

As Introduced

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H. B. No. 439

Representatives Phillips, Stewart

Cosponsors: Representatives Garland, Okey, Domenick, Yuko

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A B I L L

To amend sections 1551.20, 5709.53, and 5747.01 of 1
the Revised Code to exempt from property taxation 2
the cost of energy-conservation or renewable 3
energy improvements to business property and to 4
authorize an additional income tax deduction for 5
the costs of such improvements if the property is 6
sold for a gain. 7

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

Section 1. That sections 1551.20, 5709.53, and 5747.01 of the 8
Revised Code be amended to read as follows: 9

Sec. 1551.20. (A) As used in this section, ~~"solar;"~~ 10

(1) "Solar or wind energy system" means any method used 11
directly to provide space heating or cooling, hot water, 12
industrial process heat, or mechanical or electric power by the 13
collection, conversion, or storage of solar or wind energy 14
including, but not limited to, active or passive solar systems. It 15
does not include any equipment that is part of a conventional 16
system for such purposes, that is, a system that does not use 17
solar or wind energy; nor does it include a roof or any windows or 18
walls that would be contained in a similar structure not designed 19

or modified to use solar energy for space heating or cooling, 20
except for those modifications to the design or construction of 21
such roof, windows, or walls that are necessary to their improved 22
use to capture solar energy for space heating or cooling. 23

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~~As used in this section, "hydrothermal~~ (2) "Hydrothermal 25
energy system" means any method used directly to provide a heating 26
or cooling effect by causing a thermal exchange with the earth 27
utilizing any water source, including ground or surface water by 28
use of appropriate heat exchange equipment. 29

(3) "Renewable energy property" and "resource conservation 30
improvements" have the same meanings as in section 5709.53 of the 31
Revised Code. 32

(B)(1) The director of development shall establish, and 33
revise as necessary, guidelines for identifying renewable energy 34
property and resource conservation improvements. The guidelines 35
shall be sufficiently descriptive to enable the tax commissioner 36
to identify renewable energy property and resource conservation 37
improvements and to apply the guidelines for the purpose of 38
determining the eligibility of such property for exemption from 39
taxation under division (B) of section 5709.53 of the Revised Code 40
and claiming a deduction under division (A)(28) or (S)(15) of 41
section 5747.01 of the Revised Code. The director shall publish 42
the guidelines on the department of development's web site and 43
transmit the guidelines to the tax commissioner. 44

(2) The director of development shall adopt rules in 45
accordance with Chapter 119. of the Revised Code establishing 46
guidelines for identifying solar, wind, or hydrothermal energy 47
systems and components thereof, and guidelines for the safety and 48
thermal efficiency of such systems. The rules shall distinguish 49
such systems from conventional systems and components thereof, and 50
shall distinguish from conventional roof, window, or wall design 51

or construction those modifications to the design or construction 52
of roofs, windows, or walls that are necessary to their improved 53
use to capture solar energy for space heating or cooling. The 54
rules shall determine the eligibility of solar, wind, and 55
hydrothermal energy systems for the tax exemption under division 56
(C) of section 5709.53 of the Revised Code. 57

(C) At the request of any person who designs, manufactures, 58
installs, or constructs solar, wind, or hydrothermal energy 59
systems, renewable energy property, or resource conservation 60
improvements, the director of development shall review the 61
detailed construction plans and design calculations for any such 62
system or property to determine whether the system or property 63
complies with the guidelines adopted under division (B)(1) or (2) 64
of this section. If the system or property complies with the 65
guidelines, the director shall enter the name of the system on a 66
list of ~~solar, wind, or hydrothermal energy~~ such systems or 67
property that are eligible for the tax exemption under division 68
(B) or (C) of section 5709.53 of the Revised Code. 69

(D) At the request of any person who desires to design or 70
install a solar, wind, or hydrothermal energy system, renewable 71
energy property, or resource conservation improvement for ~~his~~ the 72
person's own use, the director of development shall review the 73
plans for or a narrative description of the system, and the list 74
of components and materials to be incorporated therein to 75
determine whether the system complies with the guidelines adopted 76
under division (B)(1) or (2) of this section. If the system 77
complies, the director shall issue a certificate to that effect to 78
the applicant. 79

Sec. 5709.53. (A) As used in this section: 80

(1) "Business real property" means real property classified 81
as to use by the tax commissioner as commercial or industrial land 82

and improvements, excluding any real property owned by or leased 83
to a public utility. 84

(2) "Cost" has the same meaning as in section 179 of the 85
Internal Revenue Code. 86

(3) "Qualifying improvements" means resource conservation 87
improvements and renewable energy property. 88

(4) "Renewable energy property" includes all of the following 89
that, upon incorporation into real property, constitute real 90
property for the purposes of property taxation: 91

(a) Equipment that uses solar radiation in lieu of 92
traditional energy sources to heat water; actively heat or cool 93
spaces; passively heat spaces; illuminate; generate electricity; 94
distill liquids; desalinate; detoxify; or produce industrial or 95
commercial heat, including related devices used to collect, store, 96
exchange, or condition solar energy, or convert solar energy to 97
other useful forms of energy. 98

(b) Equipment used to capture and convert wind energy into 99
electricity or mechanical power, including related devices used to 100
convert, condition, and store the electricity produced. 101

(c) Hydroelectric generators that produce electricity by 102
water power or by the friction of water or steam that are located 103
at existing dams or in free-flowing waterways, including related 104
devices used for water supply or control and devices used to 105
convert, condition, or store the electricity generated. 106

(d) Equipment forming part of a hydrothermal energy system as 107
defined in section 1551.20 of the Revised Code or part of any 108
other geothermal energy system not employing water. 109

(5) "Resource conservation improvements" means improvements 110
to real property that are designed to reduce or conserve the use 111
of energy, including the installation of heating, ventilating, and 112

cooling equipment, thermal cooling or heating storage components 113
designed to create, store, and supply off-peak or renewable 114
electrical distributed thermal energy or reduce peak electrical 115
demand from conventional mechanical cooling or heating equipment, 116
hot water systems, interior lighting, insulating materials, 117
energy-efficient exterior windows, doors, and other building 118
envelope improvements, and that satisfy the energy star energy 119
efficiency guidelines developed by the United States environmental 120
protection agency and department of energy or qualify as "energy 121
efficient commercial building property" as defined in section 179D 122
of the Internal Revenue Code and regulations adopted pursuant to 123
that section, including partially qualifying property, without 124
regard to limitations on the date by which such property is placed 125
into service or whether the deduction authorized by that section 126
is claimed; and improvements to real property that are designed to 127
reduce or conserve the use of water. 128

(B) A portion of the assessed value of business real property 129
shall be exempted from taxation each tax year beginning with the 130
first year in which a qualifying improvement is incorporated into 131
the real property, not earlier than 2010, and ending with and 132
including the year in which title to the real property is conveyed 133
to another person. The exempted portion shall equal the lesser of 134
thirty-five per cent of the cost of the qualifying improvement or 135
the increase, if any, in the assessed value of the parcel 136
constituting the business real property from the tax year 137
preceding the incorporation of the improvement to the tax year in 138
which the parcel is next reassessed after the improvement was 139
incorporated. If the percentage of true value in money used in the 140
determination of taxable value is established at a percentage less 141
than thirty-five per cent for any tax year under section 5715.01 142
of the Revised Code, that percentage shall be substituted for 143
thirty-five per cent for the purposes of this division. 144

Renewable energy property qualifies for exemption under this 145
section only if none of the electricity or other energy produced 146
or derived from the property is sold to another person or 147
otherwise exchanged with or otherwise provided to another person 148
for consideration. For the purposes of this section, charging 149
tenants of the business real property for use of the electricity 150
or energy, or net metering as defined in section 4928.01 of the 151
Revised Code, are not considered a sale, exchange, or provision 152
for consideration, and conveyance to another person does not 153
include a conveyance between two persons that are related entities 154
as defined in section 5733.04 of the Revised Code, where 155
"taxpayer" is construed to refer to one of the parties to the 156
conveyance. 157

(C) A solar, wind, or hydrothermal energy system on which 158
construction or installation is completed during the period from 159
~~the effective date of this section August 14, 1979,~~ through 160
December 31, 1985, that meets the guidelines established under 161
division (B)(2) of section 1551.20 of the Revised Code is exempt 162
from real property taxation. 163

Sec. 5747.01. Except as otherwise expressly provided or 164
clearly appearing from the context, any term used in this chapter 165
that is not otherwise defined in this section has the same meaning 166
as when used in a comparable context in the laws of the United 167
States relating to federal income taxes or if not used in a 168
comparable context in those laws, has the same meaning as in 169
section 5733.40 of the Revised Code. Any reference in this chapter 170
to the Internal Revenue Code includes other laws of the United 171
States relating to federal income taxes. 172

As used in this chapter: 173

(A) "Adjusted gross income" or "Ohio adjusted gross income" 174
means federal adjusted gross income, as defined and used in the 175

Internal Revenue Code, adjusted as provided in this section:	176
(1) Add interest or dividends on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities.	177 178 179
(2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes.	180 181 182 183 184
(3) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.	185 186 187 188 189 190
(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.	191 192
(5) Deduct benefits under Title II of the Social Security Act and tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code.	193 194 195 196
(6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which the distribution is made to the extent that the portion was not included in the trust's taxable income for any of the trust's taxable years beginning in 2002 or thereafter.	197 198 199 200 201 202 203 204 205
"Undistributed net income of a trust" means the taxable income of	206

the trust increased by (a)(i) the additions to adjusted gross 207
income required under division (A) of this section and (ii) the 208
personal exemptions allowed to the trust pursuant to section 209
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 210
deductions to adjusted gross income required under division (A) of 211
this section, (ii) the amount of federal income taxes attributable 212
to such income, and (iii) the amount of taxable income that has 213
been included in the adjusted gross income of a beneficiary by 214
reason of a prior accumulation distribution. Any undistributed net 215
income included in the adjusted gross income of a beneficiary 216
shall reduce the undistributed net income of the trust commencing 217
with the earliest years of the accumulation period. 218

(7) Deduct the amount of wages and salaries, if any, not 219
otherwise allowable as a deduction but that would have been 220
allowable as a deduction in computing federal adjusted gross 221
income for the taxable year, had the targeted jobs credit allowed 222
and determined under sections 38, 51, and 52 of the Internal 223
Revenue Code not been in effect. 224

(8) Deduct any interest or interest equivalent on public 225
obligations and purchase obligations to the extent that the 226
interest or interest equivalent is included in federal adjusted 227
gross income. 228

(9) Add any loss or deduct any gain resulting from the sale, 229
exchange, or other disposition of public obligations to the extent 230
that the loss has been deducted or the gain has been included in 231
computing federal adjusted gross income. 232

(10) Deduct or add amounts, as provided under section 5747.70 233
of the Revised Code, related to contributions to variable college 234
savings program accounts made or tuition units purchased pursuant 235
to Chapter 3334. of the Revised Code. 236

(11)(a) Deduct, to the extent not otherwise allowable as a 237

deduction or exclusion in computing federal or Ohio adjusted gross 238
income for the taxable year, the amount the taxpayer paid during 239
the taxable year for medical care insurance and qualified 240
long-term care insurance for the taxpayer, the taxpayer's spouse, 241
and dependents. No deduction for medical care insurance under 242
division (A)(11) of this section shall be allowed either to any 243
taxpayer who is eligible to participate in any subsidized health 244
plan maintained by any employer of the taxpayer or of the 245
taxpayer's spouse, or to any taxpayer who is entitled to, or on 246
application would be entitled to, benefits under part A of Title 247
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 248
301, as amended. For the purposes of division (A)(11)(a) of this 249
section, "subsidized health plan" means a health plan for which 250
the employer pays any portion of the plan's cost. The deduction 251
allowed under division (A)(11)(a) of this section shall be the net 252
of any related premium refunds, related premium reimbursements, or 253
related insurance premium dividends received during the taxable 254
year. 255

(b) Deduct, to the extent not otherwise deducted or excluded 256
in computing federal or Ohio adjusted gross income during the 257
taxable year, the amount the taxpayer paid during the taxable 258
year, not compensated for by any insurance or otherwise, for 259
medical care of the taxpayer, the taxpayer's spouse, and 260
dependents, to the extent the expenses exceed seven and one-half 261
per cent of the taxpayer's federal adjusted gross income. 262

(c) Deduct, to the extent not otherwise deducted or excluded 263
in computing federal or Ohio adjusted gross income, any amount 264
included in federal adjusted gross income under section 105 or not 265
excluded under section 106 of the Internal Revenue Code solely 266
because it relates to an accident and health plan for a person who 267
otherwise would be a "qualifying relative" and thus a "dependent" 268
under section 152 of the Internal Revenue Code but for the fact 269

that the person fails to meet the income and support limitations 270
under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 271

(d) For purposes of division (A)(11) of this section, 272
"medical care" has the meaning given in section 213 of the 273
Internal Revenue Code, subject to the special rules, limitations, 274
and exclusions set forth therein, and "qualified long-term care" 275
has the same meaning given in section 7702B(c) of the Internal 276
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 277
of this section, "dependent" includes a person who otherwise would 278
be a "qualifying relative" and thus a "dependent" under section 279
152 of the Internal Revenue Code but for the fact that the person 280
fails to meet the income and support limitations under section 281
152(d)(1)(B) and (C) of the Internal Revenue Code. 282

(12)(a) Deduct any amount included in federal adjusted gross 283
income solely because the amount represents a reimbursement or 284
refund of expenses that in any year the taxpayer had deducted as 285
an itemized deduction pursuant to section 63 of the Internal 286
Revenue Code and applicable United States department of the 287
treasury regulations. The deduction otherwise allowed under 288
division (A)(12)(a) of this section shall be reduced to the extent 289
the reimbursement is attributable to an amount the taxpayer 290
deducted under this section in any taxable year. 291

(b) Add any amount not otherwise included in Ohio adjusted 292
gross income for any taxable year to the extent that the amount is 293
attributable to the recovery during the taxable year of any amount 294
deducted or excluded in computing federal or Ohio adjusted gross 295
income in any taxable year. 296

(13) Deduct any portion of the deduction described in section 297
1341(a)(2) of the Internal Revenue Code, for repaying previously 298
reported income received under a claim of right, that meets both 299
of the following requirements: 300

(a) It is allowable for repayment of an item that was 301
included in the taxpayer's adjusted gross income for a prior 302
taxable year and did not qualify for a credit under division (A) 303
or (B) of section 5747.05 of the Revised Code for that year; 304

(b) It does not otherwise reduce the taxpayer's adjusted 305
gross income for the current or any other taxable year. 306

(14) Deduct an amount equal to the deposits made to, and net 307
investment earnings of, a medical savings account during the 308
taxable year, in accordance with section 3924.66 of the Revised 309
Code. The deduction allowed by division (A)(14) of this section 310
does not apply to medical savings account deposits and earnings 311
otherwise deducted or excluded for the current or any other 312
taxable year from the taxpayer's federal adjusted gross income. 313

(15)(a) Add an amount equal to the funds withdrawn from a 314
medical savings account during the taxable year, and the net 315
investment earnings on those funds, when the funds withdrawn were 316
used for any purpose other than to reimburse an account holder 317
for, or to pay, eligible medical expenses, in accordance with 318
section 3924.66 of the Revised Code; 319

(b) Add the amounts distributed from a medical savings 320
account under division (A)(2) of section 3924.68 of the Revised 321
Code during the taxable year. 322

(16) Add any amount claimed as a credit under section 323
5747.059 of the Revised Code to the extent that such amount 324
satisfies either of the following: 325

(a) The amount was deducted or excluded from the computation 326
of the taxpayer's federal adjusted gross income as required to be 327
reported for the taxpayer's taxable year under the Internal 328
Revenue Code; 329

(b) The amount resulted in a reduction of the taxpayer's 330
federal adjusted gross income as required to be reported for any 331

of the taxpayer's taxable years under the Internal Revenue Code. 332

(17) Deduct the amount contributed by the taxpayer to an 333
individual development account program established by a county 334
department of job and family services pursuant to sections 329.11 335
to 329.14 of the Revised Code for the purpose of matching funds 336
deposited by program participants. On request of the tax 337
commissioner, the taxpayer shall provide any information that, in 338
the tax commissioner's opinion, is necessary to establish the 339
amount deducted under division (A)(17) of this section. 340

(18) Beginning in taxable year 2001 but not for any taxable 341
year beginning after December 31, 2005, if the taxpayer is married 342
and files a joint return and the combined federal adjusted gross 343
income of the taxpayer and the taxpayer's spouse for the taxable 344
year does not exceed one hundred thousand dollars, or if the 345
taxpayer is single and has a federal adjusted gross income for the 346
taxable year not exceeding fifty thousand dollars, deduct amounts 347
paid during the taxable year for qualified tuition and fees paid 348
to an eligible institution for the taxpayer, the taxpayer's 349
spouse, or any dependent of the taxpayer, who is a resident of 350
this state and is enrolled in or attending a program that 351
culminates in a degree or diploma at an eligible institution. The 352
deduction may be claimed only to the extent that qualified tuition 353
and fees are not otherwise deducted or excluded for any taxable 354
year from federal or Ohio adjusted gross income. The deduction may 355
not be claimed for educational expenses for which the taxpayer 356
claims a credit under section 5747.27 of the Revised Code. 357

(19) Add any reimbursement received during the taxable year 358
of any amount the taxpayer deducted under division (A)(18) of this 359
section in any previous taxable year to the extent the amount is 360
not otherwise included in Ohio adjusted gross income. 361

(20)(a)(i) Add five-sixths of the amount of depreciation 362
expense allowed by subsection (k) of section 168 of the Internal 363

Revenue Code, including the taxpayer's proportionate or 364
distributive share of the amount of depreciation expense allowed 365
by that subsection to a pass-through entity in which the taxpayer 366
has a direct or indirect ownership interest. 367

(ii) Add five-sixths of the amount of qualifying section 179 368
depreciation expense, including a person's proportionate or 369
distributive share of the amount of qualifying section 179 370
depreciation expense allowed to any pass-through entity in which 371
the person has a direct or indirect ownership. For the purposes of 372
this division, "qualifying section 179 depreciation expense" means 373
the difference between (I) the amount of depreciation expense 374
directly or indirectly allowed to the taxpayer under section 179 375
of the Internal Revenue Code, and (II) the amount of depreciation 376
expense directly or indirectly allowed to the taxpayer under 377
section 179 of the Internal Revenue Code as that section existed 378
on December 31, 2002. 379

The tax commissioner, under procedures established by the 380
commissioner, may waive the add-backs related to a pass-through 381
entity if the taxpayer owns, directly or indirectly, less than 382
five per cent of the pass-through entity. 383

(b) Nothing in division (A)(20) of this section shall be 384
construed to adjust or modify the adjusted basis of any asset. 385

(c) To the extent the add-back required under division 386
(A)(20)(a) of this section is attributable to property generating 387
nonbusiness income or loss allocated under section 5747.20 of the 388
Revised Code, the add-back shall be situated to the same location 389
as the nonbusiness income or loss generated by the property for 390
the purpose of determining the credit under division (A) of 391
section 5747.05 of the Revised Code. Otherwise, the add-back shall 392
be apportioned, subject to one or more of the four alternative 393
methods of apportionment enumerated in section 5747.21 of the 394
Revised Code. 395

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

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

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

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

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

(23) Deduct, to the extent not otherwise deducted or excluded 427
in computing federal or Ohio adjusted gross income for the taxable 428
year, the amount the taxpayer received during the taxable year as 429
a death benefit paid by the adjutant general under section 5919.33 430
of the Revised Code. 431

(24) Deduct, to the extent included in federal adjusted gross 432
income and not otherwise allowable as a deduction or exclusion in 433
computing federal or Ohio adjusted gross income for the taxable 434
year, military pay and allowances received by the taxpayer during 435
the taxable year for active duty service in the United States 436
army, air force, navy, marine corps, or coast guard or reserve 437
components thereof or the national guard. The deduction may not be 438
claimed for military pay and allowances received by the taxpayer 439
while the taxpayer is stationed in this state. 440

(25) Deduct, to the extent not otherwise allowable as a 441
deduction or exclusion in computing federal or Ohio adjusted gross 442
income for the taxable year and not otherwise compensated for by 443
any other source, the amount of qualified organ donation expenses 444
incurred by the taxpayer during the taxable year, not to exceed 445
ten thousand dollars. A taxpayer may deduct qualified organ 446
donation expenses only once for all taxable years beginning with 447
taxable years beginning in 2007. 448

For the purposes of division (A)(25) of this section: 449

(a) "Human organ" means all or any portion of a human liver, 450
pancreas, kidney, intestine, or lung, and any portion of human 451
bone marrow. 452

(b) "Qualified organ donation expenses" means travel 453
expenses, lodging expenses, and wages and salary forgone by a 454
taxpayer in connection with the taxpayer's donation, while living, 455
of one or more of the taxpayer's human organs to another human 456
being. 457

(26) Deduct, to the extent not otherwise deducted or excluded 458
in computing federal or Ohio adjusted gross income for the taxable 459
year, amounts received by the taxpayer as retired military 460
personnel pay for service in the United States army, navy, air 461
force, coast guard, or marine corps or reserve components thereof, 462
or the national guard, or received by the surviving spouse or 463
former spouse of such a taxpayer under the survivor benefit plan 464
on account of such a taxpayer's death. If the taxpayer receives 465
income on account of retirement paid under the federal civil 466
service retirement system or federal employees retirement system, 467
or under any successor retirement program enacted by the congress 468
of the United States that is established and maintained for 469
retired employees of the United States government, and such 470
retirement income is based, in whole or in part, on credit for the 471
taxpayer's military service, the deduction allowed under this 472
division shall include only that portion of such retirement income 473
that is attributable to the taxpayer's military service, to the 474
extent that portion of such retirement income is otherwise 475
included in federal adjusted gross income and is not otherwise 476
deducted under this section. Any amount deducted under division 477
(A)(26) of this section is not included in a taxpayer's adjusted 478
gross income for the purposes of section 5747.055 of the Revised 479
Code. No amount may be deducted under division (A)(26) of this 480
section on the basis of which a credit was claimed under section 481
5747.055 of the Revised Code. 482

(27) Deduct, to the extent not otherwise deducted or excluded 483
in computing federal or Ohio adjusted gross income for the taxable 484
year, the amount the taxpayer received during the taxable year 485
from the military injury relief fund created in section 5101.98 of 486
the Revised Code. 487

(28) For any taxable year for which a capital gain is 488
recognized from the sale of business real property in this state 489

to which a qualifying improvement was made while the property was 490
owned by the taxpayer or a pass-through entity of which the 491
taxpayer is an equity owner, deduct an amount equal to the 492
applicable percentage of the cost of the qualifying improvement to 493
the extent that amount does not exceed the capital gain. The 494
applicable percentage is one hundred per cent for a qualifying 495
improvement that was placed into service not more than five years 496
before the end of the taxable year, seventy-five per cent for a 497
qualifying improvement that was placed into service more than five 498
years but not more than ten years before the end of the taxable 499
year, and fifty per cent for a qualifying improvement that was 500
placed into service more than ten years before the end of the 501
taxable year. If the property was owned by a pass-through entity 502
of which the taxpayer is an equity owner, the taxpayer shall 503
deduct the taxpayer's distributive or proportionate share of such 504
amount to the extent that share does not exceed the taxpayer's 505
distributive or proportionate share of the capital gain, and the 506
taxable year on the basis of which the applicable percentage is 507
determined shall be the entity's taxable year. No amount may be 508
deducted under this division on the basis of a qualifying 509
improvement that is no longer incorporated into the business real 510
property at the time of the sale. 511

As used in division (A)(28) of this section, "qualifying 512
improvement" and "business real property" have the same meanings 513
as in section 5709.53 of the Revised Code, and "cost" has the same 514
meaning as in section 179 of the Internal Revenue Code. 515

(B) "Business income" means income, including gain or loss, 516
arising from transactions, activities, and sources in the regular 517
course of a trade or business and includes income, gain, or loss 518
from real property, tangible property, and intangible property if 519
the acquisition, rental, management, and disposition of the 520
property constitute integral parts of the regular course of a 521

trade or business operation. "Business income" includes income, 522
including gain or loss, from a partial or complete liquidation of 523
a business, including, but not limited to, gain or loss from the 524
sale or other disposition of goodwill. 525

(C) "Nonbusiness income" means all income other than business 526
income and may include, but is not limited to, compensation, rents 527
and royalties from real or tangible personal property, capital 528
gains, interest, dividends and distributions, patent or copyright 529
royalties, or lottery winnings, prizes, and awards. 530

(D) "Compensation" means any form of remuneration paid to an 531
employee for personal services. 532

(E) "Fiduciary" means a guardian, trustee, executor, 533
administrator, receiver, conservator, or any other person acting 534
in any fiduciary capacity for any individual, trust, or estate. 535

(F) "Fiscal year" means an accounting period of twelve months 536
ending on the last day of any month other than December. 537

(G) "Individual" means any natural person. 538

(H) "Internal Revenue Code" means the "Internal Revenue Code 539
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 540

(I) "Resident" means any of the following, provided that 541
division (I)(3) of this section applies only to taxable years of a 542
trust beginning in 2002 or thereafter: 543

(1) An individual who is domiciled in this state, subject to 544
section 5747.24 of the Revised Code; 545

(2) The estate of a decedent who at the time of death was 546
domiciled in this state. The domicile tests of section 5747.24 of 547
the Revised Code are not controlling for purposes of division 548
(I)(2) of this section. 549

(3) A trust that, in whole or part, resides in this state. If 550
only part of a trust resides in this state, the trust is a 551

resident only with respect to that part. 552

For the purposes of division (I)(3) of this section: 553

(a) A trust resides in this state for the trust's current 554
taxable year to the extent, as described in division (I)(3)(d) of 555
this section, that the trust consists directly or indirectly, in 556
whole or in part, of assets, net of any related liabilities, that 557
were transferred, or caused to be transferred, directly or 558
indirectly, to the trust by any of the following: 559

(i) A person, a court, or a governmental entity or 560
instrumentality on account of the death of a decedent, but only if 561
the trust is described in division (I)(3)(e)(i) or (ii) of this 562
section; 563

(ii) A person who was domiciled in this state for the 564
purposes of this chapter when the person directly or indirectly 565
transferred assets to an irrevocable trust, but only if at least 566
one of the trust's qualifying beneficiaries is domiciled in this 567
state for the purposes of this chapter during all or some portion 568
of the trust's current taxable year; 569

(iii) A person who was domiciled in this state for the 570
purposes of this chapter when the trust document or instrument or 571
part of the trust document or instrument became irrevocable, but 572
only if at least one of the trust's qualifying beneficiaries is a 573
resident domiciled in this state for the purposes of this chapter 574
during all or some portion of the trust's current taxable year. If 575
a trust document or instrument became irrevocable upon the death 576
of a person who at the time of death was domiciled in this state 577
for purposes of this chapter, that person is a person described in 578
division (I)(3)(a)(iii) of this section. 579

(b) A trust is irrevocable to the extent that the transferor 580
is not considered to be the owner of the net assets of the trust 581
under sections 671 to 678 of the Internal Revenue Code. 582

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

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

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

(ii) Each subsequent time the trust receives assets, a revised qualifying ratio shall be computed. The numerator of the revised qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent transfer, net of any related liabilities, multiplied by the qualifying ratio last computed without regard to the subsequent transfer, and (2) the fair market value of the subsequently transferred assets at the time transferred, net of any related

liabilities, from sources enumerated in division (I)(3)(a) of this 615
section. The denominator of the revised qualifying ratio is the 616
fair market value of all the trust's assets immediately after the 617
subsequent transfer, net of any related liabilities. 618

(iii) Whether a transfer to the trust is by or from any of 619
the sources enumerated in division (I)(3)(a) of this section shall 620
be ascertained without regard to the domicile of the trust's 621
beneficiaries. 622

(e) For the purposes of division (I)(3)(a)(i) of this 623
section: 624

(i) A trust is described in division (I)(3)(e)(i) of this 625
section if the trust is a testamentary trust and the testator of 626
that testamentary trust was domiciled in this state at the time of 627
the testator's death for purposes of the taxes levied under 628
Chapter 5731. of the Revised Code. 629

(ii) A trust is described in division (I)(3)(e)(ii) of this 630
section if the transfer is a qualifying transfer described in any 631
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 632
irrevocable inter vivos trust, and at least one of the trust's 633
qualifying beneficiaries is domiciled in this state for purposes 634
of this chapter during all or some portion of the trust's current 635
taxable year. 636

(f) For the purposes of division (I)(3)(e)(ii) of this 637
section, a "qualifying transfer" is a transfer of assets, net of 638
any related liabilities, directly or indirectly to a trust, if the 639
transfer is described in any of the following: 640

(i) The transfer is made to a trust, created by the decedent 641
before the decedent's death and while the decedent was domiciled 642
in this state for the purposes of this chapter, and, prior to the 643
death of the decedent, the trust became irrevocable while the 644
decedent was domiciled in this state for the purposes of this 645

chapter. 646

(ii) The transfer is made to a trust to which the decedent, 647
prior to the decedent's death, had directly or indirectly 648
transferred assets, net of any related liabilities, while the 649
decedent was domiciled in this state for the purposes of this 650
chapter, and prior to the death of the decedent the trust became 651
irrevocable while the decedent was domiciled in this state for the 652
purposes of this chapter. 653

(iii) The transfer is made on account of a contractual 654
relationship existing directly or indirectly between the 655
transferor and either the decedent or the estate of the decedent 656
at any time prior to the date of the decedent's death, and the 657
decedent was domiciled in this state at the time of death for 658
purposes of the taxes levied under Chapter 5731. of the Revised 659
Code. 660

(iv) The transfer is made to a trust on account of a 661
contractual relationship existing directly or indirectly between 662
the transferor and another person who at the time of the 663
decedent's death was domiciled in this state for purposes of this 664
chapter. 665

(v) The transfer is made to a trust on account of the will of 666
a testator. 667

(vi) The transfer is made to a trust created by or caused to 668
be created by a court, and the trust was directly or indirectly 669
created in connection with or as a result of the death of an 670
individual who, for purposes of the taxes levied under Chapter 671
5731. of the Revised Code, was domiciled in this state at the time 672
of the individual's death. 673

(g) The tax commissioner may adopt rules to ascertain the 674
part of a trust residing in this state. 675

(J) "Nonresident" means an individual or estate that is not a 676

resident. An individual who is a resident for only part of a 677
taxable year is a nonresident for the remainder of that taxable 678
year. 679

(K) "Pass-through entity" has the same meaning as in section 680
5733.04 of the Revised Code. 681

(L) "Return" means the notifications and reports required to 682
be filed pursuant to this chapter for the purpose of reporting the 683
tax due and includes declarations of estimated tax when so 684
required. 685

(M) "Taxable year" means the calendar year or the taxpayer's 686
fiscal year ending during the calendar year, or fractional part 687
thereof, upon which the adjusted gross income is calculated 688
pursuant to this chapter. 689

(N) "Taxpayer" means any person subject to the tax imposed by 690
section 5747.02 of the Revised Code or any pass-through entity 691
that makes the election under division (D) of section 5747.08 of 692
the Revised Code. 693

(O) "Dependents" means dependents as defined in the Internal 694
Revenue Code and as claimed in the taxpayer's federal income tax 695
return for the taxable year or which the taxpayer would have been 696
permitted to claim had the taxpayer filed a federal income tax 697
return. 698

(P) "Principal county of employment" means, in the case of a 699
nonresident, the county within the state in which a taxpayer 700
performs services for an employer or, if those services are 701
performed in more than one county, the county in which the major 702
portion of the services are performed. 703

(Q) As used in sections 5747.50 to 5747.55 of the Revised 704
Code: 705

(1) "Subdivision" means any county, municipal corporation, 706

park district, or township. 707

(2) "Essential local government purposes" includes all 708
functions that any subdivision is required by general law to 709
exercise, including like functions that are exercised under a 710
charter adopted pursuant to the Ohio Constitution. 711

(R) "Overpayment" means any amount already paid that exceeds 712
the figure determined to be the correct amount of the tax. 713

(S) "Taxable income" or "Ohio taxable income" applies only to 714
estates and trusts, and means federal taxable income, as defined 715
and used in the Internal Revenue Code, adjusted as follows: 716

(1) Add interest or dividends, net of ordinary, necessary, 717
and reasonable expenses not deducted in computing federal taxable 718
income, on obligations or securities of any state or of any 719
political subdivision or authority of any state, other than this 720
state and its subdivisions and authorities, but only to the extent 721
that such net amount is not otherwise includible in Ohio taxable 722
income and is described in either division (S)(1)(a) or (b) of 723
this section: 724

(a) The net amount is not attributable to the S portion of an 725
electing small business trust and has not been distributed to 726
beneficiaries for the taxable year; 727

(b) The net amount is attributable to the S portion of an 728
electing small business trust for the taxable year. 729

(2) Add interest or dividends, net of ordinary, necessary, 730
and reasonable expenses not deducted in computing federal taxable 731
income, on obligations of any authority, commission, 732
instrumentality, territory, or possession of the United States to 733
the extent that the interest or dividends are exempt from federal 734
income taxes but not from state income taxes, but only to the 735
extent that such net amount is not otherwise includible in Ohio 736
taxable income and is described in either division (S)(1)(a) or 737

(b) of this section; 738

(3) Add the amount of personal exemption allowed to the 739
estate pursuant to section 642(b) of the Internal Revenue Code; 740

(4) Deduct interest or dividends, net of related expenses 741
deducted in computing federal taxable income, on obligations of 742
the United States and its territories and possessions or of any 743
authority, commission, or instrumentality of the United States to 744
the extent that the interest or dividends are exempt from state 745
taxes under the laws of the United States, but only to the extent 746
that such amount is included in federal taxable income and is 747
described in either division (S)(1)(a) or (b) of this section; 748

(5) Deduct the amount of wages and salaries, if any, not 749
otherwise allowable as a deduction but that would have been 750
allowable as a deduction in computing federal taxable income for 751
the taxable year, had the targeted jobs credit allowed under 752
sections 38, 51, and 52 of the Internal Revenue Code not been in 753
effect, but only to the extent such amount relates either to 754
income included in federal taxable income for the taxable year or 755
to income of the S portion of an electing small business trust for 756
the taxable year; 757

(6) Deduct any interest or interest equivalent, net of 758
related expenses deducted in computing federal taxable income, on 759
public obligations and purchase obligations, but only to the 760
extent that such net amount relates either to income included in 761
federal taxable income for the taxable year or to income of the S 762
portion of an electing small business trust for the taxable year; 763

(7) Add any loss or deduct any gain resulting from sale, 764
exchange, or other disposition of public obligations to the extent 765
that such loss has been deducted or such gain has been included in 766
computing either federal taxable income or income of the S portion 767
of an electing small business trust for the taxable year; 768

(8) Except in the case of the final return of an estate, add 769
any amount deducted by the taxpayer on both its Ohio estate tax 770
return pursuant to section 5731.14 of the Revised Code, and on its 771
federal income tax return in determining federal taxable income; 772

(9)(a) Deduct any amount included in federal taxable income 773
solely because the amount represents a reimbursement or refund of 774
expenses that in a previous year the decedent had deducted as an 775
itemized deduction pursuant to section 63 of the Internal Revenue 776
Code and applicable treasury regulations. The deduction otherwise 777
allowed under division (S)(9)(a) of this section shall be reduced 778
to the extent the reimbursement is attributable to an amount the 779
taxpayer or decedent deducted under this section in any taxable 780
year. 781

(b) Add any amount not otherwise included in Ohio taxable 782
income for any taxable year to the extent that the amount is 783
attributable to the recovery during the taxable year of any amount 784
deducted or excluded in computing federal or Ohio taxable income 785
in any taxable year, but only to the extent such amount has not 786
been distributed to beneficiaries for the taxable year. 787

(10) Deduct any portion of the deduction described in section 788
1341(a)(2) of the Internal Revenue Code, for repaying previously 789
reported income received under a claim of right, that meets both 790
of the following requirements: 791

(a) It is allowable for repayment of an item that was 792
included in the taxpayer's taxable income or the decedent's 793
adjusted gross income for a prior taxable year and did not qualify 794
for a credit under division (A) or (B) of section 5747.05 of the 795
Revised Code for that year. 796

(b) It does not otherwise reduce the taxpayer's taxable 797
income or the decedent's adjusted gross income for the current or 798
any other taxable year. 799

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

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

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

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

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

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

(14) Add or deduct the amount the taxpayer would be required 831
to add or deduct under division (A)(20) or (21) of this section if 832
the taxpayer's Ohio taxable income were computed in the same 833
manner as an individual's Ohio adjusted gross income is computed 834
under this section. In the case of a trust, division (S)(14) of 835
this section applies only to any of the trust's taxable years 836
beginning in 2002 or thereafter. 837

(15) For any taxable year for which a capital gain is 838
recognized from the sale of business real property in this state 839
to which a qualifying improvement was made while the property was 840
owned by the taxpayer or a pass-through entity of which the 841
taxpayer is an equity owner, deduct an amount equal to the 842
applicable percentage of the cost of the qualifying improvement to 843
the extent that amount does not exceed the capital gain. The 844
applicable percentage shall be determined in the manner prescribed 845
by division (A)(28) of this section. If the property was owned by 846
a pass-through entity of which the taxpayer is an equity owner, 847
the taxpayer shall deduct the taxpayer's distributive or 848
proportionate share of such amount to the extent that share does 849
not exceed the taxpayer's distributive or proportionate share of 850
the capital gain. No amount may be deducted under this division on 851
the basis of a qualifying improvement that is no longer 852
incorporated into the business real property at the time of the 853
sale. 854

As used in division (S)(15) of this section, "qualifying 855
improvement" and "business real property" have the same meanings 856
as in section 5709.53 of the Revised Code, and "cost" has the same 857
meaning as in section 179 of the Internal Revenue Code. 858

(T) "School district income" and "school district income tax" 859
have the same meanings as in section 5748.01 of the Revised Code. 860

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 861
of this section, "public obligations," "purchase obligations," and 862

"interest or interest equivalent" have the same meanings as in 863
section 5709.76 of the Revised Code. 864

(V) "Limited liability company" means any limited liability 865
company formed under Chapter 1705. of the Revised Code or under 866
the laws of any other state. 867

(W) "Pass-through entity investor" means any person who, 868
during any portion of a taxable year of a pass-through entity, is 869
a partner, member, shareholder, or equity investor in that 870
pass-through entity. 871

(X) "Banking day" has the same meaning as in section 1304.01 872
of the Revised Code. 873

(Y) "Month" means a calendar month. 874

(Z) "Quarter" means the first three months, the second three 875
months, the third three months, or the last three months of the 876
taxpayer's taxable year. 877

(AA)(1) "Eligible institution" means a state university or 878
state institution of higher education as defined in section 879
3345.011 of the Revised Code, or a private, nonprofit college, 880
university, or other post-secondary institution located in this 881
state that possesses a certificate of authorization issued by the 882
Ohio board of regents pursuant to Chapter 1713. of the Revised 883
Code or a certificate of registration issued by the state board of 884
career colleges and schools under Chapter 3332. of the Revised 885
Code. 886

(2) "Qualified tuition and fees" means tuition and fees 887
imposed by an eligible institution as a condition of enrollment or 888
attendance, not exceeding two thousand five hundred dollars in 889
each of the individual's first two years of post-secondary 890
education. If the individual is a part-time student, "qualified 891
tuition and fees" includes tuition and fees paid for the academic 892
equivalent of the first two years of post-secondary education 893

during a maximum of five taxable years, not exceeding a total of 894
five thousand dollars. "Qualified tuition and fees" does not 895
include: 896

(a) Expenses for any course or activity involving sports, 897
games, or hobbies unless the course or activity is part of the 898
individual's degree or diploma program; 899

(b) The cost of books, room and board, student activity fees, 900
athletic fees, insurance expenses, or other expenses unrelated to 901
the individual's academic course of instruction; 902

(c) Tuition, fees, or other expenses paid or reimbursed 903
through an employer, scholarship, grant in aid, or other 904
educational benefit program. 905

(BB)(1) "Modified business income" means the business income 906
included in a trust's Ohio taxable income after such taxable 907
income is first reduced by the qualifying trust amount, if any. 908

(2) "Qualifying trust amount" of a trust means capital gains 909
and losses from the sale, exchange, or other disposition of equity 910
or ownership interests in, or debt obligations of, a qualifying 911
investee to the extent included in the trust's Ohio taxable 912
income, but only if the following requirements are satisfied: 913

(a) The book value of the qualifying investee's physical 914
assets in this state and everywhere, as of the last day of the 915
qualifying investee's fiscal or calendar year ending immediately 916
prior to the date on which the trust recognizes the gain or loss, 917
is available to the trust. 918

(b) The requirements of section 5747.011 of the Revised Code 919
are satisfied for the trust's taxable year in which the trust 920
recognizes the gain or loss. 921

Any gain or loss that is not a qualifying trust amount is 922
modified business income, qualifying investment income, or 923

modified nonbusiness income, as the case may be. 924

(3) "Modified nonbusiness income" means a trust's Ohio 925
taxable income other than modified business income, other than the 926
qualifying trust amount, and other than qualifying investment 927
income, as defined in section 5747.012 of the Revised Code, to the 928
extent such qualifying investment income is not otherwise part of 929
modified business income. 930

(4) "Modified Ohio taxable income" applies only to trusts, 931
and means the sum of the amounts described in divisions (BB)(4)(a) 932
to (c) of this section: 933

(a) The fraction, calculated under section 5747.013, and 934
applying section 5747.231 of the Revised Code, multiplied by the 935
sum of the following amounts: 936

(i) The trust's modified business income; 937

(ii) The trust's qualifying investment income, as defined in 938
section 5747.012 of the Revised Code, but only to the extent the 939
qualifying investment income does not otherwise constitute 940
modified business income and does not otherwise constitute a 941
qualifying trust amount. 942

(b) The qualifying trust amount multiplied by a fraction, the 943
numerator of which is the sum of the book value of the qualifying 944
investee's physical assets in this state on the last day of the 945
qualifying investee's fiscal or calendar year ending immediately 946
prior to the day on which the trust recognizes the qualifying 947
trust amount, and the denominator of which is the sum of the book 948
value of the qualifying investee's total physical assets 949
everywhere on the last day of the qualifying investee's fiscal or 950
calendar year ending immediately prior to the day on which the 951
trust recognizes the qualifying trust amount. If, for a taxable 952
year, the trust recognizes a qualifying trust amount with respect 953
to more than one qualifying investee, the amount described in 954

division (BB)(4)(b) of this section shall equal the sum of the 955
products so computed for each such qualifying investee. 956

(c)(i) With respect to a trust or portion of a trust that is 957
a resident as ascertained in accordance with division (I)(3)(d) of 958
this section, its modified nonbusiness income. 959

(ii) With respect to a trust or portion of a trust that is 960
not a resident as ascertained in accordance with division 961
(I)(3)(d) of this section, the amount of its modified nonbusiness 962
income satisfying the descriptions in divisions (B)(2) to (5) of 963
section 5747.20 of the Revised Code, except as otherwise provided 964
in division (BB)(4)(c)(ii) of this section. With respect to a 965
trust or portion of a trust that is not a resident as ascertained 966
in accordance with division (I)(3)(d) of this section, the trust's 967
portion of modified nonbusiness income recognized from the sale, 968
exchange, or other disposition of a debt interest in or equity 969
interest in a section 5747.212 entity, as defined in section 970
5747.212 of the Revised Code, without regard to division (A) of 971
that section, shall not be allocated to this state in accordance 972
with section 5747.20 of the Revised Code but shall be apportioned 973
to this state in accordance with division (B) of section 5747.212 974
of the Revised Code without regard to division (A) of that 975
section. 976

If the allocation and apportionment of a trust's income under 977
divisions (BB)(4)(a) and (c) of this section do not fairly 978
represent the modified Ohio taxable income of the trust in this 979
state, the alternative methods described in division (C) of 980
section 5747.21 of the Revised Code may be applied in the manner 981
and to the same extent provided in that section. 982

(5)(a) Except as set forth in division (BB)(5)(b) of this 983
section, "qualifying investee" means a person in which a trust has 984
an equity or ownership interest, or a person or unit of government 985
the debt obligations of either of which are owned by a trust. For 986

the purposes of division (BB)(2)(a) of this section and for the 987
purpose of computing the fraction described in division (BB)(4)(b) 988
of this section, all of the following apply: 989

(i) If the qualifying investee is a member of a qualifying 990
controlled group on the last day of the qualifying investee's 991
fiscal or calendar year ending immediately prior to the date on 992
which the trust recognizes the gain or loss, then "qualifying 993
investee" includes all persons in the qualifying controlled group 994
on such last day. 995

(ii) If the qualifying investee, or if the qualifying 996
investee and any members of the qualifying controlled group of 997
which the qualifying investee is a member on the last day of the 998
qualifying investee's fiscal or calendar year ending immediately 999
prior to the date on which the trust recognizes the gain or loss, 1000
separately or cumulatively own, directly or indirectly, on the 1001
last day of the qualifying investee's fiscal or calendar year 1002
ending immediately prior to the date on which the trust recognizes 1003
the qualifying trust amount, more than fifty per cent of the 1004
equity of a pass-through entity, then the qualifying investee and 1005
the other members are deemed to own the proportionate share of the 1006
pass-through entity's physical assets which the pass-through 1007
entity directly or indirectly owns on the last day of the 1008
pass-through entity's calendar or fiscal year ending within or 1009
with the last day of the qualifying investee's fiscal or calendar 1010
year ending immediately prior to the date on which the trust 1011
recognizes the qualifying trust amount. 1012

(iii) For the purposes of division (BB)(5)(a)(iii) of this 1013
section, "upper level pass-through entity" means a pass-through 1014
entity directly or indirectly owning any equity of another 1015
pass-through entity, and "lower level pass-through entity" means 1016
that other pass-through entity. 1017

An upper level pass-through entity, whether or not it is also 1018

a qualifying investee, is deemed to own, on the last day of the 1019
upper level pass-through entity's calendar or fiscal year, the 1020
proportionate share of the lower level pass-through entity's 1021
physical assets that the lower level pass-through entity directly 1022
or indirectly owns on the last day of the lower level pass-through 1023
entity's calendar or fiscal year ending within or with the last 1024
day of the upper level pass-through entity's fiscal or calendar 1025
year. If the upper level pass-through entity directly and 1026
indirectly owns less than fifty per cent of the equity of the 1027
lower level pass-through entity on each day of the upper level 1028
pass-through entity's calendar or fiscal year in which or with 1029
which ends the calendar or fiscal year of the lower level 1030
pass-through entity and if, based upon clear and convincing 1031
evidence, complete information about the location and cost of the 1032
physical assets of the lower pass-through entity is not available 1033
to the upper level pass-through entity, then solely for purposes 1034
of ascertaining if a gain or loss constitutes a qualifying trust 1035
amount, the upper level pass-through entity shall be deemed as 1036
owning no equity of the lower level pass-through entity for each 1037
day during the upper level pass-through entity's calendar or 1038
fiscal year in which or with which ends the lower level 1039
pass-through entity's calendar or fiscal year. Nothing in division 1040
(BB)(5)(a)(iii) of this section shall be construed to provide for 1041
any deduction or exclusion in computing any trust's Ohio taxable 1042
income. 1043

(b) With respect to a trust that is not a resident for the 1044
taxable year and with respect to a part of a trust that is not a 1045
resident for the taxable year, "qualifying investee" for that 1046
taxable year does not include a C corporation if both of the 1047
following apply: 1048

(i) During the taxable year the trust or part of the trust 1049
recognizes a gain or loss from the sale, exchange, or other 1050

disposition of equity or ownership interests in, or debt obligations of, the C corporation.	1051 1052
(ii) Such gain or loss constitutes nonbusiness income.	1053
(6) "Available" means information is such that a person is able to learn of the information by the due date plus extensions, if any, for filing the return for the taxable year in which the trust recognizes the gain or loss.	1054 1055 1056 1057
(CC) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code.	1058 1059
(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code.	1060 1061
(EE)(1) For the purposes of division (EE) of this section:	1062
(a) "Qualifying person" means any person other than a qualifying corporation.	1063 1064
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	1065 1066 1067
(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year;	1068 1069 1070 1071
(ii) A subsidiary that is wholly owned by any corporation that has made an election under subchapter S, chapter one, subtitle A of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year.	1072 1073 1074 1075
(2) For the purposes of this chapter, unless expressly stated otherwise, no qualifying person indirectly owns any asset directly or indirectly owned by any qualifying corporation.	1076 1077 1078
(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:	1079 1080

(1) "Trust" does not include a qualified pre-income tax trust. 1081
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(2) A "qualified pre-income tax trust" is any pre-income tax trust that makes a qualifying pre-income tax trust election as described in division (FF)(3) of this section. 1083
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(3) A "qualifying pre-income tax trust election" is an election by a pre-income tax trust to subject to the tax imposed by section 5751.02 of the Revised Code the pre-income tax trust and all pass-through entities of which the trust owns or controls, directly, indirectly, or constructively through related interests, five per cent or more of the ownership or equity interests. The trustee shall notify the tax commissioner in writing of the election on or before April 15, 2006. The election, if timely made, shall be effective on and after January 1, 2006, and shall apply for all tax periods and tax years until revoked by the trustee of the trust. 1086
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(4) A "pre-income tax trust" is a trust that satisfies all of the following requirements: 1097
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(a) The document or instrument creating the trust was executed by the grantor before January 1, 1972; 1099
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(b) The trust became irrevocable upon the creation of the trust; and 1101
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(c) The grantor was domiciled in this state at the time the trust was created. 1103
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Section 2. That existing sections 1551.20, 5709.53, and 5747.01 of the Revised Code are hereby repealed. 1105
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Section 3. That the amendment by this act of section 5747.01 of the Revised Code applies to taxable years beginning on or after the effective date of this act. 1107
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Section 4. Section 1551.20 of the Revised Code is presented 1110
in this act as a composite of the section as amended by Am. Sub. 1111
H.B. 632, Sub. S.B. 269, and Sub. S.B. 271 of the 120th General 1112
Assembly. The General Assembly, applying the principle stated in 1113
division (B) of section 1.52 of the Revised Code that amendments 1114
are to be harmonized if reasonably capable of simultaneous 1115
operation, finds that the composite is the resulting version of 1116
the section in effect prior to the effective date of the section 1117
as presented in this act. 1118