

**As Passed by the House**

**128th General Assembly**

**Regular Session**

**2009-2010**

**Sub. S. B. No. 106**

**Senators Buehrer, Kearney**

**Cosponsors: Senators Miller, R., Schuler, Seitz, Turner, Fedor, Gillmor,**

**Harris, Hughes, Schiavoni, Wagoner, Wilson, Smith, Sawyer**

**Representatives Book, Stautberg, Harwood, Skindell, Foley, Stebelton, Okey,**

**Adams, J., Blessing, Brown, Bubp, Carney, Chandler, Coley, Combs,**

**DeBose, DeGeeter, Derickson, Domenick, Dyer, Evans, Fende, Gardner,**

**Goyal, Grossman, Hackett, Hite, Huffman, Letson, Luckie, Maag, McClain,**

**Mecklenborg, Moran, Oelslager, Pillich, Pryor, Ruhl, Sayre, Sears, Snitchler,**

**Stewart, Szollosi, Winburn, Yuko**

—

**A B I L L**

To amend sections 2101.16, 2107.76, 2109.21, 2111.05, 1  
2111.18, 2125.04, 2305.19, 5747.01, and 5815.31 of 2  
the Revised Code to exclude from the application 3  
of the savings statute certain estate and trust 4  
proceedings that have limitation periods, to raise 5  
the threshold amount for the termination or 6  
avoidance of guardianships of small estates of 7  
wards, to raise the threshold amount for the 8  
avoidance of guardianship upon the settlement of 9  
claims of minors or adult incompetents, to clarify 10  
that termination of marriage revokes any trust 11  
provision conferring a beneficial interest on the 12  
former spouse, to modify the period within which a 13  
plaintiff in a wrongful death action may commence 14  
a new action after the reversal of a judgment for 15  
the plaintiff or the plaintiff's failure otherwise 16

than upon the merits, and to modify the residency 17  
qualifications for a person's appointment as a 18  
guardian. 19  
20

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

**Section 1.** That sections 2101.16, 2107.76, 2109.21, 2111.05, 21  
2111.18, 2125.04, 2305.19, 5747.01, and 5815.31 of the Revised 22  
Code be amended to read as follows: 23

**Sec. 2101.16.** (A) Except as provided in section 2101.164 of 24  
the Revised Code, the fees enumerated in this division shall be 25  
charged and collected, if possible, by the probate judge and shall 26  
be in full for all services rendered in the respective 27  
proceedings: 28

- (1) Account, in addition to advertising charges 29
  - ..... \$ 12.00 30
  - Waivers and proof of notice of hearing on account, 31
  - per page, minimum one dollar
  - ..... \$ 1.00 32
- (2) Account of distribution, in addition to advertising 33  
charges
  - ..... \$ 7.00 34
- (3) Adoption of child, petition for 35
  - ..... \$ 50.00 36
- (4) Alter or cancel contract for sale or purchase of real 37  
estate, petition to
  - ..... \$ 20.00 38
- (5) Application and order not otherwise provided for in 39  
this section or by rule adopted pursuant to division  
(E) of this section
  - ..... \$ 5.00 40

|   |    |
|---|----|
| (6) Appropriation suit, per day, hearing in               | 41 |
| ..... \$ 20.00  | 42 |
| (7) Birth, application for registration of                | 43 |
| ..... \$ 7.00   | 44 |
| (8) Birth record, application to correct                  | 45 |
| ..... \$ 5.00   | 46 |
| (9) Bond, application for new or additional               | 47 |
| ..... \$ 5.00   | 48 |
| (10) Bond, application for release of surety or reduction | 49 |
| of  |    |
| ..... \$ 5.00   | 50 |
| (11) Bond, receipt for securities deposited in lieu of    | 51 |
| ..... \$ 5.00   | 52 |
| (12) Certified copy of journal entry, record, or          | 53 |
| proceeding, per page, minimum fee one dollar              |    |
| ..... \$ 1.00   | 54 |
| (13) Citation and issuing citation, application for       | 55 |
| ..... \$ 5.00   | 56 |
| (14) Change of name, petition for                         | 57 |
| ..... \$ 20.00  | 58 |
| (15) Claim, application of administrator or executor for  | 59 |
| allowance of administrator's or executor's own            |    |
| ..... \$ 10.00  | 60 |
| (16) Claim, application to compromise or settle           | 61 |
| ..... \$ 10.00  | 62 |
| (17) Claim, authority to present                          | 63 |
| ..... \$ 10.00  | 64 |
| (18) Commissioner, appointment of                         | 65 |
| ..... \$ 5.00   | 66 |
| (19) Compensation for extraordinary services and          | 67 |
| attorney's fees for fiduciary, application for            |    |
| ..... \$ 5.00   | 68 |
| (20) Competency, application to procure adjudication of   | 69 |

|   |          |    |
|---|----------|----|
| .....   | \$ 20.00 | 70 |
| (21) Complete contract, application to                    |          | 71 |
| .....   | \$ 10.00 | 72 |
| (22) Concealment of assets, citation for                  |          | 73 |
| .....   | \$ 10.00 | 74 |
| (23) Construction of will, petition for                   |          | 75 |
| .....   | \$ 20.00 | 76 |
| (24) Continue decedent's business, application to         |          | 77 |
| .....   | \$ 10.00 | 78 |
| Monthly reports of operation                              |          | 79 |
| .....   | \$ 5.00  | 80 |
| (25) Declaratory judgment, petition for                   |          | 81 |
| .....   | \$ 20.00 | 82 |
| (26) Deposit of will                                      |          | 83 |
| .....   | \$ 5.00  | 84 |
| (27) Designation of heir                                  |          | 85 |
| .....   | \$ 20.00 | 86 |
| (28) Distribution in kind, application, assent, and order |          | 87 |
| for   |          |    |
| .....   | \$ 5.00  | 88 |
| (29) Distribution under section 2109.36 of the Revised    |          | 89 |
| Code, application for an order of                         |          |    |
| .....   | \$ 7.00  | 90 |
| (30) Docketing and indexing proceedings, including the    |          | 91 |
| filing and noting of all necessary documents, maximum     |          |    |
| fee, fifteen dollars                                      |          |    |
| .....   | \$ 15.00 | 92 |
| (31) Exceptions to any proceeding named in this section,  |          | 93 |
| contest of appointment or                                 |          |    |
| .....   | \$ 10.00 | 94 |
| (32) Election of surviving partner to purchase assets of  |          | 95 |
| partnership, proceedings relating to                      |          |    |
| .....   | \$ 10.00 | 96 |

|   |          |     |
|---|----------|-----|
| (33) Election of surviving spouse under will  |          | 97  |
| .....   | \$ 5.00  | 98  |
| (34) Fiduciary, including an assignee or trustee of an insolvent debtor or any guardian or conservator accountable to the probate court, appointment of |          | 99  |
| .....   | \$ 35.00 | 100 |
| (35) Foreign will, application to record  |          | 101 |
| .....   | \$ 10.00 | 102 |
| Record of foreign will, additional, per page  |          | 103 |
| .....   | \$ 1.00  | 104 |
| (36) Forms when supplied by the probate court, not to exceed  |          | 105 |
| .....   | \$ 10.00 | 106 |
| (37) Heirship, petition to determine  |          | 107 |
| .....   | \$ 20.00 | 108 |
| (38) Injunction proceedings   |          | 109 |
| .....   | \$ 20.00 | 110 |
| (39) Improve real estate, petition to   |          | 111 |
| .....   | \$ 20.00 | 112 |
| (40) Inventory with appraisement  |          | 113 |
| .....   | \$ 10.00 | 114 |
| (41) Inventory without appraisement   |          | 115 |
| .....   | \$ 7.00  | 116 |
| (42) Investment or expenditure of funds, application for  |          | 117 |
| .....   | \$ 10.00 | 118 |
| (43) Invest in real estate, application to  |          | 119 |
| .....   | \$ 10.00 | 120 |
| (44) Lease for oil, gas, coal, or other mineral, petition to  |          | 121 |
| .....   | \$ 20.00 | 122 |
| (45) Lease or lease and improve real estate, petition to  |          | 123 |
| .....   | \$ 20.00 | 124 |
| (46) Marriage license   |          | 125 |

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|---|----------|-----|
| .....   | \$ 10.00 | 126 |
| Certified abstract of each marriage   |          | 127 |
| .....   | \$ 2.00  | 128 |
| (47) Minor or <del>mentally ill</del> <u>incompetent</u> person, etc.,<br>disposal of estate under <del>ten</del> <u>twenty-five</u> thousand<br>dollars of |          | 129 |
| .....   | \$ 10.00 | 130 |
| (48) Mortgage or mortgage and repair or improve real<br>estate, petition to   |          | 131 |
| .....   | \$ 20.00 | 132 |
| (49) Newly discovered assets, report of   |          | 133 |
| .....   | \$ 7.00  | 134 |
| (50) Nonresident executor or administrator to bar<br>creditors' claims, proceedings by  |          | 135 |
| .....   | \$ 20.00 | 136 |
| (51) Power of attorney or revocation of power, bonding<br>company   |          | 137 |
| .....   | \$ 10.00 | 138 |
| (52) Presumption of death, petition to establish  |          | 139 |
| .....   | \$ 20.00 | 140 |
| (53) Probating will   |          | 141 |
| .....   | \$ 15.00 | 142 |
| Proof of notice to beneficiaries  |          | 143 |
| .....   | \$ 5.00  | 144 |
| (54) Purchase personal property, application of surviving<br>spouse to  |          | 145 |
| .....   | \$ 10.00 | 146 |
| (55) Purchase real estate at appraised value, petition of<br>surviving spouse to  |          | 147 |
| .....   | \$ 20.00 | 148 |
| (56) Receipts in addition to advertising charges,<br>application and order to record  |          | 149 |
| .....   | \$ 5.00  | 150 |

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| Record of those receipts, additional, per page   |          | 151 |
| .....  | \$ 1.00  | 152 |
| (57) Record in excess of fifteen hundred words in any proceeding in the probate court, per page  |          | 153 |
| .....  | \$ 1.00  | 154 |
| (58) Release of estate by mortgagee or other lienholder  |          | 155 |
| .....  | \$ 5.00  | 156 |
| (59) Relieving an estate from administration under section 2113.03 of the Revised Code or granting an order for a summary release from administration under section 2113.031 of the Revised Code |          | 157 |
| .....  | \$ 60.00 | 158 |
| (60) Removal of fiduciary, application for   |          | 159 |
| .....  | \$ 10.00 | 160 |
| (61) Requalification of executor or administrator  |          | 161 |
| .....  | \$ 10.00 | 162 |
| (62) Resignation of fiduciary  |          | 163 |
| .....  | \$ 5.00  | 164 |
| (63) Sale bill, public sale of personal property   |          | 165 |
| .....  | \$ 10.00 | 166 |
| (64) Sale of personal property and report, application for   |          | 167 |
| .....  | \$ 10.00 | 168 |
| (65) Sale of real estate, petition for   |          | 169 |
| .....  | \$ 25.00 | 170 |
| (66) Terminate guardianship, petition to   |          | 171 |
| .....  | \$ 10.00 | 172 |
| (67) Transfer of real estate, application, entry, and certificate for  |          | 173 |
| .....  | \$ 7.00  | 174 |
| (68) Unclaimed money, application to invest  |          | 175 |
| .....  | \$ 7.00  | 176 |
| (69) Vacate approval of account or order of distribution, motion to  |          | 177 |

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|--|----------|--|
| .....  | \$ 10.00 | 178  |
| (70) Writ of execution   |          | 179  |
| .....  | \$ 5.00  | 180  |
| (71) Writ of possession  |          | 181  |
| .....  | \$ 5.00  | 182  |
| (72) Wrongful death, application and settlement of claim<br>for  |          | 183  |
| .....  | \$ 20.00 | 184  |
| (73) Year's allowance, petition to review  |          | 185  |
| .....  | \$ 7.00  | 186  |
| (74) Guardian's report, filing and review of   |          | 187  |
| .....  | \$ 5.00  | 188  |
| (B)(1) In relation to an application for the appointment of a<br>guardian or the review of a report of a guardian under section<br>2111.49 of the Revised Code, the probate court, pursuant to court<br>order or in accordance with a court rule, may direct that the<br>applicant or the estate pay any or all of the expenses of an<br>investigation conducted pursuant to section 2111.041 or division<br>(A)(2) of section 2111.49 of the Revised Code. If the<br>investigation is conducted by a public employee or investigator<br>who is paid by the county, the fees for the investigation shall be<br>paid into the county treasury. If the court finds that an alleged<br>incompetent or a ward is indigent, the court may waive the costs,<br>fees, and expenses of an investigation. |          | 189<br>190<br>191<br>192<br>193<br>194<br>195<br>196<br>197<br>198<br>199<br>200 |
| (2) In relation to the appointment or functioning of a<br>guardian for a minor or the guardianship of a minor, the probate<br>court may direct that the applicant or the estate pay any or all<br>of the expenses of an investigation conducted pursuant to section<br>2111.042 of the Revised Code. If the investigation is conducted by<br>a public employee or investigator who is paid by the county, the<br>fees for the investigation shall be paid into the county treasury.<br>If the court finds that the guardian or applicant is indigent, the<br>court may waive the costs, fees, and expenses of an investigation.  |          | 201<br>202<br>203<br>204<br>205<br>206<br>207<br>208<br>209                      |



(C) Thirty dollars of the thirty-five-dollar fee collected 210  
pursuant to division (A)(34) of this section and twenty dollars of 211  
the sixty-dollar fee collected pursuant to division (A)(59) of 212  
this section shall be deposited by the county treasurer in the 213  
indigent guardianship fund created pursuant to section 2111.51 of 214  
the Revised Code. 215

(D) The fees of witnesses, jurors, sheriffs, coroners, and 216  
constables for services rendered in the probate court or by order 217  
of the probate judge shall be the same as provided for like 218  
services in the court of common pleas. 219

(E) The probate court, by rule, may require an advance 220  
deposit for costs, not to exceed one hundred twenty-five dollars, 221  
at the time application is made for an appointment as executor or 222  
administrator or at the time a will is presented for probate. 223

(F) The probate court, by rule, shall establish a reasonable 224  
fee, not to exceed fifty dollars, for the filing of a petition for 225  
the release of information regarding an adopted person's name by 226  
birth and the identity of the adopted person's biological parents 227  
and biological siblings pursuant to section 3107.41 of the Revised 228  
Code, all proceedings relative to the petition, the entry of an 229  
order relative to the petition, and all services required to be 230  
performed in connection with the petition. The probate court may 231  
use a reasonable portion of a fee charged under authority of this 232  
division to reimburse any agency, as defined in section 3107.39 of 233  
the Revised Code, for any services it renders in performing a task 234  
described in section 3107.41 of the Revised Code relative to or in 235  
connection with the petition for which the fee was charged. 236

(G)(1) Thirty dollars of the fifty-dollar fee collected 237  
pursuant to division (A)(3) of this section shall be deposited 238  
into the "putative father registry fund," which is hereby created 239  
in the state treasury. The department of job and family services 240  
shall use the money in the fund to fund the department's costs of 241

performing its duties related to the putative father registry 242  
established under section 3107.062 of the Revised Code. 243

(2) If the department determines that money in the putative 244  
father registry fund is more than is needed for its duties related 245  
to the putative father registry, the department may use the 246  
surplus moneys in the fund as permitted in division (C) of section 247  
2151.3529, division (B) of section 2151.3530, or section 5103.155 248  
of the Revised Code. 249

**Sec. 2107.76.** ~~(A)~~ No person who has received or waived the 250  
right to receive the notice of the admission of a will to probate 251  
required by section 2107.19 of the Revised Code may commence an 252  
action permitted by section 2107.71 of the Revised Code to contest 253  
the validity of the will more than three months after the filing 254  
of the certificate described in division (A)(3) of section 2107.19 255  
of the Revised Code. No other person may commence an action 256  
permitted by section 2107.71 of the Revised Code to contest the 257  
validity of the will more than three months after the initial 258  
filing of a certificate described in division (A)(3) of section 259  
2107.19 of the Revised Code. A person under any legal disability 260  
nevertheless may commence an action permitted by section 2107.71 261  
of the Revised Code to contest the validity of the will within 262  
three months after the disability is removed, but the rights saved 263  
shall not affect the rights of a purchaser, lessee, or 264  
encumbrancer for value in good faith and shall not impose any 265  
liability upon a fiduciary who has acted in good faith, or upon a 266  
person delivering or transferring property to any other person 267  
under authority of a will, whether or not the purchaser, lessee, 268  
encumbrancer, fiduciary, or other person had actual or 269  
constructive notice of the legal disability. 270

~~(B) Section 2305.19 of the Revised Code does not apply to an 271  
action permitted by section 2107.71 of the Revised Code to contest 272~~

~~the validity of a will.~~ 273

**Sec. 2109.21.** (A) An administrator, special administrator, 274  
administrator de bonis non, or administrator with the will annexed 275  
shall be a resident of this state and shall be removed on proof 276  
that the administrator is no longer a resident of this state. 277

(B)(1) To qualify for appointment as executor or trustee, an 278  
executor or a trustee named in a will or nominated in accordance 279  
with any power of nomination conferred in a will, may be a 280  
resident of this state or, as provided in this division, a 281  
nonresident of this state. To qualify for appointment, a 282  
nonresident executor or trustee named in, or nominated pursuant 283  
to, a will shall be an individual who is related to the maker of 284  
the will by consanguinity or affinity, or a person who resides in 285  
a state that has statutes or rules that authorize the appointment 286  
of a nonresident person who is not related to the maker of a will 287  
by consanguinity or affinity, as an executor or trustee when named 288  
in, or nominated pursuant to, a will. No such executor or trustee 289  
shall be refused appointment or removed solely because the 290  
executor or trustee is not a resident of this state. 291

The court may require that a nonresident executor or trustee 292  
named in, or nominated pursuant to, a will assure that all of the 293  
assets of the decedent that are in the county at the time of the 294  
death of the decedent will remain in the county until distribution 295  
or until the court determines that the assets may be removed from 296  
the county. 297

(2) In accordance with this division and section 2129.08 of 298  
the Revised Code, the court shall appoint as an ancillary 299  
administrator a person who is named in the will of a nonresident 300  
decedent, or who is nominated in accordance with any power of 301  
nomination conferred in the will of a nonresident decedent, as a 302  
general executor of the decedent's estate or as executor of the 303

portion of the decedent's estate located in this state, whether or 304  
not the person so named or nominated is a resident of this state. 305

To qualify for appointment as an ancillary administrator, a 306  
person who is not a resident of this state and who is named or 307  
nominated as described in this division, shall be an individual 308  
who is related to the maker of the will by consanguinity or 309  
affinity, or a person who resides in a state that has statutes or 310  
rules that authorize the appointment of a nonresident of that 311  
state who is not related to the maker of a will by consanguinity 312  
or affinity, as an ancillary administrator when the nonresident is 313  
named in a will or nominated in accordance with any power of 314  
nomination conferred in a will. If a person who is not a resident 315  
of this state and who is named or nominated as described in this 316  
division so qualifies for appointment as an ancillary 317  
administrator and if the provisions of section 2129.08 of the 318  
Revised Code are satisfied, the court shall not refuse to appoint 319  
the person, and shall not remove the person, as ancillary 320  
administrator solely because the person is not a resident of this 321  
state. 322

The court may require that an ancillary administrator who is 323  
not a resident of this state and who is named or nominated as 324  
described in this division, assure that all of the assets of the 325  
decedent that are in the county at the time of the death of the 326  
decedent will remain in the county until distribution or until the 327  
court determines that the assets may be removed from the county. 328

(C)(1) A guardian shall be a resident of ~~the county this~~ 329  
~~state~~, except that the court may appoint a nonresident ~~of the~~ 330  
~~county who is a resident~~ of this state as a guardian ~~of the~~ 331  
~~person, the estate, or both; that a nonresident of the county or~~ 332  
~~of this state may be appointed a guardian, if any of the following~~ 333  
applies: 334

(a) The nonresident is named in a will by a parent of a minor 335

~~or if.~~ 336

(b) The nonresident is selected by a minor over the age of 337  
fourteen years as provided by section 2111.12 of the Revised Code; 338  
~~and that a nonresident of the county or of this state may be~~ 339  
~~appointed a guardian if.~~ 340

(c) The nonresident is nominated in or pursuant to a durable 341  
power of attorney as described in division (D) of section 1337.09 342  
of the Revised Code or a writing as described in division (A) of 343  
section 2111.121 of the Revised Code. ~~A~~ 344

(2) A guardian, other than a guardian named in a will by a 345  
parent of a minor, selected by a minor over the age of fourteen 346  
years, or nominated in or pursuant to ~~such~~ a durable power of 347  
attorney or writing described in division (C)(1)(c) of this 348  
section, may be removed on proof that the guardian is no longer a 349  
resident of ~~the county or this~~ state in which the guardian resided 350  
~~at the time of the guardian's appointment.~~ 351

(D) Any fiduciary, whose residence qualifications are not 352  
defined in this section, shall be a resident of this state, and 353  
shall be removed on proof that the fiduciary is no longer a 354  
resident of this state. 355

(E) Any fiduciary, in order to assist in the carrying out of 356  
the fiduciary's fiduciary duties, may employ agents who are not 357  
residents of the county or of this state. 358

**Sec. 2111.05.** When the whole estate of a ward, ~~or of several~~ 359  
~~wards jointly, under the same guardianship,~~ does not exceed ~~ten~~ 360  
twenty-five thousand dollars in value, the guardian may apply to 361  
the probate court for an order to terminate the guardianship. Upon 362  
proof that it would be for the best interest of the ward to 363  
terminate the guardianship, the court may order the guardianship 364  
terminated, and direct the guardian, if the ward is a minor, to 365

deposit the assets of the guardianship in a depository authorized 366  
to receive fiduciary funds, payable to the ward when ~~he~~ the ward 367  
attains majority, or the court may authorize the delivery of the 368  
assets to the natural guardian of the minor, to the person by whom 369  
the minor is maintained, to the executive director of children 370  
services in the county, or to the ~~minor himself~~ minor's own self. 371

If the ward is an incompetent, and the court orders the 372  
guardianship terminated, the court may authorize the deposit of 373  
the assets of the guardianship in a depository authorized to 374  
receive fiduciary funds in the name of a suitable person to be 375  
designated by the court, or if the assets do not consist of money, 376  
the court may authorize delivery to a suitable person to be 377  
designated by the court. The person receiving the assets shall 378  
hold and dispose of them in the manner the court directs. 379

If the court refuses to grant the application to terminate 380  
the guardianship, or if no such application is presented to the 381  
court, the guardian only shall be required to render account upon 382  
the termination of ~~his~~ the guardianship, upon order of the probate 383  
court made upon its own motion, or upon the order of the court 384  
made on the motion of a person interested in the wards or their 385  
property, for good cause shown, and set forth upon the journal of 386  
the court. 387

If the estate is ~~ten~~ twenty-five thousand dollars or less and 388  
the ward is a minor, the court, without the appointment of a 389  
guardian by the court, or the giving of bond, may authorize the 390  
deposit in a depository authorized to receive fiduciary funds, 391  
payable to the guardian when appointed, or to the ward when ~~he~~ the 392  
ward attains majority, or the court may authorize delivery to the 393  
natural guardian of the minor, to the person by whom the minor is 394  
maintained, to the executive director who is responsible for the 395  
administration of children services in the county, or to the ~~minor~~ 396  
~~himself~~ minor's own self. 397

If the whole estate of a person over eighteen years of age, 398  
who has been adjudged ~~mentally ill or mentally retarded~~ 399  
incompetent, does not exceed ~~ten~~ twenty-five thousand dollars in 400  
value, the court, without the appointment of a guardian by the 401  
court or the giving of bond, may authorize the deposit of the 402  
estate in a depository authorized to receive fiduciary funds in 403  
the name of a suitable person to be designated by the court, or if 404  
the assets do not consist of money, the court may authorize 405  
delivery to a suitable person to be designated by the court. The 406  
person receiving the assets shall hold and dispose of them in the 407  
manner the court directs. 408

**Sec. 2111.18.** ~~When~~ If personal injury, damage to tangible or 409  
intangible property, or damage or loss on account of personal 410  
injury or damage to tangible or intangible property is caused to a 411  
ward by wrongful act, neglect, or default that would entitle the 412  
ward to maintain an action and recover damages for the injury, 413  
damage, or loss, and when any ward is entitled to maintain an 414  
action for damages or any other relief based on any claim or is 415  
subject to any claim to recover damages or any other relief based 416  
on any claim, the guardian of the estate of the ward may adjust 417  
and settle the claim with the advice, approval, and consent of the 418  
probate court. ~~In the settlement, if the ward is a minor, the~~ 419  
~~parent or parents may waive all claim for damages on account of~~ 420  
~~loss of service of the minor, and that claim may be included in~~ 421  
~~the settlement. However, when~~ If it is proposed that ~~the~~ a claim 422  
~~involved~~ be settled for ~~ten~~ the net amount of twenty-five thousand 423  
dollars or less after payment of fees and expenses as allowed by 424  
the court, the court, upon application by any suitable person whom 425  
the court may authorize to receive and receipt for the settlement, 426  
may authorize the settlement without the appointment of a guardian 427  
and authorize the delivery of the moneys ~~to the natural guardian~~ 428  
~~of the minor, to the person by whom the minor is maintained, or to~~ 429

~~the minor himself as provided in section 2111.05 of the Revised Code. The court may authorize the minor or person receiving the moneys to execute a complete release on account of the receipt. The payment shall be a complete and final discharge of any such that claim. In the settlement, if the ward is a minor, the parent or parents of the minor may waive all claim for damages on account of loss of service of the minor, and that claim may be included in the settlement.~~ 430  
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**Sec. 2125.04.** In every civil action for wrongful death that is commenced or attempted to be commenced within the time specified by division (D)(1) or (D)(2)(c), (d), (e), (f), or (g) of section 2125.02 of the Revised Code, if a judgment for the plaintiff is reversed or the plaintiff fails otherwise than upon the merits ~~and if the time limited by any of those divisions for the commencement of the action has expired at the date of the reversal or failure,~~ the plaintiff or, if the plaintiff dies and the cause of action survives, the personal representative of the plaintiff may commence a new civil action for wrongful death within one year after ~~that~~ the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period specified by any of those divisions, whichever occurs later. 438  
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**Sec. 2305.19.** (A) In any action that is commenced or attempted to be commenced, if in due time a judgment for the plaintiff is reversed or if the plaintiff fails otherwise than upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff's representative may commence a new action within one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later. This division 452  
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applies to any claim asserted in any pleading by a defendant. 461

(B) If the defendant in an action described in division (A) 462  
of this section is a foreign or domestic corporation, and whether 463  
its charter prescribes the manner or place of service of process 464  
on the defendant, and if it passes into the hands of a receiver 465  
before the expiration of the one year period or the period of the 466  
original applicable statute of limitations, whichever is 467  
applicable, as described in that division, then service to be made 468  
within one year following the original service or attempt to begin 469  
the action may be made upon that receiver or the receiver's 470  
cashier, treasurer, secretary, clerk, or managing agent, or if 471  
none of these officers can be found, by a copy left at the office 472  
or the usual place of business of any of those agents or officers 473  
of the receiver with the person having charge of the office or 474  
place of business. If that corporation is a railroad company, 475  
summons may be served on any regular ticket or freight agent of 476  
the receiver, and if there is no regular ticket or freight agent 477  
of the receiver, then upon any conductor of the receiver, in any 478  
county in the state in which the railroad is located. The summons 479  
shall be returned as if served on that defendant corporation. 480

(C) This section does not apply to an action or proceeding 481  
arising under section 2106.22, 2107.76, 2109.35, 2115.16, 5806.04, 482  
or 5810.05 of the Revised Code. 483

**Sec. 5747.01.** Except as otherwise expressly provided or 484  
clearly appearing from the context, any term used in this chapter 485  
that is not otherwise defined in this section has the same meaning 486  
as when used in a comparable context in the laws of the United 487  
States relating to federal income taxes or if not used in a 488  
comparable context in those laws, has the same meaning as in 489  
section 5733.40 of the Revised Code. Any reference in this chapter 490  
to the Internal Revenue Code includes other laws of the United 491

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| States relating to federal income taxes.                           | 492 |
| As used in this chapter:   | 493 |
| (A) "Adjusted gross income" or "Ohio adjusted gross income"        | 494 |
| means federal adjusted gross income, as defined and used in the    | 495 |
| Internal Revenue Code, adjusted as provided in this section:       | 496 |
| (1) Add interest or dividends on obligations or securities of      | 497 |
| any state or of any political subdivision or authority of any      | 498 |
| state, other than this state and its subdivisions and authorities. | 499 |
| (2) Add interest or dividends on obligations of any                | 500 |
| authority, commission, instrumentality, territory, or possession   | 501 |
| of the United States to the extent that the interest or dividends  | 502 |
| are exempt from federal income taxes but not from state income     | 503 |
| taxes.   | 504 |
| (3) Deduct interest or dividends on obligations of the United      | 505 |
| States and its territories and possessions or of any authority,    | 506 |
| commission, or instrumentality of the United States to the extent  | 507 |
| that the interest or dividends are included in federal adjusted    | 508 |
| gross income but exempt from state income taxes under the laws of  | 509 |
| the United States.   | 510 |
| (4) Deduct disability and survivor's benefits to the extent        | 511 |
| included in federal adjusted gross income.                         | 512 |
| (5) Deduct benefits under Title II of the Social Security Act      | 513 |
| and tier 1 railroad retirement benefits to the extent included in  | 514 |
| federal adjusted gross income under section 86 of the Internal     | 515 |
| Revenue Code.  | 516 |
| (6) In the case of a taxpayer who is a beneficiary of a trust      | 517 |
| that makes an accumulation distribution as defined in section 665  | 518 |
| of the Internal Revenue Code, add, for the beneficiary's taxable   | 519 |
| years beginning before 2002, the portion, if any, of such          | 520 |
| distribution that does not exceed the undistributed net income of  | 521 |

the trust for the three taxable years preceding the taxable year 522  
in which the distribution is made to the extent that the portion 523  
was not included in the trust's taxable income for any of the 524  
trust's taxable years beginning in 2002 or thereafter. 525

"Undistributed net income of a trust" means the taxable income of 526  
the trust increased by (a)(i) the additions to adjusted gross 527  
income required under division (A) of this section and (ii) the 528  
personal exemptions allowed to the trust pursuant to section 529  
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 530  
deductions to adjusted gross income required under division (A) of 531  
this section, (ii) the amount of federal income taxes attributable 532  
to such income, and (iii) the amount of taxable income that has 533  
been included in the adjusted gross income of a beneficiary by 534  
reason of a prior accumulation distribution. Any undistributed net 535  
income included in the adjusted gross income of a beneficiary 536  
shall reduce the undistributed net income of the trust commencing 537  
with the earliest years of the accumulation period. 538

(7) Deduct the amount of wages and salaries, if any, not 539  
otherwise allowable as a deduction but that would have been 540  
allowable as a deduction in computing federal adjusted gross 541  
income for the taxable year, had the targeted jobs credit allowed 542  
and determined under sections 38, 51, and 52 of the Internal 543  
Revenue Code not been in effect. 544

(8) Deduct any interest or interest equivalent on public 545  
obligations and purchase obligations to the extent that the 546  
interest or interest equivalent is included in federal adjusted 547  
gross income. 548

(9) Add any loss or deduct any gain resulting from the sale, 549  
exchange, or other disposition of public obligations to the extent 550  
that the loss has been deducted or the gain has been included in 551  
computing federal adjusted gross income. 552

(10) Deduct or add amounts, as provided under section 5747.70 553

of the Revised Code, related to contributions to variable college 554  
savings program accounts made or tuition units purchased pursuant 555  
to Chapter 3334. of the Revised Code. 556

(11)(a) Deduct, to the extent not otherwise allowable as a 557  
deduction or exclusion in computing federal or Ohio adjusted gross 558  
income for the taxable year, the amount the taxpayer paid during 559  
the taxable year for medical care insurance and qualified 560  
long-term care insurance for the taxpayer, the taxpayer's spouse, 561  
and dependents. No deduction for medical care insurance under 562  
division (A)(11) of this section shall be allowed either to any 563  
taxpayer who is eligible to participate in any subsidized health 564  
plan maintained by any employer of the taxpayer or of the 565  
taxpayer's spouse, or to any taxpayer who is entitled to, or on 566  
application would be entitled to, benefits under part A of Title 567  
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 568  
301, as amended. For the purposes of division (A)(11)(a) of this 569  
section, "subsidized health plan" means a health plan for which 570  
the employer pays any portion of the plan's cost. The deduction 571  
allowed under division (A)(11)(a) of this section shall be the net 572  
of any related premium refunds, related premium reimbursements, or 573  
related insurance premium dividends received during the taxable 574  
year. 575

(b) Deduct, to the extent not otherwise deducted or excluded 576  
in computing federal or Ohio adjusted gross income during the 577  
taxable year, the amount the taxpayer paid during the taxable 578  
year, not compensated for by any insurance or otherwise, for 579  
medical care of the taxpayer, the taxpayer's spouse, and 580  
dependents, to the extent the expenses exceed seven and one-half 581  
per cent of the taxpayer's federal adjusted gross income. 582

(c) For purposes of division (A)(11) of this section, 583  
"medical care" has the meaning given in section 213 of the 584  
Internal Revenue Code, subject to the special rules, limitations, 585

and exclusions set forth therein, and "qualified long-term care" 586  
has the same meaning given in section 7702B(c) of the Internal 587  
Revenue Code. 588

(12)(a) Deduct any amount included in federal adjusted gross 589  
income solely because the amount represents a reimbursement or 590  
refund of expenses that in any year the taxpayer had deducted as 591  
an itemized deduction pursuant to section 63 of the Internal 592  
Revenue Code and applicable United States department of the 593  
treasury regulations. The deduction otherwise allowed under 594  
division (A)(12)(a) of this section shall be reduced to the extent 595  
the reimbursement is attributable to an amount the taxpayer 596  
deducted under this section in any taxable year. 597

(b) Add any amount not otherwise included in Ohio adjusted 598  
gross income for any taxable year to the extent that the amount is 599  
attributable to the recovery during the taxable year of any amount 600  
deducted or excluded in computing federal or Ohio adjusted gross 601  
income in any taxable year. 602

(13) Deduct any portion of the deduction described in section 603  
1341(a)(2) of the Internal Revenue Code, for repaying previously 604  
reported income received under a claim of right, that meets both 605  
of the following requirements: 606

(a) It is allowable for repayment of an item that was 607  
included in the taxpayer's adjusted gross income for a prior 608  
taxable year and did not qualify for a credit under division (A) 609  
or (B) of section 5747.05 of the Revised Code for that year; 610

(b) It does not otherwise reduce the taxpayer's adjusted 611  
gross income for the current or any other taxable year. 612

(14) Deduct an amount equal to the deposits made to, and net 613  
investment earnings of, a medical savings account during the 614  
taxable year, in accordance with section 3924.66 of the Revised 615  
Code. The deduction allowed by division (A)(14) of this section 616

does not apply to medical savings account deposits and earnings 617  
otherwise deducted or excluded for the current or any other 618  
taxable year from the taxpayer's federal adjusted gross income. 619

(15)(a) Add an amount equal to the funds withdrawn from a 620  
medical savings account during the taxable year, and the net 621  
investment earnings on those funds, when the funds withdrawn were 622  
used for any purpose other than to reimburse an account holder 623  
for, or to pay, eligible medical expenses, in accordance with 624  
section 3924.66 of the Revised Code; 625

(b) Add the amounts distributed from a medical savings 626  
account under division (A)(2) of section 3924.68 of the Revised 627  
Code during the taxable year. 628

(16) Add any amount claimed as a credit under section 629  
5747.059 of the Revised Code to the extent that such amount 630  
satisfies either of the following: 631

(a) The amount was deducted or excluded from the computation 632  
of the taxpayer's federal adjusted gross income as required to be 633  
reported for the taxpayer's taxable year under the Internal 634  
Revenue Code; 635

(b) The amount resulted in a reduction of the taxpayer's 636  
federal adjusted gross income as required to be reported for any 637  
of the taxpayer's taxable years under the Internal Revenue Code. 638

(17) Deduct the amount contributed by the taxpayer to an 639  
individual development account program established by a county 640  
department of job and family services pursuant to sections 329.11 641  
to 329.14 of the Revised Code for the purpose of matching funds 642  
deposited by program participants. On request of the tax 643  
commissioner, the taxpayer shall provide any information that, in 644  
the tax commissioner's opinion, is necessary to establish the 645  
amount deducted under division (A)(17) of this section. 646

(18) Beginning in taxable year 2001 but not for any taxable 647

year beginning after December 31, 2005, if the taxpayer is married 648  
and files a joint return and the combined federal adjusted gross 649  
income of the taxpayer and the taxpayer's spouse for the taxable 650  
year does not exceed one hundred thousand dollars, or if the 651  
taxpayer is single and has a federal adjusted gross income for the 652  
taxable year not exceeding fifty thousand dollars, deduct amounts 653  
paid during the taxable year for qualified tuition and fees paid 654  
to an eligible institution for the taxpayer, the taxpayer's 655  
spouse, or any dependent of the taxpayer, who is a resident of 656  
this state and is enrolled in or attending a program that 657  
culminates in a degree or diploma at an eligible institution. The 658  
deduction may be claimed only to the extent that qualified tuition 659  
and fees are not otherwise deducted or excluded for any taxable 660  
year from federal or Ohio adjusted gross income. The deduction may 661  
not be claimed for educational expenses for which the taxpayer 662  
claims a credit under section 5747.27 of the Revised Code. 663

(19) Add any reimbursement received during the taxable year 664  
of any amount the taxpayer deducted under division (A)(18) of this 665  
section in any previous taxable year to the extent the amount is 666  
not otherwise included in Ohio adjusted gross income. 667

(20)(a)(i) Add five-sixths of the amount of depreciation 668  
expense allowed by subsection (k) of section 168 of the Internal 669  
Revenue Code, including the taxpayer's proportionate or 670  
distributive share of the amount of depreciation expense allowed 671  
by that subsection to a pass-through entity in which the taxpayer 672  
has a direct or indirect ownership interest. 673

(ii) Add five-sixths of the amount of qualifying section 179 674  
depreciation expense, including a person's proportionate or 675  
distributive share of the amount of qualifying section 179 676  
depreciation expense allowed to any pass-through entity in which 677  
the person has a direct or indirect ownership. For the purposes of 678  
this division, "qualifying section 179 depreciation expense" means 679

the difference between (I) the amount of depreciation expense 680  
directly or indirectly allowed to the taxpayer under section 179 681  
of the Internal Revenue Code, and (II) the amount of depreciation 682  
expense directly or indirectly allowed to the taxpayer under 683  
section 179 of the Internal Revenue Code as that section existed 684  
on December 31, 2002. 685

The tax commissioner, under procedures established by the 686  
commissioner, may waive the add-backs related to a pass-through 687  
entity if the taxpayer owns, directly or indirectly, less than 688  
five per cent of the pass-through entity. 689

(b) Nothing in division (A)(20) of this section shall be 690  
construed to adjust or modify the adjusted basis of any asset. 691

(c) To the extent the add-back required under division 692  
(A)(20)(a) of this section is attributable to property generating 693  
nonbusiness income or loss allocated under section 5747.20 of the 694  
Revised Code, the add-back shall be situated to the same location 695  
as the nonbusiness income or loss generated by the property for 696  
the purpose of determining the credit under division (A) of 697  
section 5747.05 of the Revised Code. Otherwise, the add-back shall 698  
be apportioned, subject to one or more of the four alternative 699  
methods of apportionment enumerated in section 5747.21 of the 700  
Revised Code. 701

(d) For the purposes of division (A) of this section, net 702  
operating loss carryback and carryforward shall not include 703  
five-sixths of the allowance of any net operating loss deduction 704  
carryback or carryforward to the taxable year to the extent such 705  
loss resulted from depreciation allowed by section 168(k) of the 706  
Internal Revenue Code and by the qualifying section 179 707  
depreciation expense amount. 708

(21)(a) If the taxpayer was required to add an amount under 709  
division (A)(20)(a) of this section for a taxable year, deduct 710



one-fifth of the amount so added for each of the five succeeding 711  
taxable years. 712

(b) If the amount deducted under division (A)(21)(a) of this 713  
section is attributable to an add-back allocated under division 714  
(A)(20)(c) of this section, the amount deducted shall be sitused 715  
to the same location. Otherwise, the add-back shall be apportioned 716  
using the apportionment factors for the taxable year in which the 717  
deduction is taken, subject to one or more of the four alternative 718  
methods of apportionment enumerated in section 5747.21 of the 719  
Revised Code. 720

(c) No deduction is available under division (A)(21)(a) of 721  
this section with regard to any depreciation allowed by section 722  
168(k) of the Internal Revenue Code and by the qualifying section 723  
179 depreciation expense amount to the extent that such 724  
depreciation resulted in or increased a federal net operating loss 725  
carryback or carryforward to a taxable year to which division 726  
(A)(20)(d) of this section does not apply. 727

(22) Deduct, to the extent not otherwise deducted or excluded 728  
in computing federal or Ohio adjusted gross income for the taxable 729  
year, the amount the taxpayer received during the taxable year as 730  
reimbursement for life insurance premiums under section 5919.31 of 731  
the Revised Code. 732

(23) Deduct, to the extent not otherwise deducted or excluded 733  
in computing federal or Ohio adjusted gross income for the taxable 734  
year, the amount the taxpayer received during the taxable year as 735  
a death benefit paid by the adjutant general under section 5919.33 736  
of the Revised Code. 737

(24) Deduct, to the extent included in federal adjusted gross 738  
income and not otherwise allowable as a deduction or exclusion in 739  
computing federal or Ohio adjusted gross income for the taxable 740  
year, military pay and allowances received by the taxpayer during 741

the taxable year for active duty service in the United States 742  
army, air force, navy, marine corps, or coast guard or reserve 743  
components thereof or the national guard. The deduction may not be 744  
claimed for military pay and allowances received by the taxpayer 745  
while the taxpayer is stationed in this state. 746

(25) Deduct, to the extent not otherwise allowable as a 747  
deduction or exclusion in computing federal or Ohio adjusted gross 748  
income for the taxable year and not otherwise compensated for by 749  
any other source, the amount of qualified organ donation expenses 750  
incurred by the taxpayer during the taxable year, not to exceed 751  
ten thousand dollars. A taxpayer may deduct qualified organ 752  
donation expenses only once for all taxable years beginning with 753  
taxable years beginning in 2007. 754

For the purposes of division (A)(25) of this section: 755

(a) "Human organ" means all or any portion of a human liver, 756  
pancreas, kidney, intestine, or lung, and any portion of human 757  
bone marrow. 758

(b) "Qualified organ donation expenses" means travel 759  
expenses, lodging expenses, and wages and salary forgone by a 760  
taxpayer in connection with the taxpayer's donation, while living, 761  
of one or more of the taxpayer's human organs to another human 762  
being. 763

(26) Deduct, to the extent not otherwise deducted or excluded 764  
in computing federal or Ohio adjusted gross income for the taxable 765  
year, amounts received by the taxpayer as retired military 766  
personnel pay for service in the United States army, navy, air 767  
force, coast guard, or marine corps or reserve components thereof, 768  
or the national guard, or received by the surviving spouse or 769  
former spouse of such a taxpayer under the survivor benefit plan 770  
on account of such a taxpayer's death. If the taxpayer receives 771  
income on account of retirement paid under the federal civil 772

service retirement system or federal employees retirement system, 773  
or under any successor retirement program enacted by the congress 774  
of the United States that is established and maintained for 775  
retired employees of the United States government, and such 776  
retirement income is based, in whole or in part, on credit for the 777  
taxpayer's military service, the deduction allowed under this 778  
division shall include only that portion of such retirement income 779  
that is attributable to the taxpayer's military service, to the 780  
extent that portion of such retirement income is otherwise 781  
included in federal adjusted gross income and is not otherwise 782  
deducted under this section. Any amount deducted under division 783  
(A)(26) of this section is not included in a taxpayer's adjusted 784  
gross income for the purposes of section 5747.055 of the Revised 785  
Code. No amount may be deducted under division (A)(26) of this 786  
section on the basis of which a credit was claimed under section 787  
5747.055 of the Revised Code. 788

(27) Deduct, to the extent not otherwise deducted or excluded 789  
in computing federal or Ohio adjusted gross income for the taxable 790  
year, the amount the taxpayer received during the taxable year 791  
from the military injury relief fund created in section 5101.98 of 792  
the Revised Code. 793

(B) "Business income" means income, including gain or loss, 794  
arising from transactions, activities, and sources in the regular 795  
course of a trade or business and includes income, gain, or loss 796  
from real property, tangible property, and intangible property if 797  
the acquisition, rental, management, and disposition of the 798  
property constitute integral parts of the regular course of a 799  
trade or business operation. "Business income" includes income, 800  
including gain or loss, from a partial or complete liquidation of 801  
a business, including, but not limited to, gain or loss from the 802  
sale or other disposition of goodwill. 803

(C) "Nonbusiness income" means all income other than business 804

income and may include, but is not limited to, compensation, rents 805  
and royalties from real or tangible personal property, capital 806  
gains, interest, dividends and distributions, patent or copyright 807  
royalties, or lottery winnings, prizes, and awards. 808

(D) "Compensation" means any form of remuneration paid to an 809  
employee for personal services. 810

(E) "Fiduciary" means a guardian, trustee, executor, 811  
administrator, receiver, conservator, or any other person acting 812  
in any fiduciary capacity for any individual, trust, or estate. 813

(F) "Fiscal year" means an accounting period of twelve months 814  
ending on the last day of any month other than December. 815

(G) "Individual" means any natural person. 816

(H) "Internal Revenue Code" means the "Internal Revenue Code 817  
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 818

(I) "Resident" means any of the following, provided that 819  
division (I)(3) of this section applies only to taxable years of a 820  
trust beginning in 2002 or thereafter: 821

(1) An individual who is domiciled in this state, subject to 822  
section 5747.24 of the Revised Code; 823

(2) The estate of a decedent who at the time of death was 824  
domiciled in this state. The domicile tests of section 5747.24 of 825  
the Revised Code are not controlling for purposes of division 826  
(I)(2) of this section. 827

(3) A trust that, in whole or part, resides in this state. If 828  
only part of a trust resides in this state, the trust is a 829  
resident only with respect to that part. 830

For the purposes of division (I)(3) of this section: 831

(a) A trust resides in this state for the trust's current 832  
taxable year to the extent, as described in division (I)(3)(d) of 833  
this section, that the trust consists directly or indirectly, in 834

whole or in part, of assets, net of any related liabilities, that 835  
were transferred, or caused to be transferred, directly or 836  
indirectly, to the trust by any of the following: 837

(i) A person, a court, or a governmental entity or 838  
instrumentality on account of the death of a decedent, but only if 839  
the trust is described in division (I)(3)(e)(i) or (ii) of this 840  
section; 841

(ii) A person who was domiciled in this state for the 842  
purposes of this chapter when the person directly or indirectly 843  
transferred assets to an irrevocable trust, but only if at least 844  
one of the trust's qualifying beneficiaries is domiciled in this 845  
state for the purposes of this chapter during all or some portion 846  
of the trust's current taxable year; 847

(iii) A person who was domiciled in this state for the 848  
purposes of this chapter when the trust document or instrument or 849  
part of the trust document or instrument became irrevocable, but 850  
only if at least one of the trust's qualifying beneficiaries is a 851  
resident domiciled in this state for the purposes of this chapter 852  
during all or some portion of the trust's current taxable year. If 853  
a trust document or instrument became irrevocable upon the death 854  
of a person who at the time of death was domiciled in this state 855  
for purposes of this chapter, that person is a person described in 856  
division (I)(3)(a)(iii) of this section. 857

(b) A trust is irrevocable to the extent that the transferor 858  
is not considered to be the owner of the net assets of the trust 859  
under sections 671 to 678 of the Internal Revenue Code. 860

(c) With respect to a trust other than a charitable lead 861  
trust, "qualifying beneficiary" has the same meaning as "potential 862  
current beneficiary" as defined in section 1361(e)(2) of the 863  
Internal Revenue Code, and with respect to a charitable lead trust 864  
"qualifying beneficiary" is any current, future, or contingent 865

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  
section. The denominator of the revised qualifying ratio is the  
fair market value of all the trust's assets immediately after the  
subsequent transfer, net of any related liabilities.

(iii) Whether a transfer to the trust is by or from any of

the sources enumerated in division (I)(3)(a) of this section shall 898  
be ascertained without regard to the domicile of the trust's 899  
beneficiaries. 900

(e) For the purposes of division (I)(3)(a)(i) of this 901  
section: 902

(i) A trust is described in division (I)(3)(e)(i) of this 903  
section if the trust is a testamentary trust and the testator of 904  
that testamentary trust was domiciled in this state at the time of 905  
the testator's death for purposes of the taxes levied under 906  
Chapter 5731. of the Revised Code. 907

(ii) A trust is described in division (I)(3)(e)(ii) of this 908  
section if the transfer is a qualifying transfer described in any 909  
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 910  
irrevocable inter vivos trust, and at least one of the trust's 911  
qualifying beneficiaries is domiciled in this state for purposes 912  
of this chapter during all or some portion of the trust's current 913  
taxable year. 914

(f) For the purposes of division (I)(3)(e)(ii) of this 915  
section, a "qualifying transfer" is a transfer of assets, net of 916  
any related liabilities, directly or indirectly to a trust, if the 917  
transfer is described in any of the following: 918

(i) The transfer is made to a trust, created by the decedent 919  
before the decedent's death and while the decedent was domiciled 920  
in this state for the purposes of this chapter, and, prior to the 921  
death of the decedent, the trust became irrevocable while the 922  
decedent was domiciled in this state for the purposes of this 923  
chapter. 924

(ii) The transfer is made to a trust to which the decedent, 925  
prior to the decedent's death, had directly or indirectly 926  
transferred assets, net of any related liabilities, while the 927  
decedent was domiciled in this state for the purposes of this 928

chapter, and prior to the death of the decedent the trust became 929  
irrevocable while the decedent was domiciled in this state for the 930  
purposes of this chapter. 931

(iii) The transfer is made on account of a contractual 932  
relationship existing directly or indirectly between the 933  
transferor and either the decedent or the estate of the decedent 934  
at any time prior to the date of the decedent's death, and the 935  
decedent was domiciled in this state at the time of death for 936  
purposes of the taxes levied under Chapter 5731. of the Revised 937  
Code. 938

(iv) The transfer is made to a trust on account of a 939  
contractual relationship existing directly or indirectly between 940  
the transferor and another person who at the time of the 941  
decedent's death was domiciled in this state for purposes of this 942  
chapter. 943

(v) The transfer is made to a trust on account of the will of 944  
a testator who was domiciled in this state at the time of the 945  
testator's death for purposes of the taxes levied under Chapter 946  
5731. of the Revised Code. 947

(vi) The transfer is made to a trust created by or caused to 948  
be created by a court, and the trust was directly or indirectly 949  
created in connection with or as a result of the death of an 950  
individual who, for purposes of the taxes levied under Chapter 951  
5731. of the Revised Code, was domiciled in this state at the time 952  
of the individual's death. 953

(g) The tax commissioner may adopt rules to ascertain the 954  
part of a trust residing in this state. 955

(J) "Nonresident" means an individual or estate that is not a 956  
resident. An individual who is a resident for only part of a 957  
taxable year is a nonresident for the remainder of that taxable 958  
year. 959



(K) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code. 960  
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(L) "Return" means the notifications and reports required to be filed pursuant to this chapter for the purpose of reporting the tax due and includes declarations of estimated tax when so required. 962  
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(M) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the adjusted gross income is calculated pursuant to this chapter. 966  
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(N) "Taxpayer" means any person subject to the tax imposed by section 5747.02 of the Revised Code or any pass-through entity that makes the election under division (D) of section 5747.08 of the Revised Code. 970  
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(O) "Dependents" means dependents as defined in the Internal Revenue Code and as claimed in the taxpayer's federal income tax return for the taxable year or which the taxpayer would have been permitted to claim had the taxpayer filed a federal income tax return. 974  
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(P) "Principal county of employment" means, in the case of a nonresident, the county within the state in which a taxpayer performs services for an employer or, if those services are performed in more than one county, the county in which the major portion of the services are performed. 979  
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(Q) As used in sections 5747.50 to 5747.55 of the Revised Code: 984  
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(1) "Subdivision" means any county, municipal corporation, park district, or township. 986  
987

(2) "Essential local government purposes" includes all functions that any subdivision is required by general law to 988  
989

exercise, including like functions that are exercised under a 990  
charter adopted pursuant to the Ohio Constitution. 991

(R) "Overpayment" means any amount already paid that exceeds 992  
the figure determined to be the correct amount of the tax. 993

(S) "Taxable income" or "Ohio taxable income" applies only to 994  
estates and trusts, and means federal taxable income, as defined 995  
and used in the Internal Revenue Code, adjusted as follows: 996

(1) Add interest or dividends, net of ordinary, necessary, 997  
and reasonable expenses not deducted in computing federal taxable 998  
income, on obligations or securities of any state or of any 999  
political subdivision or authority of any state, other than this 1000  
state and its subdivisions and authorities, but only to the extent 1001  
that such net amount is not otherwise includible in Ohio taxable 1002  
income and is described in either division (S)(1)(a) or (b) of 1003  
this section: 1004

(a) The net amount is not attributable to the S portion of an 1005  
electing small business trust and has not been distributed to 1006  
beneficiaries for the taxable year; 1007

(b) The net amount is attributable to the S portion of an 1008  
electing small business trust for the taxable year. 1009

(2) Add interest or dividends, net of ordinary, necessary, 1010  
and reasonable expenses not deducted in computing federal taxable 1011  
income, on obligations of any authority, commission, 1012  
instrumentality, territory, or possession of the United States to 1013  
the extent that the interest or dividends are exempt from federal 1014  
income taxes but not from state income taxes, but only to the 1015  
extent that such net amount is not otherwise includible in Ohio 1016  
taxable income and is described in either division (S)(1)(a) or 1017  
(b) of this section; 1018

(3) Add the amount of personal exemption allowed to the 1019  
estate pursuant to section 642(b) of the Internal Revenue Code; 1020

(4) Deduct interest or dividends, net of related expenses 1021  
deducted in computing federal taxable income, on obligations of 1022  
the United States and its territories and possessions or of any 1023  
authority, commission, or instrumentality of the United States to 1024  
the extent that the interest or dividends are exempt from state 1025  
taxes under the laws of the United States, but only to the extent 1026  
that such amount is included in federal taxable income and is 1027  
described in either division (S)(1)(a) or (b) of this section; 1028

(5) Deduct the amount of wages and salaries, if any, not 1029  
otherwise allowable as a deduction but that would have been 1030  
allowable as a deduction in computing federal taxable income for 1031  
the taxable year, had the targeted jobs credit allowed under 1032  
sections 38, 51, and 52 of the Internal Revenue Code not been in 1033  
effect, but only to the extent such amount relates either to 1034  
income included in federal taxable income for the taxable year or 1035  
to income of the S portion of an electing small business trust for 1036  
the taxable year; 1037

(6) Deduct any interest or interest equivalent, net of 1038  
related expenses deducted in computing federal taxable income, on 1039  
public obligations and purchase obligations, but only to the 1040  
extent that such net amount relates either to income included in 1041  
federal taxable income for the taxable year or to income of the S 1042  
portion of an electing small business trust for the taxable year; 1043

(7) Add any loss or deduct any gain resulting from sale, 1044  
exchange, or other disposition of public obligations to the extent 1045  
that such loss has been deducted or such gain has been included in 1046  
computing either federal taxable income or income of the S portion 1047  
of an electing small business trust for the taxable year; 1048

(8) Except in the case of the final return of an estate, add 1049  
any amount deducted by the taxpayer on both its Ohio estate tax 1050  
return pursuant to section 5731.14 of the Revised Code, and on its 1051  
federal income tax return in determining federal taxable income; 1052

(9)(a) Deduct any amount included in federal taxable income 1053  
solely because the amount represents a reimbursement or refund of 1054  
expenses that in a previous year the decedent had deducted as an 1055  
itemized deduction pursuant to section 63 of the Internal Revenue 1056  
Code and applicable treasury regulations. The deduction otherwise 1057  
allowed under division (S)(9)(a) of this section shall be reduced 1058  
to the extent the reimbursement is attributable to an amount the 1059  
taxpayer or decedent deducted under this section in any taxable 1060  
year. 1061

(b) Add any amount not otherwise included in Ohio taxable 1062  
income for any taxable year to the extent that the amount is 1063  
attributable to the recovery during the taxable year of any amount 1064  
deducted or excluded in computing federal or Ohio taxable income 1065  
in any taxable year, but only to the extent such amount has not 1066  
been distributed to beneficiaries for the taxable year. 1067

(10) Deduct any portion of the deduction described in section 1068  
1341(a)(2) of the Internal Revenue Code, for repaying previously 1069  
reported income received under a claim of right, that meets both 1070  
of the following requirements: 1071

(a) It is allowable for repayment of an item that was 1072  
included in the taxpayer's taxable income or the decedent's 1073  
adjusted gross income for a prior taxable year and did not qualify 1074  
for a credit under division (A) or (B) of section 5747.05 of the 1075  
Revised Code for that year. 1076

(b) It does not otherwise reduce the taxpayer's taxable 1077  
income or the decedent's adjusted gross income for the current or 1078  
any other taxable year. 1079

(11) Add any amount claimed as a credit under section 1080  
5747.059 of the Revised Code to the extent that the amount 1081  
satisfies either of the following: 1082

(a) The amount was deducted or excluded from the computation 1083

of the taxpayer's federal taxable income as required to be 1084  
reported for the taxpayer's taxable year under the Internal 1085  
Revenue Code; 1086

(b) The amount resulted in a reduction in the taxpayer's 1087  
federal taxable income as required to be reported for any of the 1088  
taxpayer's taxable years under the Internal Revenue Code. 1089

(12) Deduct any amount, net of related expenses deducted in 1090  
computing federal taxable income, that a trust is required to 1091  
report as farm income on its federal income tax return, but only 1092  
if the assets of the trust include at least ten acres of land 1093  
satisfying the definition of "land devoted exclusively to 1094  
agricultural use" under section 5713.30 of the Revised Code, 1095  
regardless of whether the land is valued for tax purposes as such 1096  
land under sections 5713.30 to 5713.38 of the Revised Code. If the 1097  
trust is a pass-through entity investor, section 5747.231 of the 1098  
Revised Code applies in ascertaining if the trust is eligible to 1099  
claim the deduction provided by division (S)(12) of this section 1100  
in connection with the pass-through entity's farm income. 1101

Except for farm income attributable to the S portion of an 1102  
electing small business trust, the deduction provided by division 1103  
(S)(12) of this section is allowed only to the extent that the 1104  
trust has not distributed such farm income. Division (S)(12) of 1105  
this section applies only to taxable years of a trust beginning in 1106  
2002 or thereafter. 1107

(13) Add the net amount of income described in section 641(c) 1108  
of the Internal Revenue Code to the extent that amount is not 1109  
included in federal taxable income. 1110

(14) Add or deduct the amount the taxpayer would be required 1111  
to add or deduct under division (A)(20) or (21) of this section if 1112  
the taxpayer's Ohio taxable income were computed in the same 1113  
manner as an individual's Ohio adjusted gross income is computed 1114

under this section. In the case of a trust, division (S)(14) of 1115  
this section applies only to any of the trust's taxable years 1116  
beginning in 2002 or thereafter. 1117

(T) "School district income" and "school district income tax" 1118  
have the same meanings as in section 5748.01 of the Revised Code. 1119

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 1120  
of this section, "public obligations," "purchase obligations," and 1121  
"interest or interest equivalent" have the same meanings as in 1122  
section 5709.76 of the Revised Code. 1123

(V) "Limited liability company" means any limited liability 1124  
company formed under Chapter 1705. of the Revised Code or under 1125  
the laws of any other state. 1126

(W) "Pass-through entity investor" means any person who, 1127  
during any portion of a taxable year of a pass-through entity, is 1128  
a partner, member, shareholder, or equity investor in that 1129  
pass-through entity. 1130

(X) "Banking day" has the same meaning as in section 1304.01 1131  
of the Revised Code. 1132

(Y) "Month" means a calendar month. 1133

(Z) "Quarter" means the first three months, the second three 1134  
months, the third three months, or the last three months of the 1135  
taxpayer's taxable year. 1136

(AA)(1) "Eligible institution" means a state university or 1137  
state institution of higher education as defined in section 1138  
3345.011 of the Revised Code, or a private, nonprofit college, 1139  
university, or other post-secondary institution located in this 1140  
state that possesses a certificate of authorization issued by the 1141  
Ohio board of regents pursuant to Chapter 1713. of the Revised 1142  
Code or a certificate of registration issued by the state board of 1143  
career colleges and schools under Chapter 3332. of the Revised 1144

Code. 1145

(2) "Qualified tuition and fees" means tuition and fees 1146  
imposed by an eligible institution as a condition of enrollment or 1147  
attendance, not exceeding two thousand five hundred dollars in 1148  
each of the individual's first two years of post-secondary 1149  
education. If the individual is a part-time student, "qualified 1150  
tuition and fees" includes tuition and fees paid for the academic 1151  
equivalent of the first two years of post-secondary education 1152  
during a maximum of five taxable years, not exceeding a total of 1153  
five thousand dollars. "Qualified tuition and fees" does not 1154  
include: 1155

(a) Expenses for any course or activity involving sports, 1156  
games, or hobbies unless the course or activity is part of the 1157  
individual's degree or diploma program; 1158

(b) The cost of books, room and board, student activity fees, 1159  
athletic fees, insurance expenses, or other expenses unrelated to 1160  
the individual's academic course of instruction; 1161

(c) Tuition, fees, or other expenses paid or reimbursed 1162  
through an employer, scholarship, grant in aid, or other 1163  
educational benefit program. 1164

(BB)(1) "Modified business income" means the business income 1165  
included in a trust's Ohio taxable income after such taxable 1166  
income is first reduced by the qualifying trust amount, if any. 1167

(2) "Qualifying trust amount" of a trust means capital gains 1168  
and losses from the sale, exchange, or other disposition of equity 1169  
or ownership interests in, or debt obligations of, a qualifying 1170  
investee to the extent included in the trust's Ohio taxable 1171  
income, but only if the following requirements are satisfied: 1172

(a) The book value of the qualifying investee's physical 1173  
assets in this state and everywhere, as of the last day of the 1174  
qualifying investee's fiscal or calendar year ending immediately 1175

prior to the date on which the trust recognizes the gain or loss, 1176  
is available to the trust. 1177

(b) The requirements of section 5747.011 of the Revised Code 1178  
are satisfied for the trust's taxable year in which the trust 1179  
recognizes the gain or loss. 1180

Any gain or loss that is not a qualifying trust amount is 1181  
modified business income, qualifying investment income, or 1182  
modified nonbusiness income, as the case may be. 1183

(3) "Modified nonbusiness income" means a trust's Ohio 1184  
taxable income other than modified business income, other than the 1185  
qualifying trust amount, and other than qualifying investment 1186  
income, as defined in section 5747.012 of the Revised Code, to the 1187  
extent such qualifying investment income is not otherwise part of 1188  
modified business income. 1189

(4) "Modified Ohio taxable income" applies only to trusts, 1190  
and means the sum of the amounts described in divisions (BB)(4)(a) 1191  
to (c) of this section: 1192

(a) The fraction, calculated under section 5747.013, and 1193  
applying section 5747.231 of the Revised Code, multiplied by the 1194  
sum of the following amounts: 1195

(i) The trust's modified business income; 1196

(ii) The trust's qualifying investment income, as defined in 1197  
section 5747.012 of the Revised Code, but only to the extent the 1198  
qualifying investment income does not otherwise constitute 1199  
modified business income and does not otherwise constitute a 1200  
qualifying trust amount. 1201

(b) The qualifying trust amount multiplied by a fraction, the 1202  
numerator of which is the sum of the book value of the qualifying 1203  
investee's physical assets in this state on the last day of the 1204  
qualifying investee's fiscal or calendar year ending immediately 1205



prior to the day on which the trust recognizes the qualifying 1206  
trust amount, and the denominator of which is the sum of the book 1207  
value of the qualifying investee's total physical assets 1208  
everywhere on the last day of the qualifying investee's fiscal or 1209  
calendar year ending immediately prior to the day on which the 1210  
trust recognizes the qualifying trust amount. If, for a taxable 1211  
year, the trust recognizes a qualifying trust amount with respect 1212  
to more than one qualifying investee, the amount described in 1213  
division (BB)(4)(b) of this section shall equal the sum of the 1214  
products so computed for each such qualifying investee. 1215

(c)(i) With respect to a trust or portion of a trust that is 1216  
a resident as ascertained in accordance with division (I)(3)(d) of 1217  
this section, its modified nonbusiness income. 1218

(ii) With respect to a trust or portion of a trust that is 1219  
not a resident as ascertained in accordance with division 1220  
(I)(3)(d) of this section, the amount of its modified nonbusiness 1221  
income satisfying the descriptions in divisions (B)(2) to (5) of 1222  
section 5747.20 of the Revised Code, except as otherwise provided 1223  
in division (BB)(4)(c)(ii) of this section. With respect to a 1224  
trust or portion of a trust that is not a resident as ascertained 1225  
in accordance with division (I)(3)(d) of this section, the trust's 1226  
portion of modified nonbusiness income recognized from the sale, 1227  
exchange, or other disposition of a debt interest in or equity 1228  
interest in a section 5747.212 entity, as defined in section 1229  
5747.212 of the Revised Code, without regard to division (A) of 1230  
that section, shall not be allocated to this state in accordance 1231  
with section 5747.20 of the Revised Code but shall be apportioned 1232  
to this state in accordance with division (B) of section 5747.212 1233  
of the Revised Code without regard to division (A) of that 1234  
section. 1235

If the allocation and apportionment of a trust's income under 1236  
divisions (BB)(4)(a) and (c) of this section do not fairly 1237

represent the modified Ohio taxable income of the trust in this 1238  
state, the alternative methods described in division (C) of 1239  
section 5747.21 of the Revised Code may be applied in the manner 1240  
and to the same extent provided in that section. 1241

(5)(a) Except as set forth in division (BB)(5)(b) of this 1242  
section, "qualifying investee" means a person in which a trust has 1243  
an equity or ownership interest, or a person or unit of government 1244  
the debt obligations of either of which are owned by a trust. For 1245  
the purposes of division (BB)(2)(a) of this section and for the 1246  
purpose of computing the fraction described in division (BB)(4)(b) 1247  
of this section, all of the following apply: 1248

(i) If the qualifying investee is a member of a qualifying 1249  
controlled group on the last day of the qualifying investee's 1250  
fiscal or calendar year ending immediately prior to the date on 1251  
which the trust recognizes the gain or loss, then "qualifying 1252  
investee" includes all persons in the qualifying controlled group 1253  
on such last day. 1254

(ii) If the qualifying investee, or if the qualifying 1255  
investee and any members of the qualifying controlled group of 1256  
which the qualifying investee is a member on the last day of the 1257  
qualifying investee's fiscal or calendar year ending immediately 1258  
prior to the date on which the trust recognizes the gain or loss, 1259  
separately or cumulatively own, directly or indirectly, on the 1260  
last day of the qualifying investee's fiscal or calendar year 1261  
ending immediately prior to the date on which the trust recognizes 1262  
the qualifying trust amount, more than fifty per cent of the 1263  
equity of a pass-through entity, then the qualifying investee and 1264  
the other members are deemed to own the proportionate share of the 1265  
pass-through entity's physical assets which the pass-through 1266  
entity directly or indirectly owns on the last day of the 1267  
pass-through entity's calendar or fiscal year ending within or 1268  
with the last day of the qualifying investee's fiscal or calendar 1269

year ending immediately prior to the date on which the trust 1270  
recognizes the qualifying trust amount. 1271

(iii) For the purposes of division (BB)(5)(a)(iii) of this 1272  
section, "upper level pass-through entity" means a pass-through 1273  
entity directly or indirectly owning any equity of another 1274  
pass-through entity, and "lower level pass-through entity" means 1275  
that other pass-through entity. 1276

An upper level pass-through entity, whether or not it is also 1277  
a qualifying investee, is deemed to own, on the last day of the 1278  
upper level pass-through entity's calendar or fiscal year, the 1279  
proportionate share of the lower level pass-through entity's 1280  
physical assets that the lower level pass-through entity directly 1281  
or indirectly owns on the last day of the lower level pass-through 1282  
entity's calendar or fiscal year ending within or with the last 1283  
day of the upper level pass-through entity's fiscal or calendar 1284  
year. If the upper level pass-through entity directly and 1285  
indirectly owns less than fifty per cent of the equity of the 1286  
lower level pass-through entity on each day of the upper level 1287  
pass-through entity's calendar or fiscal year in which or with 1288  
which ends the calendar or fiscal year of the lower level 1289  
pass-through entity and if, based upon clear and convincing 1290  
evidence, complete information about the location and cost of the 1291  
physical assets of the lower pass-through entity is not available 1292  
to the upper level pass-through entity, then solely for purposes 1293  
of ascertaining if a gain or loss constitutes a qualifying trust 1294  
amount, the upper level pass-through entity shall be deemed as 1295  
owning no equity of the lower level pass-through entity for each 1296  
day during the upper level pass-through entity's calendar or 1297  
fiscal year in which or with which ends the lower level 1298  
pass-through entity's calendar or fiscal year. Nothing in division 1299  
(BB)(5)(a)(iii) of this section shall be construed to provide for 1300  
any deduction or exclusion in computing any trust's Ohio taxable 1301

income. 1302

(b) With respect to a trust that is not a resident for the 1303  
taxable year and with respect to a part of a trust that is not a 1304  
resident for the taxable year, "qualifying investee" for that 1305  
taxable year does not include a C corporation if both of the 1306  
following apply: 1307

(i) During the taxable year the trust or part of the trust 1308  
recognizes a gain or loss from the sale, exchange, or other 1309  
disposition of equity or ownership interests in, or debt 1310  
obligations of, the C corporation. 1311

(ii) Such gain or loss constitutes nonbusiness income. 1312

(6) "Available" means information is such that a person is 1313  
able to learn of the information by the due date plus extensions, 1314  
if any, for filing the return for the taxable year in which the 1315  
trust recognizes the gain or loss. 1316

(CC) "Qualifying controlled group" has the same meaning as in 1317  
section 5733.04 of the Revised Code. 1318

(DD) "Related member" has the same meaning as in section 1319  
5733.042 of the Revised Code. 1320

(EE)(1) For the purposes of division (EE) of this section: 1321

(a) "Qualifying person" means any person other than a 1322  
qualifying corporation. 1323

(b) "Qualifying corporation" means any person classified for 1324  
federal income tax purposes as an association taxable as a 1325  
corporation, except either of the following: 1326

(i) A corporation that has made an election under subchapter 1327  
S, chapter one, subtitle A, of the Internal Revenue Code for its 1328  
taxable year ending within, or on the last day of, the investor's 1329  
taxable year; 1330

(ii) A subsidiary that is wholly owned by any corporation 1331

that has made an election under subchapter S, chapter one, 1332  
subtitle A of the Internal Revenue Code for its taxable year 1333  
ending within, or on the last day of, the investor's taxable year. 1334

(2) For the purposes of this chapter, unless expressly stated 1335  
otherwise, no qualifying person indirectly owns any asset directly 1336  
or indirectly owned by any qualifying corporation. 1337

(FF) For purposes of this chapter and Chapter 5751. of the 1338  
Revised Code: 1339

(1) "Trust" does not include a qualified pre-income tax 1340  
trust. 1341

(2) A "qualified pre-income tax trust" is any pre-income tax 1342  
trust that makes a qualifying pre-income tax trust election as 1343  
described in division (FF)(3) of this section. 1344

(3) A "qualifying pre-income tax trust election" is an 1345  
election by a pre-income tax trust to subject to the tax imposed 1346  
by section 5751.02 of the Revised Code the pre-income tax trust 1347  
and all pass-through entities of which the trust owns or controls, 1348  
directly, indirectly, or constructively through related interests, 1349  
five per cent or more of the ownership or equity interests. The 1350  
trustee shall notify the tax commissioner in writing of the 1351  
election on or before April 15, 2006. The election, if timely 1352  
made, shall be effective on and after January 1, 2006, and shall 1353  
apply for all tax periods and tax years until revoked by the 1354  
trustee of the trust. 1355

(4) A "pre-income tax trust" is a trust that satisfies all of 1356  
the following requirements: 1357

(a) The document or instrument creating the trust was 1358  
executed by the grantor before January 1, 1972; 1359

(b) The trust became irrevocable upon the creation of the 1360  
trust; and 1361

(c) The grantor was domiciled in this state at the time the trust was created. 1362  
1363

**Sec. 5815.31.** Unless the trust or separation agreement 1364  
provides otherwise, if, after executing a trust in which the 1365  
grantor reserves to self a power to alter, amend, revoke, or 1366  
terminate the provisions of the trust, a grantor is divorced, 1367  
obtains a dissolution of marriage, has the grantor's marriage 1368  
annulled, or, upon actual separation from the grantor's spouse, 1369  
enters into a separation agreement pursuant to which the parties 1370  
intend to fully and finally settle their prospective property 1371  
rights in the property of the other, whether by expected 1372  
inheritance or otherwise, the spouse or former spouse of the 1373  
grantor shall be deemed to have predeceased the grantor, and any 1374  
provision in the trust conferring any beneficial interest or a 1375  
general or special power of appointment on the spouse or former 1376  
spouse or nominating the spouse or former spouse as trustee or 1377  
trust advisor shall be revoked. If the grantor remarries the 1378  
grantor's former spouse or if the separation agreement is 1379  
terminated, the spouse shall not be deemed to have predeceased the 1380  
grantor, and any provision in the trust conferring any beneficial 1381  
interest or a general or special power of appointment on the 1382  
spouse or former spouse or nominating the spouse or former spouse 1383  
as trustee or trust advisor shall not be revoked. 1384

**Section 2.** That existing sections 2101.16, 2107.76, 2109.21, 1385  
2111.05, 2111.18, 2125.04, 2305.19, 5747.01, and 5815.31 of the 1386  
Revised Code are hereby repealed. 1387