

As Introduced

**128th General Assembly
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H. B. No. 74

Representative Weddington

**Cosponsors: Representatives Harris, Luckie, Winburn, Williams, S., Okey,
Letson, Phillips, Chandler**

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A B I L L

To amend sections 5747.01, 5747.08, and 5747.98 and 1
to enact sections 3727.18, 3727.181, 3727.182, 2
3727.183, 3727.184, 3727.185, 3727.186, 3727.187, 3
4723.11, 4723.111, and 5747.72 of the Revised Code 4
regarding limits on mandatory overtime for nurses, 5
tuition reimbursement for nursing education, tax 6
credits for nursing professors, and tax deductions 7
for nurse aides. 8

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

Section 1. That sections 5747.01, 5747.08, and 5747.98 be 9
amended and sections 3727.18, 3727.181, 3727.182, 3727.183, 10
3727.184, 3727.185, 3727.186, 3727.187, 4723.11, 4723.111, and 11
5747.72 of the Revised Code be enacted to read as follows: 12

Sec. 3727.18. As used in sections 3727.181 to 3727.183 of the 13
Revised Code: 14

(A) "Overtime" means an amount of time that is worked in 15
excess of an agreed upon, predetermined, regularly scheduled 16
full-time or part-time work week. 17

(B) "Registered nurse" and "licensed practical nurse" have 18

the same meanings as in section 4723.01 of the Revised Code. 19

Sec. 3727.181. No hospital shall directly or indirectly 20
require a registered nurse or licensed practical nurse to work 21
overtime as a condition of continued employment with the hospital. 22

Sec. 3727.182. Actions by a hospital that constitute 23
violations of section 3727.181 of the Revised Code include both of 24
the following: 25

(A) Terminating or proposing to terminate the employment of a 26
registered nurse or licensed practical nurse with the hospital 27
solely because the nurse chooses not to work overtime; 28

(B) Taking or proposing to take disciplinary or retaliatory 29
action against a registered nurse or licensed practical nurse 30
solely because the nurse chooses not to work overtime. 31

Sec. 3727.183. (A) Section 3727.181 of the Revised Code does 32
not prohibit any of the following: 33

(1) A registered nurse or licensed practical nurse from 34
voluntarily working overtime; 35

(2) A hospital from offering overtime to a registered nurse 36
or licensed practical nurse or permitting a registered nurse or 37
licensed practical nurse to work overtime when the nurse chooses; 38

(3) A hospital from requesting or scheduling a registered 39
nurse or licensed practical nurse to work overtime if the hospital 40
is experiencing a staffing shortage as a direct result of an 41
occasion or instance that has been publicly declared as an 42
emergency or disaster by the governor of this state or the 43
president of the United States. 44

(B) Section 3727.181 of the Revised Code does not affect any 45
conflicting provisions of labor agreements entered into by 46

employee organizations and employers with regard to the overtime a 47
registered nurse or licensed practical nurse is required to work 48
in a hospital. 49

Sec. 3727.184. (A) If the department of health determines 50
that a violation of section 3727.181 of the Revised Code may have 51
occurred, the department shall notify the hospital and afford the 52
hospital an opportunity for an adjudication conducted in 53
accordance with Chapter 119. of the Revised Code. If the hospital 54
fails to request an adjudication or the department determines 55
after conducting an adjudication that the violation has occurred, 56
the department shall impose a civil money penalty on the hospital 57
of not more than ten thousand dollars. If more than one violation 58
is involved, the department shall impose a separate civil money 59
penalty for each violation. 60

(B) On request of the department, the attorney general shall 61
bring and prosecute to judgment a civil action to collect any 62
civil money penalty imposed under division (A) of this section 63
that remains unpaid. 64

(C) All amounts collected under this section shall be 65
deposited into the state treasury to the credit of the general 66
operations fund created under section 3701.83 of the Revised Code 67
and shall be used solely for purposes of enforcing section 68
3727.181 of the Revised Code. 69

Sec. 3727.185. Through the attorney general or an appropriate 70
prosecuting attorney, the director of health may apply to the 71
court of common pleas of the county in which a hospital is located 72
for a temporary or permanent injunction restraining the hospital 73
from violating section 3727.181 of the Revised Code. On a showing 74
that the violation has occurred, the court shall grant an order 75
enjoining the violation. 76

Sec. 3727.186. The remedies provided for in sections 3727.184 77
and 3727.185 of the Revised Code are in addition to all penalties 78
and other remedies available under this chapter or any other 79
provision of the Revised Code. 80

Sec. 3727.187. The department of health shall adopt rules as 81
the department considers necessary to implement sections 3727.18 82
and 3727.181 to 3727.186 of the Revised Code. The rules shall be 83
adopted in accordance with Chapter 119. of the Revised Code. 84

Sec. 4723.11. As used in this section and section 4723.111 of 85
the Revised Code: 86

(A) "Qualified nurse" means an individual who, after July 1, 87
2009, completed a board of nursing approved prelicensure nursing 88
education program from a private or public institution in this 89
state and holds a valid license to practice nursing as a 90
registered nurse in this state. 91

(B) "Prelicensure nursing education program" means the 92
post-secondary education leading to the degree or diploma required 93
by the board of nursing to be eligible to take the examination for 94
licensure as a registered nurse. 95

(C) "Hospital" means a hospital as defined in section 3727.01 96
of the Revised Code, or a similar institution operated by the 97
department of mental health. 98

(D) "Nursing education instructional costs" for a given 99
university means the annual cost of instructional and general fees 100
for enrollment in a prelicensure nursing education program. 101

(E) "Statewide average nursing education instructional costs" 102
means the calculated statewide average of the nursing education 103
instructional costs for all the state universities listed in 104
section 3345.011 of the Revised Code that offer prelicensure 105

nursing education programs, plus an estimated amount for the 106
annual purchase of necessary textbooks. 107

Sec. 4723.111. (A)(1) There is hereby established the nursing 108
education reimbursement program, which shall be administered by 109
the board of nursing. Under the program, any qualified nurse who 110
completes two years of full-time employment in a hospital in this 111
state shall be reimbursed for the lesser of the following: 112

(a) One year of statewide average nursing education 113
instructional costs, as calculated for the year in which the nurse 114
completed the prelicensure nursing education program; 115

(b) The average annual actual costs of the prelicensure 116
nursing education program instructional costs for the nurse, 117
documented in accordance with rules adopted pursuant to division 118
(B)(2) of this section, plus an estimated amount for the annual 119
purchase of necessary textbooks. 120

(2) Except as provided in division (A)(3) of this section, 121
for each additional year of full-time employment in a hospital in 122
this state, the nurse shall be reimbursed for one additional year 123
of instructional costs, the amount of reimbursement to be 124
determined in the same manner as under division (A)(1) of this 125
section. 126

(3) The maximum number of years of instructional costs for 127
which a nurse may be reimbursed under the program is the lesser of 128
the following: 129

(a) The number of years the nurse was enrolled as a full-time 130
student in a prelicensure nursing education program; 131

(b) Five years. 132

(B) The board of nursing shall adopt rules under Chapter 119. 133
of the Revised Code for the reimbursement of qualified nurses 134
under the program. The rules shall provide for all of the 135

<u>following:</u>	136
<u>(1) The annual calculation of the statewide average nursing education instructional costs for that year;</u>	137
<u>(2) Requirements for qualified nurses to document their completion of a prelicensure nursing education program at a private or public institution in this state, the number of years in which they were enrolled in such a program, and the average cost of instructional and general fees and textbooks for the years in which they were enrolled;</u>	138
<u>(3) Requirements for qualified nurses to document their full-time employment by hospitals in this state;</u>	139
<u>(4) Application procedures and deadlines for filing for reimbursement under the program.</u>	140
Sec. 5747.01. Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter that is not otherwise defined in this section has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes or if not used in a comparable context in those laws, has the same meaning as in section 5733.40 of the Revised Code. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.	141
As used in this chapter:	142
(A) "Adjusted gross income" or "Ohio adjusted gross income" means federal adjusted gross income, as defined and used in the Internal Revenue Code, adjusted as provided in this section:	143
(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.	144
(2) Add interest or dividends on obligations of any	145

authority, commission, instrumentality, territory, or possession 166
of the United States to the extent that the interest or dividends 167
are exempt from federal income taxes but not from state income 168
taxes. 169

(3) Deduct interest or dividends on obligations of the United 170
States and its territories and possessions or of any authority, 171
commission, or instrumentality of the United States to the extent 172
that the interest or dividends are included in federal adjusted 173
gross income but exempt from state income taxes under the laws of 174
the United States. 175

(4) Deduct disability and survivor's benefits to the extent 176
included in federal adjusted gross income. 177

(5) Deduct benefits under Title II of the Social Security Act 178
and tier 1 railroad retirement benefits to the extent included in 179
federal adjusted gross income under section 86 of the Internal 180
Revenue Code. 181

(6) In the case of a taxpayer who is a beneficiary of a trust 182
that makes an accumulation distribution as defined in section 665 183
of the Internal Revenue Code, add, for the beneficiary's taxable 184
years beginning before 2002, the portion, if any, of such 185
distribution that does not exceed the undistributed net income of 186
the trust for the three taxable years preceding the taxable year 187
in which the distribution is made to the extent that the portion 188
was not included in the trust's taxable income for any of the 189
trust's taxable years beginning in 2002 or thereafter. 190

"Undistributed net income of a trust" means the taxable income of 191
the trust increased by (a)(i) the additions to adjusted gross 192
income required under division (A) of this section and (ii) the 193
personal exemptions allowed to the trust pursuant to section 194
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 195
deductions to adjusted gross income required under division (A) of 196
this section, (ii) the amount of federal income taxes attributable 197

to such income, and (iii) the amount of taxable income that has 198
been included in the adjusted gross income of a beneficiary by 199
reason of a prior accumulation distribution. Any undistributed net 200
income included in the adjusted gross income of a beneficiary 201
shall reduce the undistributed net income of the trust commencing 202
with the earliest years of the accumulation period. 203

(7) Deduct the amount of wages and salaries, if any, not 204
otherwise allowable as a deduction but that would have been 205
allowable as a deduction in computing federal adjusted gross 206
income for the taxable year, had the targeted jobs credit allowed 207
and determined under sections 38, 51, and 52 of the Internal 208
Revenue Code not been in effect. 209

(8) Deduct any interest or interest equivalent on public 210
obligations and purchase obligations to the extent that the 211
interest or interest equivalent is included in federal adjusted 212
gross income. 213

(9) Add any loss or deduct any gain resulting from the sale, 214
exchange, or other disposition of public obligations to the extent 215
that the loss has been deducted or the gain has been included in 216
computing federal adjusted gross income. 217

(10) Deduct or add amounts, as provided under section 5747.70 218
of the Revised Code, related to contributions to variable college 219
savings program accounts made or tuition units purchased pursuant 220
to Chapter 3334. of the Revised Code. 221

(11)(a) Deduct, to the extent not otherwise allowable as a 222
deduction or exclusion in computing federal or Ohio adjusted gross 223
income for the taxable year, the amount the taxpayer paid during 224
the taxable year for medical care insurance and qualified 225
long-term care insurance for the taxpayer, the taxpayer's spouse, 226
and dependents. No deduction for medical care insurance under 227
division (A)(11) of this section shall be allowed either to any 228

taxpayer who is eligible to participate in any subsidized health 229
plan maintained by any employer of the taxpayer or of the 230
taxpayer's spouse, or to any taxpayer who is entitled to, or on 231
application would be entitled to, benefits under part A of Title 232
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 233
301, as amended. For the purposes of division (A)(11)(a) of this 234
section, "subsidized health plan" means a health plan for which 235
the employer pays any portion of the plan's cost. The deduction 236
allowed under division (A)(11)(a) of this section shall be the net 237
of any related premium refunds, related premium reimbursements, or 238
related insurance premium dividends received during the taxable 239
year. 240

(b) Deduct, to the extent not otherwise deducted or excluded 241
in computing federal or Ohio adjusted gross income during the 242
taxable year, the amount the taxpayer paid during the taxable 243
year, not compensated for by any insurance or otherwise, for 244
medical care of the taxpayer, the taxpayer's spouse, and 245
dependents, to the extent the expenses exceed seven and one-half 246
per cent of the taxpayer's federal adjusted gross income. 247

(c) For purposes of division (A)(11) of this section, 248
"medical care" has the meaning given in section 213 of the 249
Internal Revenue Code, subject to the special rules, limitations, 250
and exclusions set forth therein, and "qualified long-term care" 251
has the same meaning given in section 7702B(c) of the Internal 252
Revenue Code. 253

(12)(a) Deduct any amount included in federal adjusted gross 254
income solely because the amount represents a reimbursement or 255
refund of expenses that in any year the taxpayer had deducted as 256
an itemized deduction pursuant to section 63 of the Internal 257
Revenue Code and applicable United States department of the 258
treasury regulations. The deduction otherwise allowed under 259
division (A)(12)(a) of this section shall be reduced to the extent 260

the reimbursement is attributable to an amount the taxpayer 261
deducted under this section in any taxable year. 262

(b) Add any amount not otherwise included in Ohio adjusted 263
gross income for any taxable year to the extent that the amount is 264
attributable to the recovery during the taxable year of any amount 265
deducted or excluded in computing federal or Ohio adjusted gross 266
income in any taxable year. 267

(13) Deduct any portion of the deduction described in section 268
1341(a)(2) of the Internal Revenue Code, for repaying previously 269
reported income received under a claim of right, that meets both 270
of the following requirements: 271

(a) It is allowable for repayment of an item that was 272
included in the taxpayer's adjusted gross income for a prior 273
taxable year and did not qualify for a credit under division (A) 274
or (B) of section 5747.05 of the Revised Code for that year; 275

(b) It does not otherwise reduce the taxpayer's adjusted 276
gross income for the current or any other taxable year. 277

(14) Deduct an amount equal to the deposits made to, and net 278
investment earnings of, a medical savings account during the 279
taxable year, in accordance with section 3924.66 of the Revised 280
Code. The deduction allowed by division (A)(14) of this section 281
does not apply to medical savings account deposits and earnings 282
otherwise deducted or excluded for the current or any other 283
taxable year from the taxpayer's federal adjusted gross income. 284

(15)(a) Add an amount equal to the funds withdrawn from a 285
medical savings account during the taxable year, and the net 286
investment earnings on those funds, when the funds withdrawn were 287
used for any purpose other than to reimburse an account holder 288
for, or to pay, eligible medical expenses, in accordance with 289
section 3924.66 of the Revised Code; 290

(b) Add the amounts distributed from a medical savings 291

account under division (A)(2) of section 3924.68 of the Revised Code during the taxable year.	292 293
(16) Add any amount claimed as a credit under section 5747.059 of the Revised Code to the extent that such amount satisfies either of the following:	294 295 296
(a) The amount was deducted or excluded from the computation of the taxpayer's federal adjusted gross income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;	297 298 299 300
(b) The amount resulted in a reduction of the taxpayer's federal adjusted gross income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.	301 302 303
(17) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of job and family services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax commissioner, the taxpayer shall provide any information that, in the tax commissioner's opinion, is necessary to establish the amount deducted under division (A)(17) of this section.	304 305 306 307 308 309 310 311
(18) Beginning in taxable year 2001 but not for any taxable year beginning after December 31, 2005, if the taxpayer is married and files a joint return and the combined federal adjusted gross income of the taxpayer and the taxpayer's spouse for the taxable year does not exceed one hundred thousand dollars, or if the taxpayer is single and has a federal adjusted gross income for the taxable year not exceeding fifty thousand dollars, deduct amounts paid during the taxable year for qualified tuition and fees paid to an eligible institution for the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer, who is a resident of this state and is enrolled in or attending a program that	312 313 314 315 316 317 318 319 320 321 322

culminates in a degree or diploma at an eligible institution. The 323
deduction may be claimed only to the extent that qualified tuition 324
and fees are not otherwise deducted or excluded for any taxable 325
year from federal or Ohio adjusted gross income. The deduction may 326
not be claimed for educational expenses for which the taxpayer 327
claims a credit under section 5747.27 of the Revised Code. 328

(19) Add any reimbursement received during the taxable year 329
of any amount the taxpayer deducted under division (A)(18) of this 330
section in any previous taxable year to the extent the amount is 331
not otherwise included in Ohio adjusted gross income. 332

(20)(a)(i) Add five-sixths of the amount of depreciation 333
expense allowed by subsection (k) of section 168 of the Internal 334
Revenue Code, including the taxpayer's proportionate or 335
distributive share of the amount of depreciation expense allowed 336
by that subsection to a pass-through entity in which the taxpayer 337
has a direct or indirect ownership interest. 338

(ii) Add five-sixths of the amount of qualifying section 179 339
depreciation expense, including a person's proportionate or 340
distributive share of the amount of qualifying section 179 341
depreciation expense allowed to any pass-through entity in which 342
the person has a direct or indirect ownership. For the purposes of 343
this division, "qualifying section 179 depreciation expense" means 344
the difference between (I) the amount of depreciation expense 345
directly or indirectly allowed to the taxpayer under section 179 346
of the Internal Revenue Code, and (II) the amount of depreciation 347
expense directly or indirectly allowed to the taxpayer under 348
section 179 of the Internal Revenue Code as that section existed 349
on December 31, 2002. 350

The tax commissioner, under procedures established by the 351
commissioner, may waive the add-backs related to a pass-through 352
entity if the taxpayer owns, directly or indirectly, less than 353
five per cent of the pass-through entity. 354

(b) Nothing in division (A)(20) of this section shall be 355
construed to adjust or modify the adjusted basis of any asset. 356

(c) To the extent the add-back required under division 357
(A)(20)(a) of this section is attributable to property generating 358
nonbusiness income or loss allocated under section 5747.20 of the 359
Revised Code, the add-back shall be situated to the same location 360
as the nonbusiness income or loss generated by the property for 361
the purpose of determining the credit under division (A) of 362
section 5747.05 of the Revised Code. Otherwise, the add-back shall 363
be apportioned, subject to one or more of the four alternative 364
methods of apportionment enumerated in section 5747.21 of the 365
Revised Code. 366

(d) For the purposes of division (A) of this section, net 367
operating loss carryback and carryforward shall not include 368
five-sixths of the allowance of any net operating loss deduction 369
carryback or carryforward to the taxable year to the extent such 370
loss resulted from depreciation allowed by section 168(k) of the 371
Internal Revenue Code and by the qualifying section 179 372
depreciation expense amount. 373

(21)(a) If the taxpayer was required to add an amount under 374
division (A)(20)(a) of this section for a taxable year, deduct 375
one-fifth of the amount so added for each of the five succeeding 376
taxable years. 377

(b) If the amount deducted under division (A)(21)(a) of this 378
section is attributable to an add-back allocated under division 379
(A)(20)(c) of this section, the amount deducted shall be situated 380
to the same location. Otherwise, the add-back shall be apportioned 381
using the apportionment factors for the taxable year in which the 382
deduction is taken, subject to one or more of the four alternative 383
methods of apportionment enumerated in section 5747.21 of the 384
Revised Code. 385

(c) No deduction is available under division (A)(21)(a) of 386
this section with regard to any depreciation allowed by section 387
168(k) of the Internal Revenue Code and by the qualifying section 388
179 depreciation expense amount to the extent that such 389
depreciation resulted in or increased a federal net operating loss 390
carryback or carryforward to a taxable year to which division 391
(A)(20)(d) of this section does not apply. 392

(22) Deduct, to the extent not otherwise deducted or excluded 393
in computing federal or Ohio adjusted gross income for the taxable 394
year, the amount the taxpayer received during the taxable year as 395
reimbursement for life insurance premiums under section 5919.31 of 396
the Revised Code. 397

(23) Deduct, to the extent not otherwise deducted or excluded 398
in computing federal or Ohio adjusted gross income for the taxable 399
year, the amount the taxpayer received during the taxable year as 400
a death benefit paid by the adjutant general under section 5919.33 401
of the Revised Code. 402

(24) Deduct, to the extent included in federal adjusted gross 403
income and not otherwise allowable as a deduction or exclusion in 404
computing federal or Ohio adjusted gross income for the taxable 405
year, military pay and allowances received by the taxpayer during 406
the taxable year for active duty service in the United States 407
army, air force, navy, marine corps, or coast guard or reserve 408
components thereof or the national guard. The deduction may not be 409
claimed for military pay and allowances received by the taxpayer 410
while the taxpayer is stationed in this state. 411

(25) Deduct, to the extent not otherwise allowable as a 412
deduction or exclusion in computing federal or Ohio adjusted gross 413
income for the taxable year and not otherwise compensated for by 414
any other source, the amount of qualified organ donation expenses 415
incurred by the taxpayer during the taxable year, not to exceed 416
ten thousand dollars. A taxpayer may deduct qualified organ 417

donation expenses only once for all taxable years beginning with 418
taxable years beginning in 2007. 419

For the purposes of division (A)(25) of this section: 420

(a) "Human organ" means all or any portion of a human liver, 421
pancreas, kidney, intestine, or lung, and any portion of human 422
bone marrow. 423

(b) "Qualified organ donation expenses" means travel 424
expenses, lodging expenses, and wages and salary forgone by a 425
taxpayer in connection with the taxpayer's donation, while living, 426
of one or more of the taxpayer's human organs to another human 427
being. 428

(26) Deduct, to the extent not otherwise deducted or excluded 429
in computing federal or Ohio adjusted gross income for the taxable 430
year, amounts received by the taxpayer as retired military 431
personnel pay for service in the United States army, navy, air 432
force, coast guard, or marine corps or reserve components thereof, 433
or the national guard, or received by the surviving spouse or 434
former spouse of such a taxpayer under the survivor benefit plan 435
on account of such a taxpayer's death. If the taxpayer receives 436
income on account of retirement paid under the federal civil 437
service retirement system or federal employees retirement system, 438
or under any successor retirement program enacted by the congress 439
of the United States that is established and maintained for 440
retired employees of the United States government, and such 441
retirement income is based, in whole or in part, on credit for the 442
taxpayer's military service, the deduction allowed under this 443
division shall include only that portion of such retirement income 444
that is attributable to the taxpayer's military service, to the 445
extent that portion of such retirement income is otherwise 446
included in federal adjusted gross income and is not otherwise 447
deducted under this section. Any amount deducted under division 448
(A)(26) of this section is not included in a taxpayer's adjusted 449

gross income for the purposes of section 5747.055 of the Revised Code. No amount may be deducted under division (A)(26) of this section on the basis of which a credit was claimed under section 5747.055 of the Revised Code.

(27) 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 from the military injury relief fund created in section 5101.98 of the Revised Code.

(28) Deduct an amount equal to fifty per cent of the compensation received for personal services rendered in this state by the taxpayer as a nurse aide, as defined in section 3721.21 of the Revised Code, who satisfies division (B) or (C) of section 3721.28 of the Revised Code, to the extent such compensation is not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year.

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

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

(D) "Compensation" means any form of remuneration paid to an 481
employee for personal services. 482

(E) "Fiduciary" means a guardian, trustee, executor, 483
administrator, receiver, conservator, or any other person acting 484
in any fiduciary capacity for any individual, trust, or estate. 485

(F) "Fiscal year" means an accounting period of twelve months 486
ending on the last day of any month other than December. 487

(G) "Individual" means any natural person. 488

(H) "Internal Revenue Code" means the "Internal Revenue Code 489
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 490

(I) "Resident" means any of the following, provided that 491
division (I)(3) of this section applies only to taxable years of a 492
trust beginning in 2002 or thereafter: 493

(1) An individual who is domiciled in this state, subject to 494
section 5747.24 of the Revised Code; 495

(2) The estate of a decedent who at the time of death was 496
domiciled in this state. The domicile tests of section 5747.24 of 497
the Revised Code are not controlling for purposes of division 498
(I)(2) of this section. 499

(3) A trust that, in whole or part, resides in this state. If 500
only part of a trust resides in this state, the trust is a 501
resident only with respect to that part. 502

For the purposes of division (I)(3) of this section: 503

(a) A trust resides in this state for the trust's current 504
taxable year to the extent, as described in division (I)(3)(d) of 505
this section, that the trust consists directly or indirectly, in 506
whole or in part, of assets, net of any related liabilities, that 507
were transferred, or caused to be transferred, directly or 508
indirectly, to the trust by any of the following: 509

(i) A person, a court, or a governmental entity or 510

instrumentality on account of the death of a decedent, but only if 511
the trust is described in division (I)(3)(e)(i) or (ii) of this 512
section; 513

(ii) A person who was domiciled in this state for the 514
purposes of this chapter when the person directly or indirectly 515
transferred assets to an irrevocable trust, but only if at least 516
one of the trust's qualifying beneficiaries is domiciled in this 517
state for the purposes of this chapter during all or some portion 518
of the trust's current taxable year; 519

(iii) A person who was domiciled in this state for the 520
purposes of this chapter when the trust document or instrument or 521
part of the trust document or instrument became irrevocable, but 522
only if at least one of the trust's qualifying beneficiaries is a 523
resident domiciled in this state for the purposes of this chapter 524
during all or some portion of the trust's current taxable year. If 525
a trust document or instrument became irrevocable upon the death 526
of a person who at the time of death was domiciled in this state 527
for purposes of this chapter, that person is a person described in 528
division (I)(3)(a)(iii) of this section. 529

(b) A trust is irrevocable to the extent that the transferor 530
is not considered to be the owner of the net assets of the trust 531
under sections 671 to 678 of the Internal Revenue Code. 532

(c) With respect to a trust other than a charitable lead 533
trust, "qualifying beneficiary" has the same meaning as "potential 534
current beneficiary" as defined in section 1361(e)(2) of the 535
Internal Revenue Code, and with respect to a charitable lead trust 536
"qualifying beneficiary" is any current, future, or contingent 537
beneficiary, but with respect to any trust "qualifying 538
beneficiary" excludes a person or a governmental entity or 539
instrumentality to any of which a contribution would qualify for 540
the charitable deduction under section 170 of the Internal Revenue 541
Code. 542

(d) For the purposes of division (I)(3)(a) of this section, 543
the extent to which a trust consists directly or indirectly, in 544
whole or in part, of assets, net of any related liabilities, that 545
were transferred directly or indirectly, in whole or part, to the 546
trust by any of the sources enumerated in that division shall be 547
ascertained by multiplying the fair market value of the trust's 548
assets, net of related liabilities, by the qualifying ratio, which 549
shall be computed as follows: 550

(i) The first time the trust receives assets, the numerator 551
of the qualifying ratio is the fair market value of those assets 552
at that time, net of any related liabilities, from sources 553
enumerated in division (I)(3)(a) of this section. The denominator 554
of the qualifying ratio is the fair market value of all the 555
trust's assets at that time, net of any related liabilities. 556

(ii) Each subsequent time the trust receives assets, a 557
revised qualifying ratio shall be computed. The numerator of the 558
revised qualifying ratio is the sum of (1) the fair market value 559
of the trust's assets immediately prior to the subsequent 560
transfer, net of any related liabilities, multiplied by the 561
qualifying ratio last computed without regard to the subsequent 562
transfer, and (2) the fair market value of the subsequently 563
transferred assets at the time transferred, net of any related 564
liabilities, from sources enumerated in division (I)(3)(a) of this 565
section. The denominator of the revised qualifying ratio is the 566
fair market value of all the trust's assets immediately after the 567
subsequent transfer, net of any related liabilities. 568

(iii) Whether a transfer to the trust is by or from any of 569
the sources enumerated in division (I)(3)(a) of this section shall 570
be ascertained without regard to the domicile of the trust's 571
beneficiaries. 572

(e) For the purposes of division (I)(3)(a)(i) of this 573
section: 574

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

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

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

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

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

(iii) The transfer is made on account of a contractual relationship existing directly or indirectly between the

transferor and either the decedent or the estate of the decedent 606
at any time prior to the date of the decedent's death, and the 607
decedent was domiciled in this state at the time of death for 608
purposes of the taxes levied under Chapter 5731. of the Revised 609
Code. 610

(iv) The transfer is made to a trust on account of a 611
contractual relationship existing directly or indirectly between 612
the transferor and another person who at the time of the 613
decedent's death was domiciled in this state for purposes of this 614
chapter. 615

(v) The transfer is made to a trust on account of the will of 616
a testator. 617

(vi) The transfer is made to a trust created by or caused to 618
be created by a court, and the trust was directly or indirectly 619
created in connection with or as a result of the death of an 620
individual who, for purposes of the taxes levied under Chapter 621
5731. of the Revised Code, was domiciled in this state at the time 622
of the individual's death. 623

(g) The tax commissioner may adopt rules to ascertain the 624
part of a trust residing in this state. 625

(J) "Nonresident" means an individual or estate that is not a 626
resident. An individual who is a resident for only part of a 627
taxable year is a nonresident for the remainder of that taxable 628
year. 629

(K) "Pass-through entity" has the same meaning as in section 630
5733.04 of the Revised Code. 631

(L) "Return" means the notifications and reports required to 632
be filed pursuant to this chapter for the purpose of reporting the 633
tax due and includes declarations of estimated tax when so 634
required. 635

(M) "Taxable year" means the calendar year or the taxpayer's 636
fiscal year ending during the calendar year, or fractional part 637
thereof, upon which the adjusted gross income is calculated 638
pursuant to this chapter. 639

(N) "Taxpayer" means any person subject to the tax imposed by 640
section 5747.02 of the Revised Code or any pass-through entity 641
that makes the election under division (D) of section 5747.08 of 642
the Revised Code. 643

(O) "Dependents" means dependents as defined in the Internal 644
Revenue Code and as claimed in the taxpayer's federal income tax 645
return for the taxable year or which the taxpayer would have been 646
permitted to claim had the taxpayer filed a federal income tax 647
return. 648

(P) "Principal county of employment" means, in the case of a 649
nonresident, the county within the state in which a taxpayer 650
performs services for an employer or, if those services are 651
performed in more than one county, the county in which the major 652
portion of the services are performed. 653

(Q) As used in sections 5747.50 to 5747.55 of the Revised 654
Code: 655

(1) "Subdivision" means any county, municipal corporation, 656
park district, or township. 657

(2) "Essential local government purposes" includes all 658
functions that any subdivision is required by general law to 659
exercise, including like functions that are exercised under a 660
charter adopted pursuant to the Ohio Constitution. 661

(R) "Overpayment" means any amount already paid that exceeds 662
the figure determined to be the correct amount of the tax. 663

(S) "Taxable income" or "Ohio taxable income" applies only to 664
estates and trusts, and means federal taxable income, as defined 665

and used in the Internal Revenue Code, adjusted as follows: 666

(1) Add interest or dividends, net of ordinary, necessary, 667
and reasonable expenses not deducted in computing federal taxable 668
income, on obligations or securities of any state or of any 669
political subdivision or authority of any state, other than this 670
state and its subdivisions and authorities, but only to the extent 671
that such net amount is not otherwise includible in Ohio taxable 672
income and is described in either division (S)(1)(a) or (b) of 673
this section: 674

(a) The net amount is not attributable to the S portion of an 675
electing small business trust and has not been distributed to 676
beneficiaries for the taxable year; 677

(b) The net amount is attributable to the S portion of an 678
electing small business trust for the taxable year. 679

(2) Add interest or dividends, net of ordinary, necessary, 680
and reasonable expenses not deducted in computing federal taxable 681
income, on obligations of any authority, commission, 682
instrumentality, territory, or possession of the United States to 683
the extent that the interest or dividends are exempt from federal 684
income taxes but not from state income taxes, but only to the 685
extent that such net amount is not otherwise includible in Ohio 686
taxable income and is described in either division (S)(1)(a) or 687
(b) of this section; 688

(3) Add the amount of personal exemption allowed to the 689
estate pursuant to section 642(b) of the Internal Revenue Code; 690

(4) Deduct interest or dividends, net of related expenses 691
deducted in computing federal taxable income, on obligations of 692
the United States and its territories and possessions or of any 693
authority, commission, or instrumentality of the United States to 694
the extent that the interest or dividends are exempt from state 695
taxes under the laws of the United States, but only to the extent 696

that such amount is included in federal taxable income and is 697
described in either division (S)(1)(a) or (b) of this section; 698

(5) Deduct the amount of wages and salaries, if any, not 699
otherwise allowable as a deduction but that would have been 700
allowable as a deduction in computing federal taxable income for 701
the taxable year, had the targeted jobs credit allowed under 702
sections 38, 51, and 52 of the Internal Revenue Code not been in 703
effect, but only to the extent such amount relates either to 704
income included in federal taxable income for the taxable year or 705
to income of the S portion of an electing small business trust for 706
the taxable year; 707

(6) Deduct any interest or interest equivalent, net of 708
related expenses deducted in computing federal taxable income, on 709
public obligations and purchase obligations, but only to the 710
extent that such net amount relates either to income included in 711
federal taxable income for the taxable year or to income of the S 712
portion of an electing small business trust for the taxable year; 713

(7) Add any loss or deduct any gain resulting from sale, 714
exchange, or other disposition of public obligations to the extent 715
that such loss has been deducted or such gain has been included in 716
computing either federal taxable income or income of the S portion 717
of an electing small business trust for the taxable year; 718

(8) Except in the case of the final return of an estate, add 719
any amount deducted by the taxpayer on both its Ohio estate tax 720
return pursuant to section 5731.14 of the Revised Code, and on its 721
federal income tax return in determining federal taxable income; 722

(9)(a) Deduct any amount included in federal taxable income 723
solely because the amount represents a reimbursement or refund of 724
expenses that in a previous year the decedent had deducted as an 725
itemized deduction pursuant to section 63 of the Internal Revenue 726
Code and applicable treasury regulations. The deduction otherwise 727

allowed under division (S)(9)(a) of this section shall be reduced 728
to the extent the reimbursement is attributable to an amount the 729
taxpayer or decedent deducted under this section in any taxable 730
year. 731

(b) Add any amount not otherwise included in Ohio taxable 732
income for any taxable year to the extent that the amount is 733
attributable to the recovery during the taxable year of any amount 734
deducted or excluded in computing federal or Ohio taxable income 735
in any taxable year, but only to the extent such amount has not 736
been distributed to beneficiaries for the taxable year. 737

(10) Deduct any portion of the deduction described in section 738
1341(a)(2) of the Internal Revenue Code, for repaying previously 739
reported income received under a claim of right, that meets both 740
of the following requirements: 741

(a) It is allowable for repayment of an item that was 742
included in the taxpayer's taxable income or the decedent's 743
adjusted gross income for a prior taxable year and did not qualify 744
for a credit under division (A) or (B) of section 5747.05 of the 745
Revised Code for that year. 746

(b) It does not otherwise reduce the taxpayer's taxable 747
income or the decedent's adjusted gross income for the current or 748
any other taxable year. 749

(11) Add any amount claimed as a credit under section 750
5747.059 of the Revised Code to the extent that the amount 751
satisfies either of the following: 752

(a) The amount was deducted or excluded from the computation 753
of the taxpayer's federal taxable income as required to be 754
reported for the taxpayer's taxable year under the Internal 755
Revenue Code; 756

(b) The amount resulted in a reduction in the taxpayer's 757
federal taxable income as required to be reported for any of the 758

taxpayer's taxable years under the Internal Revenue Code. 759

(12) Deduct any amount, net of related expenses deducted in 760
computing federal taxable income, that a trust is required to 761
report as farm income on its federal income tax return, but only 762
if the assets of the trust include at least ten acres of land 763
satisfying the definition of "land devoted exclusively to 764
agricultural use" under section 5713.30 of the Revised Code, 765
regardless of whether the land is valued for tax purposes as such 766
land under sections 5713.30 to 5713.38 of the Revised Code. If the 767
trust is a pass-through entity investor, section 5747.231 of the 768
Revised Code applies in ascertaining if the trust is eligible to 769
claim the deduction provided by division (S)(12) of this section 770
in connection with the pass-through entity's farm income. 771

Except for farm income attributable to the S portion of an 772
electing small business trust, the deduction provided by division 773
(S)(12) of this section is allowed only to the extent that the 774
trust has not distributed such farm income. Division (S)(12) of 775
this section applies only to taxable years of a trust beginning in 776
2002 or thereafter. 777

(13) Add the net amount of income described in section 641(c) 778
of the Internal Revenue Code to the extent that amount is not 779
included in federal taxable income. 780

(14) Add or deduct the amount the taxpayer would be required 781
to add or deduct under division (A)(20) or (21) of this section if 782
the taxpayer's Ohio taxable income were computed in the same 783
manner as an individual's Ohio adjusted gross income is computed 784
under this section. In the case of a trust, division (S)(14) of 785
this section applies only to any of the trust's taxable years 786
beginning in 2002 or thereafter. 787

(T) "School district income" and "school district income tax" 788
have the same meanings as in section 5748.01 of the Revised Code. 789

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 790
of this section, "public obligations," "purchase obligations," and 791
"interest or interest equivalent" have the same meanings as in 792
section 5709.76 of the Revised Code. 793

(V) "Limited liability company" means any limited liability 794
company formed under Chapter 1705. of the Revised Code or under 795
the laws of any other state. 796

(W) "Pass-through entity investor" means any person who, 797
during any portion of a taxable year of a pass-through entity, is 798
a partner, member, shareholder, or equity investor in that 799
pass-through entity. 800

(X) "Banking day" has the same meaning as in section 1304.01 801
of the Revised Code. 802

(Y) "Month" means a calendar month. 803

(Z) "Quarter" means the first three months, the second three 804
months, the third three months, or the last three months of the 805
taxpayer's taxable year. 806

(AA)(1) "Eligible institution" means a state university or 807
state institution of higher education as defined in section 808
3345.011 of the Revised Code, or a private, nonprofit college, 809
university, or other post-secondary institution located in this 810
state that possesses a certificate of authorization issued by the 811
Ohio board of regents pursuant to Chapter 1713. of the Revised 812
Code or a certificate of registration issued by the state board of 813
career colleges and schools under Chapter 3332. of the Revised 814
Code. 815

(2) "Qualified tuition and fees" means tuition and fees 816
imposed by an eligible institution as a condition of enrollment or 817
attendance, not exceeding two thousand five hundred dollars in 818
each of the individual's first two years of post-secondary 819
education. If the individual is a part-time student, "qualified 820

tuition and fees" includes tuition and fees paid for the academic 821
equivalent of the first two years of post-secondary education 822
during a maximum of five taxable years, not exceeding a total of 823
five thousand dollars. "Qualified tuition and fees" does not 824
include: 825

(a) Expenses for any course or activity involving sports, 826
games, or hobbies unless the course or activity is part of the 827
individual's degree or diploma program; 828

(b) The cost of books, room and board, student activity fees, 829
athletic fees, insurance expenses, or other expenses unrelated to 830
the individual's academic course of instruction; 831

(c) Tuition, fees, or other expenses paid or reimbursed 832
through an employer, scholarship, grant in aid, or other 833
educational benefit program. 834

(BB)(1) "Modified business income" means the business income 835
included in a trust's Ohio taxable income after such taxable 836
income is first reduced by the qualifying trust amount, if any. 837

(2) "Qualifying trust amount" of a trust means capital gains 838
and losses from the sale, exchange, or other disposition of equity 839
or ownership interests in, or debt obligations of, a qualifying 840
investee to the extent included in the trust's Ohio taxable 841
income, but only if the following requirements are satisfied: 842

(a) The book value of the qualifying investee's physical 843
assets in this state and everywhere, as of the last day of the 844
qualifying investee's fiscal or calendar year ending immediately 845
prior to the date on which the trust recognizes the gain or loss, 846
is available to the trust. 847

(b) The requirements of section 5747.011 of the Revised Code 848
are satisfied for the trust's taxable year in which the trust 849
recognizes the gain or loss. 850

Any gain or loss that is not a qualifying trust amount is 851
modified business income, qualifying investment income, or 852
modified nonbusiness income, as the case may be. 853

(3) "Modified nonbusiness income" means a trust's Ohio 854
taxable income other than modified business income, other than the 855
qualifying trust amount, and other than qualifying investment 856
income, as defined in section 5747.012 of the Revised Code, to the 857
extent such qualifying investment income is not otherwise part of 858
modified business income. 859

(4) "Modified Ohio taxable income" applies only to trusts, 860
and means the sum of the amounts described in divisions (BB)(4)(a) 861
to (c) of this section: 862

(a) The fraction, calculated under section 5747.013, and 863
applying section 5747.231 of the Revised Code, multiplied by the 864
sum of the following amounts: 865

(i) The trust's modified business income; 866

(ii) The trust's qualifying investment income, as defined in 867
section 5747.012 of the Revised Code, but only to the extent the 868
qualifying investment income does not otherwise constitute 869
modified business income and does not otherwise constitute a 870
qualifying trust amount. 871

(b) The qualifying trust amount multiplied by a fraction, the 872
numerator of which is the sum of the book value of the qualifying 873
investee's physical assets in this state on the last day of the 874
qualifying investee's fiscal or calendar year ending immediately 875
prior to the day on which the trust recognizes the qualifying 876
trust amount, and the denominator of which is the sum of the book 877
value of the qualifying investee's total physical assets 878
everywhere on the last day of the qualifying investee's fiscal or 879
calendar year ending immediately prior to the day on which the 880
trust recognizes the qualifying trust amount. If, for a taxable 881

year, the trust recognizes a qualifying trust amount with respect 882
to more than one qualifying investee, the amount described in 883
division (BB)(4)(b) of this section shall equal the sum of the 884
products so computed for each such qualifying investee. 885

(c)(i) With respect to a trust or portion of a trust that is 886
a resident as ascertained in accordance with division (I)(3)(d) of 887
this section, its modified nonbusiness income. 888

(ii) With respect to a trust or portion of a trust that is 889
not a resident as ascertained in accordance with division 890
(I)(3)(d) of this section, the amount of its modified nonbusiness 891
income satisfying the descriptions in divisions (B)(2) to (5) of 892
section 5747.20 of the Revised Code, except as otherwise provided 893
in division (BB)(4)(c)(ii) of this section. With respect to a 894
trust or portion of a trust that is not a resident as ascertained 895
in accordance with division (I)(3)(d) of this section, the trust's 896
portion of modified nonbusiness income recognized from the sale, 897
exchange, or other disposition of a debt interest in or equity 898
interest in a section 5747.212 entity, as defined in section 899
5747.212 of the Revised Code, without regard to division (A) of 900
that section, shall not be allocated to this state in accordance 901
with section 5747.20 of the Revised Code but shall be apportioned 902
to this state in accordance with division (B) of section 5747.212 903
of the Revised Code without regard to division (A) of that 904
section. 905

If the allocation and apportionment of a trust's income under 906
divisions (BB)(4)(a) and (c) of this section do not fairly 907
represent the modified Ohio taxable income of the trust in this 908
state, the alternative methods described in division (C) of 909
section 5747.21 of the Revised Code may be applied in the manner 910
and to the same extent provided in that section. 911

(5)(a) Except as set forth in division (BB)(5)(b) of this 912
section, "qualifying investee" means a person in which a trust has 913

an equity or ownership interest, or a person or unit of government 914
the debt obligations of either of which are owned by a trust. For 915
the purposes of division (BB)(2)(a) of this section and for the 916
purpose of computing the fraction described in division (BB)(4)(b) 917
of this section, all of the following apply: 918

(i) If the qualifying investee is a member of a qualifying 919
controlled group on the last day of the qualifying investee's 920
fiscal or calendar year ending immediately prior to the date on 921
which the trust recognizes the gain or loss, then "qualifying 922
investee" includes all persons in the qualifying controlled group 923
on such last day. 924

(ii) If the qualifying investee, or if the qualifying 925
investee and any members of the qualifying controlled group of 926
which the qualifying investee is a member on the last day of the 927
qualifying investee's fiscal or calendar year ending immediately 928
prior to the date on which the trust recognizes the gain or loss, 929
separately or cumulatively own, directly or indirectly, on the 930
last day of the qualifying investee's fiscal or calendar year 931
ending immediately prior to the date on which the trust recognizes 932
the qualifying trust amount, more than fifty per cent of the 933
equity of a pass-through entity, then the qualifying investee and 934
the other members are deemed to own the proportionate share of the 935
pass-through entity's physical assets which the pass-through 936
entity directly or indirectly owns on the last day of the 937
pass-through entity's calendar or fiscal year ending within or 938
with the last day of the qualifying investee's fiscal or calendar 939
year ending immediately prior to the date on which the trust 940
recognizes the qualifying trust amount. 941

(iii) For the purposes of division (BB)(5)(a)(iii) of this 942
section, "upper level pass-through entity" means a pass-through 943
entity directly or indirectly owning any equity of another 944
pass-through entity, and "lower level pass-through entity" means 945

that other pass-through entity. 946

An upper level pass-through entity, whether or not it is also 947
a qualifying investee, is deemed to own, on the last day of the 948
upper level pass-through entity's calendar or fiscal year, the 949
proportionate share of the lower level pass-through entity's 950
physical assets that the lower level pass-through entity directly 951
or indirectly owns on the last day of the lower level pass-through 952
entity's calendar or fiscal year ending within or with the last 953
day of the upper level pass-through entity's fiscal or calendar 954
year. If the upper level pass-through entity directly and 955
indirectly owns less than fifty per cent of the equity of the 956
lower level pass-through entity on each day of the upper level 957
pass-through entity's calendar or fiscal year in which or with 958
which ends the calendar or fiscal year of the lower level 959
pass-through entity and if, based upon clear and convincing 960
evidence, complete information about the location and cost of the 961
physical assets of the lower pass-through entity is not available 962
to the upper level pass-through entity, then solely for purposes 963
of ascertaining if a gain or loss constitutes a qualifying trust 964
amount, the upper level pass-through entity shall be deemed as 965
owning no equity of the lower level pass-through entity for each 966
day during the upper level pass-through entity's calendar or 967
fiscal year in which or with which ends the lower level 968
pass-through entity's calendar or fiscal year. Nothing in division 969
(BB)(5)(a)(iii) of this section shall be construed to provide for 970
any deduction or exclusion in computing any trust's Ohio taxable 971
income. 972

(b) With respect to a trust that is not a resident for the 973
taxable year and with respect to a part of a trust that is not a 974
resident for the taxable year, "qualifying investee" for that 975
taxable year does not include a C corporation if both of the 976
following apply: 977

(i) During the taxable year the trust or part of the trust	978
recognizes a gain or loss from the sale, exchange, or other	979
disposition of equity or ownership interests in, or debt	980
obligations of, the C corporation.	981
(ii) Such gain or loss constitutes nonbusiness income.	982
(6) "Available" means information is such that a person is	983
able to learn of the information by the due date plus extensions,	984
if any, for filing the return for the taxable year in which the	985
trust recognizes the gain or loss.	986
(CC) "Qualifying controlled group" has the same meaning as in	987
section 5733.04 of the Revised Code.	988
(DD) "Related member" has the same meaning as in section	989
5733.042 of the Revised Code.	990
(EE)(1) For the purposes of division (EE) of this section:	991
(a) "Qualifying person" means any person other than a	992
qualifying corporation.	993
(b) "Qualifying corporation" means any person classified for	994
federal income tax purposes as an association taxable as a	995
corporation, except either of the following:	996
(i) A corporation that has made an election under subchapter	997
S, chapter one, subtitle A, of the Internal Revenue Code for its	998
taxable year ending within, or on the last day of, the investor's	999
taxable year;	1000
(ii) A subsidiary that is wholly owned by any corporation	1001
that has made an election under subchapter S, chapter one,	1002
subtitle A of the Internal Revenue Code for its taxable year	1003
ending within, or on the last day of, the investor's taxable year.	1004
(2) For the purposes of this chapter, unless expressly stated	1005
otherwise, no qualifying person indirectly owns any asset directly	1006
or indirectly owned by any qualifying corporation.	1007

(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:	1008 1009
(1) "Trust" does not include a qualified pre-income tax trust.	1010 1011
(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.	1012 1013 1014
(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.	1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025
(4) A "pre-income tax trust" is a trust that satisfies all of the following requirements:	1026 1027
(a) The document or instrument creating the trust was executed by the grantor before January 1, 1972;	1028 1029
(b) The trust became irrevocable upon the creation of the trust; and	1030 1031
(c) The grantor was domiciled in this state at the time the trust was created.	1032 1033
Sec. 5747.08. An annual return with respect to the tax imposed by section 5747.02 of the Revised Code and each tax imposed under Chapter 5748. of the Revised Code shall be made by every taxpayer for any taxable year for which the taxpayer is	1034 1035 1036 1037

liable for the tax imposed by that section or under that chapter, 1038
unless the total credits allowed under divisions (E), (F), and (G) 1039
of section 5747.05 of the Revised Code for the year are equal to 1040
or exceed the tax imposed by section 5747.02 of the Revised Code, 1041
in which case no return shall be required unless the taxpayer is 1042
liable for a tax imposed pursuant to Chapter 5748. of the Revised 1043
Code. 1044

(A) If an individual is deceased, any return or notice 1045
required of that individual under this chapter shall be made and 1046
filed by that decedent's executor, administrator, or other person 1047
charged with the property of that decedent. 1048

(B) If an individual is unable to make a return or notice 1049
required by this chapter, the return or notice required of that 1050
individual shall be made and filed by the individual's duly 1051
authorized agent, guardian, conservator, fiduciary, or other 1052
person charged with the care of the person or property of that 1053
individual. 1054

(C) Returns or notices required of an estate or a trust shall 1055
be made and filed by the fiduciary of the estate or trust. 1056

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) 1057
of this section, any pass-through entity may file a single return 1058
on behalf of one or more of the entity's investors other than an 1059
investor that is a person subject to the tax imposed under section 1060
5733.06 of the Revised Code. The single return shall set forth the 1061
name, address, and social security number or other identifying 1062
number of each of those pass-through entity investors and shall 1063
indicate the distributive share of each of those pass-through 1064
entity investor's income taxable in this state in accordance with 1065
sections 5747.20 to 5747.231 of the Revised Code. Such 1066
pass-through entity investors for whom the pass-through entity 1067
elects to file a single return are not entitled to the exemption 1068
or credit provided for by sections 5747.02 and 5747.022 of the 1069

Revised Code; shall calculate the tax before business credits at 1070
the highest rate of tax set forth in section 5747.02 of the 1071
Revised Code for the taxable year for which the return is filed; 1072
and are entitled to only their distributive share of the business 1073
credits as defined in division (D)(2) of this section. A single 1074
check drawn by the pass-through entity shall accompany the return 1075
in full payment of the tax due, as shown on the single return, for 1076
such investors, other than investors who are persons subject to 1077
the tax imposed under section 5733.06 of the Revised Code. 1078

(b)(i) A pass-through entity shall not include in such a 1079
single return any investor that is a trust to the extent that any 1080
direct or indirect current, future, or contingent beneficiary of 1081
the trust is a person subject to the tax imposed under section 1082
5733.06 of the Revised Code. 1083

(ii) A pass-through entity shall not include in such a single 1084
return any investor that is itself a pass-through entity to the 1085
extent that any direct or indirect investor in the second 1086
pass-through entity is a person subject to the tax imposed under 1087
section 5733.06 of the Revised Code. 1088

(c) Nothing in division (D) of this section precludes the tax 1089
commissioner from requiring such investors to file the return and 1090
make the payment of taxes and related interest, penalty, and 1091
interest penalty required by this section or section 5747.02, 1092
5747.09, or 5747.15 of the Revised Code. Nothing in division (D) 1093
of this section shall be construed to provide to such an investor 1094
or pass-through entity any additional deduction or credit, other 1095
than the credit provided by division (J) of this section, solely 1096
on account of the entity's filing a return in accordance with this 1097
section. Such a pass-through entity also shall make the filing and 1098
payment of estimated taxes on behalf of the pass-through entity 1099
investors other than an investor that is a person subject to the 1100
tax imposed under section 5733.06 of the Revised Code. 1101

(2) For the purposes of this section, "business credits"	1102
means the credits listed in section 5747.98 of the Revised Code	1103
excluding the following credits:	1104
(a) The retirement credit under division (B) of section	1105
5747.055 of the Revised Code;	1106
(b) The senior citizen credit under division (C) of section	1107
5747.05 of the Revised Code;	1108
(c) The lump sum distribution credit under division (D) of	1109
section 5747.05 of the Revised Code;	1110
(d) The dependent care credit under section 5747.054 of the	1111
Revised Code;	1112
(e) The lump sum retirement income credit under division (C)	1113
of section 5747.055 of the Revised Code;	1114
(f) The lump sum retirement income credit under division (D)	1115
of section 5747.055 of the Revised Code;	1116
(g) The lump sum retirement income credit under division (E)	1117
of section 5747.055 of the Revised Code;	1118
(h) The credit for displaced workers who pay for job training	1119
under section 5747.27 of the Revised Code;	1120
(i) The twenty-dollar personal exemption credit under section	1121
5747.022 of the Revised Code;	1122
(j) The joint filing credit under division (G) of section	1123
5747.05 of the Revised Code;	1124
(k) The nonresident credit under division (A) of section	1125
5747.05 of the Revised Code;	1126
(l) The credit for a resident's out-of-state income under	1127
division (B) of section 5747.05 of the Revised Code;	1128
(m) The low-income credit under section 5747.056 of the	1129
Revised Code;	1130

(n) The nursing professor credit under section 5747.72 of the 1131
Revised Code. 1132

(3) The election provided for under division (D) of this 1133
section applies only to the taxable year for which the election is 1134
made by the pass-through entity. Unless the tax commissioner 1135
provides otherwise, this election, once made, is binding and 1136
irrevocable for the taxable year for which the election is made. 1137
Nothing in this division shall be construed to provide for any 1138
deduction or credit that would not be allowable if a nonresident 1139
pass-through entity investor were to file an annual return. 1140

(4) If a pass-through entity makes the election provided for 1141
under division (D) of this section, the pass-through entity shall 1142
be liable for any additional taxes, interest, interest penalty, or 1143
penalties imposed by this chapter if the tax commissioner finds 1144
that the single return does not reflect the correct tax due by the 1145
pass-through entity investors covered by that return. Nothing in 1146
this division shall be construed to limit or alter the liability, 1147
if any, imposed on pass-through entity investors for unpaid or 1148
underpaid taxes, interest, interest penalty, or penalties as a 1149
result of the pass-through entity's making the election provided 1150
for under division (D) of this section. For the purposes of 1151
division (D) of this section, "correct tax due" means the tax that 1152
would have been paid by the pass-through entity had the single 1153
return been filed in a manner reflecting the tax commissioner's 1154
findings. Nothing in division (D) of this section shall be 1155
construed to make or hold a pass-through entity liable for tax 1156
attributable to a pass-through entity investor's income from a 1157
source other than the pass-through entity electing to file the 1158
single return. 1159

(E) If a husband and wife file a joint federal income tax 1160
return for a taxable year, they shall file a joint return under 1161
this section for that taxable year, and their liabilities are 1162

joint and several, but, if the federal income tax liability of 1163
either spouse is determined on a separate federal income tax 1164
return, they shall file separate returns under this section. 1165

If either spouse is not required to file a federal income tax 1166
return and either or both are required to file a return pursuant 1167
to this chapter, they may elect to file separate or joint returns, 1168
and, pursuant to that election, their liabilities are separate or 1169
joint and several. If a husband and wife file separate returns 1170
pursuant to this chapter, each must claim the taxpayer's own 1171
exemption, but not both, as authorized under section 5747.02 of 1172
the Revised Code on the taxpayer's own return. 1173

(F) Each return or notice required to be filed under this 1174
section shall contain the signature of the taxpayer or the 1175
taxpayer's duly authorized agent and of the person who prepared 1176
the return for the taxpayer, and shall include the taxpayer's 1177
social security number. Each return shall be verified by a 1178
declaration under the penalties of perjury. The tax commissioner 1179
shall prescribe the form that the signature and declaration shall 1180
take. 1181

(G) Each return or notice required to be filed under this 1182
section shall be made and filed as required by section 5747.04 of 1183
the Revised Code, on or before the fifteenth day of April of each 1184
year, on forms that the tax commissioner shall prescribe, together 1185
with remittance made payable to the treasurer of state in the 1186
combined amount of the state and all school district income taxes 1187
shown to be due on the form, unless the combined amount shown to 1188
be due is one dollar or less, in which case that amount need not 1189
be remitted. 1190

Upon good cause shown, the tax commissioner may extend the 1191
period for filing any notice or return required to be filed under 1192
this section and may adopt rules relating to extensions. If the 1193
extension results in an extension of time for the payment of any 1194

state or school district income tax liability with respect to 1195
which the return is filed, the taxpayer shall pay at the time the 1196
tax liability is paid an amount of interest computed at the rate 1197
per annum prescribed by section 5703.47 of the Revised Code on 1198
that liability from the time that payment is due without extension 1199
to the time of actual payment. Except as provided in section 1200
5747.132 of the Revised Code, in addition to all other interest 1201
charges and penalties, all taxes imposed under this chapter or 1202
Chapter 5748. of the Revised Code and remaining unpaid after they 1203
become due, except combined amounts due of one dollar or less, 1204
bear interest at the rate per annum prescribed by section 5703.47 1205
of the Revised Code until paid or until the day an assessment is 1206
issued under section 5747.13 of the Revised Code, whichever occurs 1207
first. 1208

If the tax commissioner considers it necessary in order to 1209
ensure the payment of the tax imposed by section 5747.02 of the 1210
Revised Code or any tax imposed under Chapter 5748. of the Revised 1211
Code, the tax commissioner may require returns and payments to be 1212
made otherwise than as provided in this section. 1213

To the extent that any provision in this division conflicts 1214
with any provision in section 5747.026 of the Revised Code, the 1215
provision in that section prevails. 1216

(H) If any report, claim, statement, or other document 1217
required to be filed, or any payment required to be made, within a 1218
prescribed period or on or before a prescribed date under this 1219
chapter is delivered after that period or that date by United 1220
States mail to the agency, officer, or office with which the 1221
report, claim, statement, or other document is required to be 1222
filed, or to which the payment is required to be made, the date of 1223
the postmark stamped on the cover in which the report, claim, 1224
statement, or other document, or payment is mailed shall be deemed 1225
to be the date of delivery or the date of payment. 1226

If a payment is required to be made by electronic funds 1227
transfer pursuant to section 5747.072 of the Revised Code, the 1228
payment is considered to be made when the payment is received by 1229
the treasurer of state or credited to an account designated by the 1230
treasurer of state for the receipt of tax payments. 1231

"The date of the postmark" means, in the event there is more 1232
than one date on the cover, the earliest date imprinted on the 1233
cover by the United States postal service. 1234

(I) The amounts withheld by the employer pursuant to section 1235
5747.06 of the Revised Code shall be allowed to the recipient of 1236
the compensation as credits against payment of the appropriate 1237
taxes imposed on the recipient by section 5747.02 and under 1238
Chapter 5748. of the Revised Code. 1239

(J) If, in accordance with division (D) of this section, a 1240
pass-through entity elects to file a single return and if any 1241
investor is required to file the return and make the payment of 1242
taxes required by this chapter on account of the investor's other 1243
income that is not included in a single return filed by a 1244
pass-through entity, the investor is entitled to a refundable 1245
credit equal to the investor's proportionate share of the tax paid 1246
by the pass-through entity on behalf of the investor. The investor 1247
shall claim the credit for the investor's taxable year in which or 1248
with which ends the taxable year of the pass-through entity. 1249
Nothing in this chapter shall be construed to allow any credit 1250
provided in this chapter to be claimed more than once. For the 1251
purposes of computing any interest, penalty, or interest penalty, 1252
the investor shall be deemed to have paid the refundable credit 1253
provided by this division on the day that the pass-through entity 1254
paid the estimated tax or the tax giving rise to the credit. 1255

(K) The tax commissioner shall ensure that each return 1256
required to be filed under this section includes a box that the 1257
taxpayer may check to authorize a paid tax preparer who prepared 1258

the return to communicate with the department of taxation about 1259
matters pertaining to the return. The return or instructions 1260
accompanying the return shall indicate that by checking the box 1261
the taxpayer authorizes the department of taxation to contact the 1262
preparer concerning questions that arise during the processing of 1263
the return and authorizes the preparer only to provide the 1264
department with information that is missing from the return, to 1265
contact the department for information about the processing of the 1266
return or the status of the taxpayer's refund or payments, and to 1267
respond to notices about mathematical errors, offsets, or return 1268
preparation that the taxpayer has received from the department and 1269
has shown to the preparer. 1270

Sec. 5747.72. (A) As used in this section: 1271

(1) "Nursing professor" means an individual who is licensed 1272
to practice as a registered nurse under Chapter 4723. of the 1273
Revised Code and is teaching at a post-secondary educational 1274
institution in a program that leads to a diploma or degree in 1275
nursing. 1276

(2) "Post-secondary educational institution" means any 1277
state-assisted college or university as defined in section 1278
3333.041 of the Revised Code, any nonprofit institution holding a 1279
certificate of authorization pursuant to Chapter 1713. of the 1280
Revised Code, any institution holding a certificate of 1281
registration from the state board of proprietary school 1282
registration issued under Chapter 3332. of the Revised Code, or 1283
any school holding authorization pursuant to Title XLVII of the 1284
Revised Code to offer courses leading to a nursing license. 1285

(B) A refundable credit is allowed against the tax imposed by 1286
section 5747.02 of the Revised Code for a taxpayer who is a 1287
nursing professor during a taxable year. The amount of the credit 1288
shall be as follows: 1289

(1) Three thousand five hundred dollars each taxable year for 1290
four consecutive taxable years; 1291

(2) One thousand seven hundred fifty dollars each taxable 1292
year for two consecutive taxable years after the credit has been 1293
taken in four consecutive taxable years under division (B)(1) of 1294
this section. 1295

A taxpayer may not claim the credit allowed under this 1296
section in taxable year 2022 or thereafter. 1297

(C) The credit under this section shall be claimed in the 1298
order required under section 5747.98 of the Revised Code. If the 1299
amount of the credit under this section exceeds the amount of tax 1300
otherwise due under section 5747.02 of the Revised Code after 1301
deduction of all other credits in that order, the taxpayer is 1302
entitled to a refund of the excess. 1303

(D) The tax commissioner may require a taxpayer to furnish 1304
such information as is necessary to support a claim for a credit 1305
under this section, and no credit shall be allowed unless the 1306
information is provided. 1307

Sec. 5747.98. (A) To provide a uniform procedure for 1308
calculating the amount of tax due under section 5747.02 of the 1309
Revised Code, a taxpayer shall claim any credits to which the 1310
taxpayer is entitled in the following order: 1311

(1) The retirement income credit under division (B) of 1312
section 5747.055 of the Revised Code; 1313

(2) The senior citizen credit under division (C) of section 1314
5747.05 of the Revised Code; 1315

(3) The lump sum distribution credit under division (D) of 1316
section 5747.05 of the Revised Code; 1317

(4) The dependent care credit under section 5747.054 of the 1318
Revised Code; 1319

(5) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;	1320 1321
(6) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;	1322 1323
(7) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	1324 1325
(8) The low-income credit under section 5747.056 of the Revised Code;	1326 1327
(9) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	1328 1329
(10) The campaign contribution credit under section 5747.29 of the Revised Code;	1330 1331
(11) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	1332 1333
(12) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	1334 1335
(13) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	1336 1337
(14) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	1338 1339
(15) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;	1340 1341
(16) The credit for employers that reimburse employee child care expenses under section 5747.36 of the Revised Code;	1342 1343
(17) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	1344 1345
(18) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	1346 1347
(19) The job retention credit under division (B) of section	1348

5747.058 of the Revised Code;	1349
(20) The credit for selling alternative fuel under section 5747.77 of the Revised Code;	1350 1351
(21) 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;	1352 1353 1354
(22) The job training credit under section 5747.39 of the Revised Code;	1355 1356
(23) The enterprise zone credit under section 5709.66 of the Revised Code;	1357 1358
(24) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	1359 1360
(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	1361 1362
(26) The ethanol plant investment credit under section 5747.75 of the Revised Code;	1363 1364
(27) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	1365 1366
(28) The export sales credit under section 5747.057 of the Revised Code;	1367 1368
(29) The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;	1369 1370
(30) The enterprise zone credits under section 5709.65 of the Revised Code;	1371 1372
(31) The research and development credit under section 5747.331 of the Revised Code;	1373 1374
(32) The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	1375 1376
(33) The refundable credit for rehabilitating a historic	1377

building under section 5747.76 of the Revised Code;	1378
(34) The refundable jobs creation credit under division (A) of section 5747.058 of the Revised Code;	1379 1380
(35) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	1381 1382
(36) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (J) of section 5747.08 of the Revised Code;	1383 1384 1385
(37) The refundable credit for tax withheld under division (B)(1) of section 5747.062 of the Revised Code;	1386 1387
(38) The refundable credit under section 5747.80 of the Revised Code for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code;	1388 1389 1390
<u>(39) The refundable nursing professor credit granted under section 5747.72 of the Revised Code.</u>	1391 1392
(B) For any credit, except the credits enumerated in divisions (A)(33) to (38) (39) of this section and the credit granted under division (I) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.	1393 1394 1395 1396 1397 1398 1399 1400 1401 1402 1403
Section 2. That existing sections 5747.01, 5747.08, and 5747.98 of the Revised Code are hereby repealed.	1404 1405
Section 3. The amendment by this act of section 5747.01, 5747.08, and 5747.98 of the Revised Code applies to taxable years	1406 1407

beginning in 2009 or thereafter.

1408