent of the qualified property 1294
during that year was not shipped to a location such that it would 1295
be situated outside of this state under the provisions of division 1296
(E) of section 5751.033 of the Revised Code or if it is later 1297
determined that the person that operates the distribution center 1298
had average monthly costs from its suppliers of less than forty 1299
million dollars during that year, then the operator of the 1300
distribution center shall be liable for any tax, interest, or 1301
penalty upon amounts claimed as qualifying distribution center 1302
receipts, other than those receipts exempt under division (C)(1) 1303
of section 5751.011 of the Revised Code, that would have not 1304
otherwise been owed by its suppliers during the qualifying year if 1305
the qualifying certificate was valid. (For purposes of division 1306
(F)(2)(z)(ii) of this section, "supplier" excludes any person that 1307
is part of the consolidated elected taxpayer group, if applicable, 1308
of the operator of the qualified distribution center.) 1309

(iii) When filing an application for a qualifying certificate 1310
under division (F)(2)(z)(i)(VI) of this section, the operator of a 1311
qualified distribution center also shall provide documentation, as 1312

the commissioner requires, for the commissioner to ascertain the 1313
Ohio delivery percentage. The commissioner, upon issuing the 1314
qualifying certificate, also shall certify the Ohio delivery 1315
percentage. The operator of the qualified distribution center may 1316
appeal the commissioner's certification of the Ohio delivery 1317
percentage in the same manner as an appeal is taken from the 1318
denial of a qualifying certificate under division (F)(2)(z)(i)(VI) 1319
of this section. 1320

Within thirty days after all appeals have been exhausted, the 1321
operator of the qualified distribution center shall notify the 1322
affected suppliers of qualified property that such suppliers are 1323
required to file, within sixty days after receiving notice from 1324
the operator of the qualified distribution center, amended reports 1325
for the impacted calendar quarter or quarters or calendar year, 1326
whichever the case may be. Any additional tax liability or tax 1327
overpayment shall be subject to interest but shall not be subject 1328
to the imposition of any penalty so long as the amended returns 1329
are timely filed. The supplier of tangible personal property 1330
delivered to the qualified distribution center shall include in 1331
its report of taxable gross receipts the receipts from the total 1332
sales of property delivered to the qualified distribution center 1333
for the calendar quarter or calendar year, whichever the case may 1334
be, multiplied by the Ohio delivery percentage for the qualifying 1335
year. Nothing in division (F)(2)(z)(iii) of this section shall be 1336
construed as imposing liability on the operator of a qualified 1337
distribution center for the tax imposed by this chapter arising 1338
from any change to the Ohio delivery percentage. 1339

(iv) In the case where the distribution center is new and not 1340
open for the entire qualifying period, the operator shall make a 1341
good faith estimate of an Ohio delivery percentage for use by 1342
suppliers in their reports of taxable gross receipts for the 1343
remainder of the qualifying period. The operator of the facility 1344

shall disclose to the suppliers that such Ohio delivery percentage 1345
is an estimate and is subject to recalculation. By the due date of 1346
the next application for a qualifying certificate, the operator 1347
shall determine the actual Ohio delivery percentage for the 1348
estimated qualifying period and proceed as provided in division 1349
(F)(2)(z)(iii) of this section with respect to the calculation and 1350
recalculation of the Ohio delivery percentage. The supplier is 1351
required to file, within sixty days after receiving notice from 1352
the operator of the qualified distribution center, amended reports 1353
for the impacted calendar quarter or quarters or calendar year, 1354
whichever the case may be. Any additional tax liability or tax 1355
overpayment shall be subject to interest but shall not be subject 1356
to the imposition of any penalty so long as the amended returns 1357
are timely filed. 1358

(v) Qualifying certificates and Ohio delivery percentages 1359
issued by the commissioner shall be open to public inspection and 1360
shall be timely published by the commissioner. A supplier relying 1361
in good faith on a certificate issued under this division shall 1362
not be subject to tax on the qualifying distribution center 1363
receipts under division (F)(2)(z) of this section. A person 1364
receiving a qualifying certificate is responsible for paying the 1365
tax, interest, and penalty upon amounts claimed as qualifying 1366
distribution center receipts that would not otherwise have been 1367
owed by the supplier if the qualifying certificate were available 1368
when it is later determined that the qualifying certificate should 1369
not have been issued because the statutory requirements were in 1370
fact not met. 1371

(vi) The annual fee for a qualifying certificate shall be one 1372
hundred thousand dollars for each qualified distribution center. 1373
If a qualifying certificate is not issued, the annual fee is 1374
subject to refund after the exhaustion of all appeals provided for 1375
in division (F)(2)(z)(i)(VI) of this section. The fee imposed 1376

under this division may be assessed in the same manner as the tax 1377
imposed under this chapter. The first one hundred thousand dollars 1378
of the annual application fees collected each calendar year shall 1379
be credited to the commercial activity tax administrative fund. 1380
The remainder of the annual application fees collected shall be 1381
distributed in the same manner required under section 5751.20 of 1382
the Revised Code. 1383

(vii) The tax commissioner may require that adequate security 1384
be posted by the operator of the distribution center on appeal 1385
when the commissioner disagrees that the applicant has met the 1386
minimum thresholds for a qualified distribution center as set 1387
forth in divisions (F)(2)(z)(i)(VI) and (F)(2)(z)(ii) of this 1388
section. 1389

(aa) Receipts excludable under division (B) of section 1390
5751.54 of the Revised Code. 1391

(bb) Any receipts for which the tax imposed by this chapter 1392
is prohibited by the Constitution or laws of the United States or 1393
the Constitution of Ohio. 1394

(3) In the case of a taxpayer when acting as a real estate 1395
broker, "gross receipts" includes only the portion of any fee for 1396
the service of a real estate broker, or service of a real estate 1397
salesperson associated with that broker, that is retained by the 1398
broker and not paid to an associated real estate salesperson or 1399
another real estate broker. For the purposes of this division, 1400
"real estate broker" and "real estate salesperson" have the same 1401
meanings as in section 4735.01 of the Revised Code. 1402

(4) A taxpayer's method of accounting for gross receipts for 1403
a tax period shall be the same as the taxpayer's method of 1404
accounting for federal income tax purposes for the taxpayer's 1405
federal taxable year that includes the tax period. If a taxpayer's 1406
method of accounting for federal income tax purposes changes, its 1407

method of accounting for gross receipts under this chapter shall 1408
be changed accordingly. 1409

In calculating gross receipts, the following shall be 1410
deducted to the extent included as a gross receipt in the current 1411
tax period or reported as taxable gross receipts in a prior tax 1412
period: 1413

(a) Cash discounts allowed and taken; 1414

(b) Returns and allowances; 1415

(c) Bad debts. For the purposes of this division, "bad debts" 1416
mean any debts that have become worthless or uncollectible between 1417
the preceding and current quarterly tax payment periods, have been 1418
uncollected for at least six months, and may be claimed as a 1419
deduction under section 166 of the Internal Revenue Code and the 1420
regulations adopted pursuant thereto, or that could be claimed as 1421
such if the taxpayer kept its accounts on the accrual basis. "Bad 1422
debts" does not include uncollectible amounts on property that 1423
remains in the possession of the taxpayer until the full purchase 1424
price is paid, expenses in attempting to collect any account 1425
receivable or for any portion of the debt recovered, and 1426
repossessed property; 1427

(d) Any amount realized from the sale of an account 1428
receivable but only to the extent the receipts from the underlying 1429
transaction giving rise to the account receivable were included in 1430
the gross receipts of the taxpayer. 1431

(G) "Taxable gross receipts" means gross receipts situated to 1432
this state under section 5751.033 of the Revised Code. 1433

(H) A person has "substantial nexus with this state" if any 1434
of the following applies. The person: 1435

(1) Owns or uses a part or all of its capital in this state; 1436

(2) Holds a certificate of compliance with the laws of this 1437

state authorizing the person to do business in this state;	1438
(3) Has bright-line presence in this state;	1439
(4) Otherwise has nexus with this state to an extent that the person can be required to remit the tax imposed under this chapter under the Constitution of the United States.	1440 1441 1442
(I) A person has "bright-line presence" in this state for a reporting period and for the remaining portion of the calendar year if any of the following applies. The person:	1443 1444 1445
(1) Has at any time during the calendar year property in this state with an aggregate value of at least fifty thousand dollars. For the purpose of division (I)(1) of this section, owned property is valued at original cost and rented property is valued at eight times the net annual rental charge.	1446 1447 1448 1449 1450
(2) Has during the calendar year payroll in this state of at least fifty thousand dollars. Payroll in this state includes all of the following:	1451 1452 1453
(a) Any amount subject to withholding by the person under section 5747.06 of the Revised Code;	1454 1455
(b) Any other amount the person pays as compensation to an individual under the supervision or control of the person for work done in this state; and	1456 1457 1458
(c) Any amount the person pays for services performed in this state on its behalf by another.	1459 1460
(3) Has during the calendar year taxable gross receipts of at least five hundred thousand dollars.	1461 1462
(4) Has at any time during the calendar year within this state at least twenty-five per cent of the person's total property, total payroll, or total gross receipts.	1463 1464 1465
(5) Is domiciled in this state as an individual or for corporate, commercial, or other business purposes.	1466 1467

(J) "Tangible personal property" has the same meaning as in section 5739.01 of the Revised Code. 1468
1469

(K) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term used in this chapter that is not otherwise defined has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes. 1470
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(L) "Calendar quarter" means a three-month period ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, or the thirty-first day of December. 1478
1479
1480

(M) "Tax period" means the calendar quarter or calendar year on the basis of which a taxpayer is required to pay the tax imposed under this chapter. 1481
1482
1483

(N) "Calendar year taxpayer" means a taxpayer for which the tax period is a calendar year. 1484
1485

(O) "Calendar quarter taxpayer" means a taxpayer for which the tax period is a calendar quarter. 1486
1487

(P) "Agent" means a person authorized by another person to act on its behalf to undertake a transaction for the other, including any of the following: 1488
1489
1490

(1) A person receiving a fee to sell financial instruments; 1491

(2) A person retaining only a commission from a transaction with the other proceeds from the transaction being remitted to another person; 1492
1493
1494

(3) A person issuing licenses and permits under section 1533.13 of the Revised Code; 1495
1496

(4) A lottery sales agent holding a valid license issued 1497

under section 3770.05 of the Revised Code; 1498

(5) A person acting as an agent of the division of liquor 1499
control under section 4301.17 of the Revised Code. 1500

(Q) "Received" includes amounts accrued under the accrual 1501
method of accounting. 1502

Sec. 5751.54. (A) As used in this section: 1503

(1) "Alternative fuel" means an alternative fuel as defined 1504
in 42 U.S.C. 13211, or biodiesel, blended biodiesel, or blended 1505
gasoline as defined in section 122.075 of the Revised Code. 1506

(2) "Former brownfield site" means a brownfield, as defined 1507
in section 122.65 of the Revised Code, at which cleanup or 1508
remediation, as defined in section 122.65 of the Revised Code, has 1509
occurred. 1510

(3) "Clean coal technology" means any technology, including a 1511
technology applied at the precombustion, combustion, or 1512
postcombustion stage, that achieves significant reductions in air 1513
emissions of sulfur dioxide or oxides of nitrogen associated with 1514
the utilization of coal in the generation of electricity or 1515
process steam, including fluidized-bed combustion, integrated 1516
gasification combined cycle, limestone injection multistage 1517
burner, enhanced flue gas desulfurization, coal liquefaction, and 1518
coal gasification, as prescribed by the director of environmental 1519
protection under section 3745.17 of the Revised Code. 1520

(4) "Excludable receipts" means: 1521

(a) To the extent otherwise includible in taxable gross 1522
receipts, gross receipts realized from the sale or other transfer 1523
by a qualifying taxpayer of alternative fuel produced at a 1524
facility located wholly or partly on a former brownfield site in 1525
this state. 1526

(b) To the extent otherwise includible in taxable gross 1527

receipts, gross receipts realized from the sale or other transfer 1528
by a qualifying taxpayer of tangible personal property 1529
manufactured, refined, rectified, or combined at a facility 1530
located wholly or partly on a former brownfield site in this state 1531
multiplied by the percentage that the heat output generated at 1532
that facility utilizing clean coal technology to provide energy 1533
for manufacturing, refining, rectifying, or combining tangible 1534
personal property at that facility is of the equivalent of the 1535
total heat output generated anywhere to provide energy for 1536
manufacturing, refining, rectifying, or combining tangible 1537
personal property at all the manufacturer's facilities in this 1538
state. For the purposes of this division, heat output shall be 1539
measured by British thermal units or other appropriate unit 1540
allowed by the tax commissioner. To the extent energy is provided 1541
in a form for which the heat output used to generate it is not 1542
known to the manufacturer, the heat output shall be estimated 1543
using appropriate conversion factors to reflect the heat output 1544
required to generate that form of energy. 1545

(c) To the extent otherwise includible in taxable gross 1546
receipts, gross receipts realized from the sale or other transfer 1547
of petroleum or petroleum distillate stored, processed, or 1548
otherwise handled at, or distributed from, a facility located 1549
wholly or partly on a former brownfield site in this state, or 1550
realized from the storage, processing, other handling, or 1551
distribution of petroleum or petroleum distillate at or from such 1552
a facility. 1553

(5) "Qualifying taxpayer" means: 1554

(a) A taxpayer that owns and operates a refinery located 1555
wholly or partly on a former brownfield site in this state at 1556
which alternative fuel is produced at some time during the 1557
calendar year for which the tax is imposed under this chapter. 1558

(b) A taxpayer that is a manufacturer, as defined in section 1559

5711.16 of the Revised Code, that owns and operates a facility 1560
located wholly or partly on a former brownfield site in this state 1561
and at which, at some time during the calendar year for which the 1562
tax is imposed under this chapter, clean coal technology is 1563
utilized to produce energy for the manufacture, refinement, 1564
rectification, or combination of tangible personal property. 1565

(c) A taxpayer that owns and operates a facility located 1566
wholly or partly on a former brownfield site and at or from which 1567
the taxpayer stores, processes, otherwise handles, or distributes 1568
petroleum or a petroleum distillate at some time during the 1569
calendar year for which the tax is imposed under this chapter. 1570

(B) To encourage the redevelopment of brownfield sites with 1571
facilities producing alternative fuels, utilizing clean coal 1572
technology, or handling or distributing petroleum or petroleum 1573
distillates, the following percentage of excludable receipts of a 1574
qualifying taxpayer shall be excluded from the computation of the 1575
taxpayer's taxable gross receipts under division (F) of section 1576
5751.01 of the Revised Code: 1577

(1) One hundred per cent for each of the first five calendar 1578
years, after calendar year 2006, in which a taxpayer is a 1579
qualifying taxpayer. 1580

(2) Seventy-five per cent for the sixth, seventh, eighth, 1581
ninth, and tenth calendar years, after calendar year 2006, in 1582
which a taxpayer is a qualifying taxpayer. 1583

(C) To encourage the use of alternative fuels, a taxpayer may 1584
deduct from the taxpayer's taxable gross receipts an amount equal 1585
to the taxpayer's cost of purchasing alternative fuel used in the 1586
conduct of the taxpayer's trade or business. The deduction under 1587
this division shall not exceed the taxpayer's taxable gross 1588
receipts for the tax period. 1589

<u>Sec. 5751.55. (A) As used in this section:</u>	1590
<u>(1) "Partnership" includes a limited liability company if the</u>	1591
<u>limited liability company is not classified as an association</u>	1592
<u>taxable as a corporation for federal income tax purposes.</u>	1593
<u>(2) "Partner" includes a member of a limited liability</u>	1594
<u>company if the limited liability company is not classified as an</u>	1595
<u>association taxable as a corporation for federal income tax</u>	1596
<u>purposes.</u>	1597
<u>(B)(1) A nonrefundable credit is allowed against the tax</u>	1598
<u>imposed under this chapter for a taxpayer that has entered into an</u>	1599
<u>agreement with the director of development under section 122.16 of</u>	1600
<u>the Revised Code, or for a taxpayer that is a partner in a</u>	1601
<u>partnership that has entered into such an agreement. If a taxpayer</u>	1602
<u>is a partner in such a partnership, the taxpayer shall be allowed</u>	1603
<u>its distributive share of the credit available through the</u>	1604
<u>partnership.</u>	1605
<u>If an S corporation or partnership claims a credit under this</u>	1606
<u>section with respect to an agreement under section 122.16 of the</u>	1607
<u>Revised Code, a shareholder of the S corporation or partner in the</u>	1608
<u>partnership may not claim a credit under section 5747.32 of the</u>	1609
<u>Revised Code with respect to the same agreement.</u>	1610
<u>(2) If a taxpayer enters into more than one agreement under</u>	1611
<u>section 122.16 of the Revised Code, the taxpayer may aggregate the</u>	1612
<u>amount of those credits each year.</u>	1613
<u>(3) A taxpayer entitled to the credit allowed under this</u>	1614
<u>section shall claim one-fifth of the credit amount for the</u>	1615
<u>calendar year immediately following the calendar year in which the</u>	1616
<u>agreement is entered into, and one-fifth of the credit amount for</u>	1617
<u>each of the four succeeding calendar years. If a taxpayer is a</u>	1618
<u>calendar quarter taxpayer for any of those calendar years, the</u>	1619

taxpayer shall claim one-fourth of the credit amount allowed for 1620
the calendar year for each quarterly tax period in the calendar 1621
quarter. 1622

(4) A taxpayer shall claim the credit in the order provided 1623
under section 5751.98 of the Revised Code. The amount of the 1624
credit that a taxpayer may claim each year shall be the amount 1625
indicated on the certificate issued by the director of development 1626
under section 122.16 of the Revised Code, or the taxpayer's 1627
distributive share of that amount if the taxpayer is entitled to 1628
the credit through a partnership. The taxpayer shall submit the 1629
certificate with the taxpayer's annual report filed under division 1630
(A)(3) of section 5751.051 of the Revised Code. Each calendar 1631
year, any credit amount in excess of the tax due for that year 1632
under this chapter, after allowing for all other credits preceding 1633
the credit in that order, may be carried forward for not more than 1634
three calendar years. 1635

(5) A taxpayer shall not claim any credit amount remaining, 1636
including any amounts carried forward from prior years, for any 1637
calendar year following the calendar year in which any of the 1638
following events occur, except as otherwise provided under 1639
division (B)(6) of this section: 1640

(a) The taxpayer, or a partnership through which the taxpayer 1641
is entitled to the credit, enters into a compliance schedule 1642
agreement pursuant to division (B)(3) of section 3746.12 of the 1643
Revised Code. 1644

(b) The taxpayer, or a partnership through which the taxpayer 1645
is entitled to the credit, has its covenant not to sue revoked 1646
pursuant to Chapter 3746. of the Revised Code and rules adopted 1647
under that chapter. 1648

(c) The covenant not to sue issued to the taxpayer, or a 1649
partnership through which the taxpayer is entitled to the credit, 1650

is void pursuant to Chapter 3746. of the Revised Code. 1651

(d) The director of development has determined that the taxpayer, or a partnership through which the taxpayer is entitled to the credit, has permitted the eligible site to be used in such a manner as to cause the relocation of employment positions from elsewhere in this state in violation of the commitment required under division (D) of section 122.16 of the Revised Code. 1652
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If a taxpayer claims credits through more than one partnership, division (B)(5) of this section prohibits that taxpayer from claiming a credit through any of those partnerships that has entered into a compliance schedule agreement, has had its covenant not to sue revoked or voided, or has violated the commitment required in division (D) of section 122.16 of the Revised Code. Division (B)(5) of this section does not prohibit such a taxpayer from claiming a credit through a partnership that has not entered into a compliance schedule agreement, has not had its covenant not to sue revoked or voided, or has not violated the commitment required in division (D) of section 122.16 of the Revised Code. 1658
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(6) If a taxpayer has been prohibited from claiming the credit or a portion of the credit by reason of division (B)(5)(a) of this section, and the taxpayer, or a partnership in which the taxpayer is a partner, subsequently has returned the property to compliance with applicable standards pursuant to the compliance schedule agreement, the taxpayer may claim the credit for the calendar year following the calendar year in which the director of environmental protection has determined that the taxpayer or partnership has returned the property to compliance with applicable standards and for each subsequent calendar year for which the taxpayer is otherwise allowed to claim the credit under division (B)(3) of this section. 1670
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Sec. 5751.98. (A) To provide a uniform procedure for	1682
calculating the amount of tax due under this chapter, a taxpayer	1683
shall claim any credits to which it is entitled in the following	1684
order:	1685
(1) The nonrefundable jobs retention credit under division	1686
(B) of section 5751.50 of the Revised Code;	1687
(2) The nonrefundable credit for qualified research expenses	1688
under division (B) of section 5751.51 of the Revised Code;	1689
(3) The nonrefundable credit for a borrower's qualified	1690
research and development loan payments under division (B) of	1691
section 5751.52 of the Revised Code;	1692
(4) <u>The nonrefundable credit for the eligible costs</u>	1693
<u>associated with a voluntary action under section 5751.55 of the</u>	1694
<u>Revised Code;</u>	1695
<u>(5)</u> The nonrefundable credit for calendar years 2010 to 2029	1696
for unused net operating losses under division (B) of section	1697
5751.53 of the Revised Code;	1698
(5) <u>(6)</u> The refundable credit for calendar year 2030 for	1699
unused net operating losses under division (C) of section 5751.53	1700
of the Revised Code;	1701
(6) <u>(7)</u> The refundable jobs creation credit under division (A)	1702
of section 5751.50 of the Revised Code.	1703
(B) For any credit except the credit <u>credits</u> enumerated in	1704
division <u>divisions</u> (A) (4) <u>(6)</u> and <u>(7)</u> of this section, the amount	1705
of the credit for a tax period shall not exceed the tax due after	1706
allowing for any other credit that precedes it in the order	1707
required under this section. Any excess amount of a particular	1708
credit may be carried forward if authorized under the section	1709
creating the credit.	1710
Section 2. That existing sections 122.16, 5733.01, 5733.98,	1711

5747.32, 5747.98, 5751.01, and 5751.98 of the Revised Code are
hereby repealed.

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