

**As Reported by the Senate Judiciary--Civil Justice Committee**

**128th General Assembly**

**Regular Session**

**2009-2010**

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

**Senators Buehrer, Kearney**

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

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**A B I L L**

To amend sections 2101.16, 2107.76, 2111.05, 2111.18, 1  
2305.19, 5747.01, and 5815.31 of the Revised Code 2  
to exclude from the application of the savings 3  
statute certain estate and trust proceedings that 4  
have limitation periods, to raise the threshold 5  
amount for the termination or avoidance of 6  
guardianships of small estates of wards, to raise 7  
the threshold amount for the avoidance of 8  
guardianship upon the settlement of claims of 9  
minors or adult incompetents, and to clarify that 10  
termination of marriage revokes any trust 11  
provision conferring a beneficial interest on the 12  
former spouse. 13

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

**Section 1.** That sections 2101.16, 2107.76, 2111.05, 2111.18, 14  
2305.19, 5747.01, and 5815.31 of the Revised Code be amended to 15  
read as follows: 16

**Sec. 2101.16.** (A) Except as provided in section 2101.164 of 17  
the Revised Code, the fees enumerated in this division shall be 18  
charged and collected, if possible, by the probate judge and shall 19

be in full for all services rendered in the respective	20
proceedings:	21
(1) Account, in addition to advertising charges	22
..... \$ 12.00	23
Waivers and proof of notice of hearing on account,	24
per page, minimum one dollar	
..... \$ 1.00	25
(2) Account of distribution, in addition to advertising	26
charges	
..... \$ 7.00	27
(3) Adoption of child, petition for	28
..... \$ 50.00	29
(4) Alter or cancel contract for sale or purchase of real	30
estate, petition to	
..... \$ 20.00	31
(5) Application and order not otherwise provided for in	32
this section or by rule adopted pursuant to division	
(E) of this section	
..... \$ 5.00	33
(6) Appropriation suit, per day, hearing in	34
..... \$ 20.00	35
(7) Birth, application for registration of	36
..... \$ 7.00	37
(8) Birth record, application to correct	38
..... \$ 5.00	39
(9) Bond, application for new or additional	40
..... \$ 5.00	41
(10) Bond, application for release of surety or reduction	42
of	
..... \$ 5.00	43
(11) Bond, receipt for securities deposited in lieu of	44
..... \$ 5.00	45
(12) Certified copy of journal entry, record, or	46

proceeding, per page, minimum fee one dollar		
.....	\$ 1.00	47
(13) Citation and issuing citation, application for		48
.....	\$ 5.00	49
(14) Change of name, petition for		50
.....	\$ 20.00	51
(15) Claim, application of administrator or executor for allowance of administrator's or executor's own		52
.....	\$ 10.00	53
(16) Claim, application to compromise or settle		54
.....	\$ 10.00	55
(17) Claim, authority to present		56
.....	\$ 10.00	57
(18) Commissioner, appointment of		58
.....	\$ 5.00	59
(19) Compensation for extraordinary services and attorney's fees for fiduciary, application for		60
.....	\$ 5.00	61
(20) Competency, application to procure adjudication of		62
.....	\$ 20.00	63
(21) Complete contract, application to		64
.....	\$ 10.00	65
(22) Concealment of assets, citation for		66
.....	\$ 10.00	67
(23) Construction of will, petition for		68
.....	\$ 20.00	69
(24) Continue decedent's business, application to		70
.....	\$ 10.00	71
Monthly reports of operation		72
.....	\$ 5.00	73
(25) Declaratory judgment, petition for		74
.....	\$ 20.00	75
(26) Deposit of will		76

.....	\$ 5.00	77
(27) Designation of heir		78
.....	\$ 20.00	79
(28) Distribution in kind, application, assent, and order for		80
.....	\$ 5.00	81
(29) Distribution under section 2109.36 of the Revised Code, application for an order of		82
.....	\$ 7.00	83
(30) Docketing and indexing proceedings, including the filing and noting of all necessary documents, maximum fee, fifteen dollars		84
.....	\$ 15.00	85
(31) Exceptions to any proceeding named in this section, contest of appointment or		86
.....	\$ 10.00	87
(32) Election of surviving partner to purchase assets of partnership, proceedings relating to		88
.....	\$ 10.00	89
(33) Election of surviving spouse under will		90
.....	\$ 5.00	91
(34) Fiduciary, including an assignee or trustee of an insolvent debtor or any guardian or conservator accountable to the probate court, appointment of		92
.....	\$ 35.00	93
(35) Foreign will, application to record		94
.....	\$ 10.00	95
Record of foreign will, additional, per page		96
.....	\$ 1.00	97
(36) Forms when supplied by the probate court, not to exceed		98
.....	\$ 10.00	99
(37) Heirship, petition to determine		100

.....	\$ 20.00	101
(38) Injunction proceedings		102
.....	\$ 20.00	103
(39) Improve real estate, petition to		104
.....	\$ 20.00	105
(40) Inventory with appraisement		106
.....	\$ 10.00	107
(41) Inventory without appraisement		108
.....	\$ 7.00	109
(42) Investment or expenditure of funds, application for		110
.....	\$ 10.00	111
(43) Invest in real estate, application to		112
.....	\$ 10.00	113
(44) Lease for oil, gas, coal, or other mineral, petition to		114
.....	\$ 20.00	115
(45) Lease or lease and improve real estate, petition to		116
.....	\$ 20.00	117
(46) Marriage license		118
.....	\$ 10.00	119
Certified abstract of each marriage		120
.....	\$ 2.00	121
(47) Minor or <del>mentally ill</del> <u>incompetent</u> person, etc., disposal of estate under <del>ten</del> <u>twenty-five</u> thousand dollars of		122
.....	\$ 10.00	123
(48) Mortgage or mortgage and repair or improve real estate, petition to		124
.....	\$ 20.00	125
(49) Newly discovered assets, report of		126
.....	\$ 7.00	127
(50) Nonresident executor or administrator to bar creditors' claims, proceedings by		128

.....	\$ 20.00	129
(51) Power of attorney or revocation of power, bonding company		130
.....	\$ 10.00	131
(52) Presumption of death, petition to establish		132
.....	\$ 20.00	133
(53) Probating will		134
.....	\$ 15.00	135
Proof of notice to beneficiaries		136
.....	\$ 5.00	137
(54) Purchase personal property, application of surviving spouse to		138
.....	\$ 10.00	139
(55) Purchase real estate at appraised value, petition of surviving spouse to		140
.....	\$ 20.00	141
(56) Receipts in addition to advertising charges, application and order to record		142
.....	\$ 5.00	143
Record of those receipts, additional, per page		144
.....	\$ 1.00	145
(57) Record in excess of fifteen hundred words in any proceeding in the probate court, per page		146
.....	\$ 1.00	147
(58) Release of estate by mortgagee or other lienholder		148
.....	\$ 5.00	149
(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		150
.....	\$ 60.00	151
(60) Removal of fiduciary, application for		152
.....	\$ 10.00	153

(61) Requalification of executor or administrator		154
.....	\$ 10.00	155
(62) Resignation of fiduciary		156
.....	\$ 5.00	157
(63) Sale bill, public sale of personal property		158
.....	\$ 10.00	159
(64) Sale of personal property and report, application for		160
.....	\$ 10.00	161
(65) Sale of real estate, petition for		162
.....	\$ 25.00	163
(66) Terminate guardianship, petition to		164
.....	\$ 10.00	165
(67) Transfer of real estate, application, entry, and certificate for		166
.....	\$ 7.00	167
(68) Unclaimed money, application to invest		168
.....	\$ 7.00	169
(69) Vacate approval of account or order of distribution, motion to		170
.....	\$ 10.00	171
(70) Writ of execution		172
.....	\$ 5.00	173
(71) Writ of possession		174
.....	\$ 5.00	175
(72) Wrongful death, application and settlement of claim for		176
.....	\$ 20.00	177
(73) Year's allowance, petition to review		178
.....	\$ 7.00	179
(74) Guardian's report, filing and review of		180
.....	\$ 5.00	181
(B)(1) In relation to an application for the appointment of a guardian or the review of a report of a guardian under section		182 183

2111.49 of the Revised Code, the probate court, pursuant to court order or in accordance with a court rule, may direct that the applicant or the estate pay any or all of the expenses of an investigation conducted pursuant to section 2111.041 or division (A)(2) of section 2111.49 of the Revised Code. If the investigation is conducted by a public employee or investigator who is paid by the county, the fees for the investigation shall be paid into the county treasury. If the court finds that an alleged incompetent or a ward is indigent, the court may waive the costs, fees, and expenses of an investigation.

(2) In relation to the appointment or functioning of a guardian for a minor or the guardianship of a minor, the probate court may direct that the applicant or the estate pay any or all of the expenses of an investigation conducted pursuant to section 2111.042 of the Revised Code. If the investigation is conducted by a public employee or investigator who is paid by the county, the fees for the investigation shall be paid into the county treasury. If the court finds that the guardian or applicant is indigent, the court may waive the costs, fees, and expenses of an investigation.

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

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

(E) The probate court, by rule, may require an advance deposit for costs, not to exceed one hundred twenty-five dollars, at the time application is made for an appointment as executor or



administrator or at the time a will is presented for probate. 216

(F) The probate court, by rule, shall establish a reasonable 217  
fee, not to exceed fifty dollars, for the filing of a petition for 218  
the release of information regarding an adopted person's name by 219  
birth and the identity of the adopted person's biological parents 220  
and biological siblings pursuant to section 3107.41 of the Revised 221  
Code, all proceedings relative to the petition, the entry of an 222  
order relative to the petition, and all services required to be 223  
performed in connection with the petition. The probate court may 224  
use a reasonable portion of a fee charged under authority of this 225  
division to reimburse any agency, as defined in section 3107.39 of 226  
the Revised Code, for any services it renders in performing a task 227  
described in section 3107.41 of the Revised Code relative to or in 228  
connection with the petition for which the fee was charged. 229

(G)(1) Thirty dollars of the fifty-dollar fee collected 230  
pursuant to division (A)(3) of this section shall be deposited 231  
into the "putative father registry fund," which is hereby created 232  
in the state treasury. The department of job and family services 233  
shall use the money in the fund to fund the department's costs of 234  
performing its duties related to the putative father registry 235  
established under section 3107.062 of the Revised Code. 236

(2) If the department determines that money in the putative 237  
father registry fund is more than is needed for its duties related 238  
to the putative father registry, the department may use the 239  
surplus moneys in the fund as permitted in division (C) of section 240  
2151.3529, division (B) of section 2151.3530, or section 5103.155 241  
of the Revised Code. 242

**Sec. 2107.76.** ~~(A)~~ No person who has received or waived the 243  
right to receive the notice of the admission of a will to probate 244  
required by section 2107.19 of the Revised Code may commence an 245  
action permitted by section 2107.71 of the Revised Code to contest 246

the validity of the will more than three months after the filing 247  
of the certificate described in division (A)(3) of section 2107.19 248  
of the Revised Code. No other person may commence an action 249  
permitted by section 2107.71 of the Revised Code to contest the 250  
validity of the will more than three months after the initial 251  
filing of a certificate described in division (A)(3) of section 252  
2107.19 of the Revised Code. A person under any legal disability 253  
nevertheless may commence an action permitted by section 2107.71 254  
of the Revised Code to contest the validity of the will within 255  
three months after the disability is removed, but the rights saved 256  
shall not affect the rights of a purchaser, lessee, or 257  
encumbrancer for value in good faith and shall not impose any 258  
liability upon a fiduciary who has acted in good faith, or upon a 259  
person delivering or transferring property to any other person 260  
under authority of a will, whether or not the purchaser, lessee, 261  
encumbrancer, fiduciary, or other person had actual or 262  
constructive notice of the legal disability. 263

~~(B) Section 2305.19 of the Revised Code does not apply to an 264  
action permitted by section 2107.71 of the Revised Code to contest 265  
the validity of a will. 266~~

**Sec. 2111.05.** When the whole estate of a ward, or of several 267  
wards jointly, under the same guardianship, does not exceed ~~ten~~ 268  
twenty-five thousand dollars in value, the guardian may apply to 269  
the probate court for an order to terminate the guardianship. Upon 270  
proof that it would be for the best interest of the ward to 271  
terminate the guardianship, the court may order the guardianship 272  
terminated, and direct the guardian, if the ward is a minor, to 273  
deposit the assets of the guardianship in a depository authorized 274  
to receive fiduciary funds, payable to the ward when ~~he~~ the ward 275  
attains majority, or the court may authorize the delivery of the 276  
assets to the natural guardian of the minor, to the person by whom 277

the minor is maintained, to the executive director of children 278  
services in the county, or to the ~~minor himself~~ minor's own self. 279

If the ward is an incompetent, and the court orders the 280  
guardianship terminated, the court may authorize the deposit of 281  
the assets of the guardianship in a depository authorized to 282  
receive fiduciary funds in the name of a suitable person to be 283  
designated by the court, or if the assets do not consist of money, 284  
the court may authorize delivery to a suitable person to be 285  
designated by the court. The person receiving the assets shall 286  
hold and dispose of them in the manner the court directs. 287

If the court refuses to grant the application to terminate 288  
the guardianship, or if no such application is presented to the 289  
court, the guardian only shall be required to render account upon 290  
the termination of ~~his~~ the guardianship, upon order of the probate 291  
court made upon its own motion, or upon the order of the court 292  
made on the motion of a person interested in the wards or their 293  
property, for good cause shown, and set forth upon the journal of 294  
the court. 295

If the estate is ~~ten~~ twenty-five thousand dollars or less and 296  
the ward is a minor, the court, without the appointment of a 297  
guardian by the court, or the giving of bond, may authorize the 298  
deposit in a depository authorized to receive fiduciary funds, 299  
payable to the guardian when appointed, or to the ward when ~~he~~ the 300  
ward attains majority, or the court may authorize delivery to the 301  
natural guardian of the minor, to the person by whom the minor is 302  
maintained, to the executive director who is responsible for the 303  
administration of children services in the county, or to the ~~minor~~ 304  
~~himself~~ minor's own self. 305

If the whole estate of a person over eighteen years of age, 306  
who has been adjudged ~~mentally ill or mentally retarded~~ 307  
incompetent, does not exceed ~~ten~~ twenty-five thousand dollars in 308  
value, the court, without the appointment of a guardian by the 309

court or the giving of bond, may authorize the deposit of the 310  
estate in a depository authorized to receive fiduciary funds in 311  
the name of a suitable person to be designated by the court, or if 312  
the assets do not consist of money, the court may authorize 313  
delivery to a suitable person to be designated by the court. The 314  
person receiving the assets shall hold and dispose of them in the 315  
manner the court directs. 316

**Sec. 2111.18.** ~~When~~ If personal injury, damage to tangible or 317  
intangible property, or damage or loss on account of personal 318  
injury or damage to tangible or intangible property is caused to a 319  
ward by wrongful act, neglect, or default that would entitle the 320  
ward to maintain an action and recover damages for the injury, 321  
damage, or loss, and when any ward is entitled to maintain an 322  
action for damages or any other relief based on any claim or is 323  
subject to any claim to recover damages or any other relief based 324  
on any claim, the guardian of the estate of the ward may adjust 325  
and settle the claim with the advice, approval, and consent of the 326  
probate court. ~~In the settlement, if the ward is a minor, the~~ 327  
~~parent or parents may waive all claim for damages on account of~~ 328  
~~loss of service of the minor, and that claim may be included in~~ 329  
~~the settlement. However, when~~ If it is proposed that ~~the~~ a claim 330  
~~involved~~ be settled for ~~ten~~ the net amount of twenty-five thousand 331  
dollars or less after payment of fees and expenses as allowed by 332  
the court, the court, upon application by any suitable person whom 333  
the court may authorize to receive and receipt for the settlement, 334  
may authorize the settlement without the appointment of a guardian 335  
and authorize the delivery of the moneys ~~to the natural guardian~~ 336  
~~of the minor, to the person by whom the minor is maintained, or to~~ 337  
~~the minor himself~~ as provided in section 2111.05 of the Revised 338  
Code. The court may authorize the ~~minor or~~ person receiving the 339  
moneys to execute a complete release on account of the receipt. 340  
The payment shall be a complete and final discharge of ~~any such~~ 341

that claim. In the settlement, if the ward is a minor, the parent 342  
or parents of the minor may waive all claim for damages on account 343  
of loss of service of the minor, and that claim may be included in 344  
the settlement. 345

**Sec. 2305.19.** (A) In any action that is commenced or 346  
attempted to be commenced, if in due time a judgment for the 347  
plaintiff is reversed or if the plaintiff fails otherwise than 348  
upon the merits, the plaintiff or, if the plaintiff dies and the 349  
cause of action survives, the plaintiff's representative may 350  
commence a new action within one year after the date of the 351  
reversal of the judgment or the plaintiff's failure otherwise than 352  
upon the merits or within the period of the original applicable 353  
statute of limitations, whichever occurs later. This division 354  
applies to any claim asserted in any pleading by a defendant. 355

(B) If the defendant in an action described in division (A) 356  
of this section is a foreign or domestic corporation, and whether 357  
its charter prescribes the manner or place of service of process 358  
on the defendant, and if it passes into the hands of a receiver 359  
before the expiration of the one year period or the period of the 360  
original applicable statute of limitations, whichever is 361  
applicable, as described in that division, then service to be made 362  
within one year following the original service or attempt to begin 363  
the action may be made upon that receiver or the receiver's 364  
cashier, treasurer, secretary, clerk, or managing agent, or if 365  
none of these officers can be found, by a copy left at the office 366  
or the usual place of business of any of those agents or officers 367  
of the receiver with the person having charge of the office or 368  
place of business. If that corporation is a railroad company, 369  
summons may be served on any regular ticket or freight agent of 370  
the receiver, and if there is no regular ticket or freight agent 371  
of the receiver, then upon any conductor of the receiver, in any 372  
county in the state in which the railroad is located. The summons 373

shall be returned as if served on that defendant corporation. 374

(C) This section does not apply to an action or proceeding 375  
arising under section 2106.22, 2107.76, 2109.35, 2115.16, 5806.04, 376  
or 5810.05 of the Revised Code. 377

**Sec. 5747.01.** Except as otherwise expressly provided or 378  
clearly appearing from the context, any term used in this chapter 379  
that is not otherwise defined in this section has the same meaning 380  
as when used in a comparable context in the laws of the United 381  
States relating to federal income taxes or if not used in a 382  
comparable context in those laws, has the same meaning as in 383  
section 5733.40 of the Revised Code. Any reference in this chapter 384  
to the Internal Revenue Code includes other laws of the United 385  
States relating to federal income taxes. 386

As used in this chapter: 387

(A) "Adjusted gross income" or "Ohio adjusted gross income" 388  
means federal adjusted gross income, as defined and used in the 389  
Internal Revenue Code, adjusted as provided in this section: 390

(1) Add interest or dividends on obligations or securities of 391  
any state or of any political subdivision or authority of any 392  
state, other than this state and its subdivisions and authorities. 393

(2) Add interest or dividends on obligations of any 394  
authority, commission, instrumentality, territory, or possession 395  
of the United States to the extent that the interest or dividends 396  
are exempt from federal income taxes but not from state income 397  
taxes. 398

(3) Deduct interest or dividends on obligations of the United 399  
States and its territories and possessions or of any authority, 400  
commission, or instrumentality of the United States to the extent 401  
that the interest or dividends are included in federal adjusted 402  
gross income but exempt from state income taxes under the laws of 403

the United States.	404
(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.	405 406
(5) Deduct benefits under Title II of the Social Security Act and tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code.	407 408 409 410
(6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which the distribution is made to the extent that the portion was not included in the trust's taxable income for any of the trust's taxable years beginning in 2002 or thereafter.	411 412 413 414 415 416 417 418 419
"Undistributed net income of a trust" means the taxable income of the trust increased by (a)(i) the additions to adjusted gross income required under division (A) of this section and (ii) the personal exemptions allowed to the trust pursuant to section 642(b) of the Internal Revenue Code, and decreased by (b)(i) the deductions to adjusted gross income required under division (A) of this section, (ii) the amount of federal income taxes attributable to such income, and (iii) the amount of taxable income that has been included in the adjusted gross income of a beneficiary by reason of a prior accumulation distribution. Any undistributed net income included in the adjusted gross income of a beneficiary shall reduce the undistributed net income of the trust commencing with the earliest years of the accumulation period.	420 421 422 423 424 425 426 427 428 429 430 431 432
(7) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal adjusted gross	433 434 435

income for the taxable year, had the targeted jobs credit allowed 436  
and determined under sections 38, 51, and 52 of the Internal 437  
Revenue Code not been in effect. 438

(8) Deduct any interest or interest equivalent on public 439  
obligations and purchase obligations to the extent that the 440  
interest or interest equivalent is included in federal adjusted 441  
gross income. 442

(9) Add any loss or deduct any gain resulting from the sale, 443  
exchange, or other disposition of public obligations to the extent 444  
that the loss has been deducted or the gain has been included in 445  
computing federal adjusted gross income. 446

(10) Deduct or add amounts, as provided under section 5747.70 447  
of the Revised Code, related to contributions to variable college 448  
savings program accounts made or tuition units purchased pursuant 449  
to Chapter 3334. of the Revised Code. 450

(11)(a) Deduct, to the extent not otherwise allowable as a 451  
deduction or exclusion in computing federal or Ohio adjusted gross 452  
income for the taxable year, the amount the taxpayer paid during 453  
the taxable year for medical care insurance and qualified 454  
long-term care insurance for the taxpayer, the taxpayer's spouse, 455  
and dependents. No deduction for medical care insurance under 456  
division (A)(11) of this section shall be allowed either to any 457  
taxpayer who is eligible to participate in any subsidized health 458  
plan maintained by any employer of the taxpayer or of the 459  
taxpayer's spouse, or to any taxpayer who is entitled to, or on 460  
application would be entitled to, benefits under part A of Title 461  
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 462  
301, as amended. For the purposes of division (A)(11)(a) of this 463  
section, "subsidized health plan" means a health plan for which 464  
the employer pays any portion of the plan's cost. The deduction 465  
allowed under division (A)(11)(a) of this section shall be the net 466  
of any related premium refunds, related premium reimbursements, or 467



related insurance premium dividends received during the taxable 468  
year. 469

(b) Deduct, to the extent not otherwise deducted or excluded 470  
in computing federal or Ohio adjusted gross income during the 471  
taxable year, the amount the taxpayer paid during the taxable 472  
year, not compensated for by any insurance or otherwise, for 473  
medical care of the taxpayer, the taxpayer's spouse, and 474  
dependents, to the extent the expenses exceed seven and one-half 475  
per cent of the taxpayer's federal adjusted gross income. 476

(c) For purposes of division (A)(11) of this section, 477  
"medical care" has the meaning given in section 213 of the 478  
Internal Revenue Code, subject to the special rules, limitations, 479  
and exclusions set forth therein, and "qualified long-term care" 480  
has the same meaning given in section 7702B(c) of the Internal 481  
Revenue Code. 482

(12)(a) Deduct any amount included in federal adjusted gross 483  
income solely because the amount represents a reimbursement or 484  
refund of expenses that in any year the taxpayer had deducted as 485  
an itemized deduction pursuant to section 63 of the Internal 486  
Revenue Code and applicable United States department of the 487  
treasury regulations. The deduction otherwise allowed under 488  
division (A)(12)(a) of this section shall be reduced to the extent 489  
the reimbursement is attributable to an amount the taxpayer 490  
deducted under this section in any taxable year. 491

(b) Add any amount not otherwise included in Ohio adjusted 492  
gross income for any taxable year to the extent that the amount is 493  
attributable to the recovery during the taxable year of any amount 494  
deducted or excluded in computing federal or Ohio adjusted gross 495  
income in any taxable year. 496

(13) Deduct any portion of the deduction described in section 497  
1341(a)(2) of the Internal Revenue Code, for repaying previously 498

reported income received under a claim of right, that meets both 499  
of the following requirements: 500

(a) It is allowable for repayment of an item that was 501  
included in the taxpayer's adjusted gross income for a prior 502  
taxable year and did not qualify for a credit under division (A) 503  
or (B) of section 5747.05 of the Revised Code for that year; 504

(b) It does not otherwise reduce the taxpayer's adjusted 505  
gross income for the current or any other taxable year. 506

(14) Deduct an amount equal to the deposits made to, and net 507  
investment earnings of, a medical savings account during the 508  
taxable year, in accordance with section 3924.66 of the Revised 509  
Code. The deduction allowed by division (A)(14) of this section 510  
does not apply to medical savings account deposits and earnings 511  
otherwise deducted or excluded for the current or any other 512  
taxable year from the taxpayer's federal adjusted gross income. 513

(15)(a) Add an amount equal to the funds withdrawn from a 514  
medical savings account during the taxable year, and the net 515  
investment earnings on those funds, when the funds withdrawn were 516  
used for any purpose other than to reimburse an account holder 517  
for, or to pay, eligible medical expenses, in accordance with 518  
section 3924.66 of the Revised Code; 519

(b) Add the amounts distributed from a medical savings 520  
account under division (A)(2) of section 3924.68 of the Revised 521  
Code during the taxable year. 522

(16) Add any amount claimed as a credit under section 523  
5747.059 of the Revised Code to the extent that such amount 524  
satisfies either of the following: 525

(a) The amount was deducted or excluded from the computation 526  
of the taxpayer's federal adjusted gross income as required to be 527  
reported for the taxpayer's taxable year under the Internal 528  
Revenue Code; 529

(b) The amount resulted in a reduction of the taxpayer's 530  
federal adjusted gross income as required to be reported for any 531  
of the taxpayer's taxable years under the Internal Revenue Code. 532

(17) Deduct the amount contributed by the taxpayer to an 533  
individual development account program established by a county 534  
department of job and family services pursuant to sections 329.11 535  
to 329.14 of the Revised Code for the purpose of matching funds 536  
deposited by program participants. On request of the tax 537  
commissioner, the taxpayer shall provide any information that, in 538  
the tax commissioner's opinion, is necessary to establish the 539  
amount deducted under division (A)(17) of this section. 540

(18) Beginning in taxable year 2001 but not for any taxable 541  
year beginning after December 31, 2005, if the taxpayer is married 542  
and files a joint return and the combined federal adjusted gross 543  
income of the taxpayer and the taxpayer's spouse for the taxable 544  
year does not exceed one hundred thousand dollars, or if the 545  
taxpayer is single and has a federal adjusted gross income for the 546  
taxable year not exceeding fifty thousand dollars, deduct amounts 547  
paid during the taxable year for qualified tuition and fees paid 548  
to an eligible institution for the taxpayer, the taxpayer's 549  
spouse, or any dependent of the taxpayer, who is a resident of 550  
this state and is enrolled in or attending a program that 551  
culminates in a degree or diploma at an eligible institution. The 552  
deduction may be claimed only to the extent that qualified tuition 553  
and fees are not otherwise deducted or excluded for any taxable 554  
year from federal or Ohio adjusted gross income. The deduction may 555  
not be claimed for educational expenses for which the taxpayer 556  
claims a credit under section 5747.27 of the Revised Code. 557

(19) Add any reimbursement received during the taxable year 558  
of any amount the taxpayer deducted under division (A)(18) of this 559  
section in any previous taxable year to the extent the amount is 560  
not otherwise included in Ohio adjusted gross income. 561

(20)(a)(i) Add five-sixths of the amount of depreciation 562  
expense allowed by subsection (k) of section 168 of the Internal 563  
Revenue Code, including the taxpayer's proportionate or 564  
distributive share of the amount of depreciation expense allowed 565  
by that subsection to a pass-through entity in which the taxpayer 566  
has a direct or indirect ownership interest. 567

(ii) Add five-sixths of the amount of qualifying section 179 568  
depreciation expense, including a person's proportionate or 569  
distributive share of the amount of qualifying section 179 570  
depreciation expense allowed to any pass-through entity in which 571  
the person has a direct or indirect ownership. For the purposes of 572  
this division, "qualifying section 179 depreciation expense" means 573  
the difference between (I) the amount of depreciation expense 574  
directly or indirectly allowed to the taxpayer under section 179 575  
of the Internal Revenue Code, and (II) the amount of depreciation 576  
expense directly or indirectly allowed to the taxpayer under 577  
section 179 of the Internal Revenue Code as that section existed 578  
on December 31, 2002. 579

The tax commissioner, under procedures established by the 580  
commissioner, may waive the add-backs related to a pass-through 581  
entity if the taxpayer owns, directly or indirectly, less than 582  
five per cent of the pass-through entity. 583

(b) Nothing in division (A)(20) of this section shall be 584  
construed to adjust or modify the adjusted basis of any asset. 585

(c) To the extent the add-back required under division 586  
(A)(20)(a) of this section is attributable to property generating 587  
nonbusiness income or loss allocated under section 5747.20 of the 588  
Revised Code, the add-back shall be situated to the same location 589  
as the nonbusiness income or loss generated by the property for 590  
the purpose of determining the credit under division (A) of 591  
section 5747.05 of the Revised Code. Otherwise, the add-back shall 592  
be apportioned, subject to one or more of the four alternative 593

methods of apportionment enumerated in section 5747.21 of the Revised Code. 594  
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(d) For the purposes of division (A) of this section, net operating loss carryback and carryforward shall not include five-sixths of the allowance of any net operating loss deduction carryback or carryforward to the taxable year to the extent such loss resulted from depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount. 596  
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(21)(a) If the taxpayer was required to add an amount under division (A)(20)(a) of this section for a taxable year, deduct one-fifth of the amount so added for each of the five succeeding taxable years. 603  
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(b) If the amount deducted under division (A)(21)(a) of this section is attributable to an add-back allocated under division (A)(20)(c) of this section, the amount deducted shall be situated to the same location. Otherwise, the add-back shall be apportioned using the apportionment factors for the taxable year in which the deduction is taken, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code. 607  
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(c) No deduction is available under division (A)(21)(a) of this section with regard to any depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount to the extent that such depreciation resulted in or increased a federal net operating loss carryback or carryforward to a taxable year to which division (A)(20)(d) of this section does not apply. 615  
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(22) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year as 622  
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reimbursement for life insurance premiums under section 5919.31 of 625  
the Revised Code. 626

(23) Deduct, to the extent not otherwise deducted or excluded 627  
in computing federal or Ohio adjusted gross income for the taxable 628  
year, the amount the taxpayer received during the taxable year as 629  
a death benefit paid by the adjutant general under section 5919.33 630  
of the Revised Code. 631

(24) Deduct, to the extent included in federal adjusted gross 632  
income and not otherwise allowable as a deduction or exclusion in 633  
computing federal or Ohio adjusted gross income for the taxable 634  
year, military pay and allowances received by the taxpayer during 635  
the taxable year for active duty service in the United States 636  
army, air force, navy, marine corps, or coast guard or reserve 637  
components thereof or the national guard. The deduction may not be 638  
claimed for military pay and allowances received by the taxpayer 639  
while the taxpayer is stationed in this state. 640

(25) Deduct, to the extent not otherwise allowable as a 641  
deduction or exclusion in computing federal or Ohio adjusted gross 642  
income for the taxable year and not otherwise compensated for by 643  
any other source, the amount of qualified organ donation expenses 644  
incurred by the taxpayer during the taxable year, not to exceed 645  
ten thousand dollars. A taxpayer may deduct qualified organ 646  
donation expenses only once for all taxable years beginning with 647  
taxable years beginning in 2007. 648

For the purposes of division (A)(25) of this section: 649

(a) "Human organ" means all or any portion of a human liver, 650  
pancreas, kidney, intestine, or lung, and any portion of human 651  
bone marrow. 652

(b) "Qualified organ donation expenses" means travel 653  
expenses, lodging expenses, and wages and salary forgone by a 654  
taxpayer in connection with the taxpayer's donation, while living, 655

of one or more of the taxpayer's human organs to another human 656  
being. 657

(26) Deduct, to the extent not otherwise deducted or excluded 658  
in computing federal or Ohio adjusted gross income for the taxable 659  
year, amounts received by the taxpayer as retired military 660  
personnel pay for service in the United States army, navy, air 661  
force, coast guard, or marine corps or reserve components thereof, 662  
or the national guard, or received by the surviving spouse or 663  
former spouse of such a taxpayer under the survivor benefit plan 664  
on account of such a taxpayer's death. If the taxpayer receives 665  
income on account of retirement paid under the federal civil 666  
service retirement system or federal employees retirement system, 667  
or under any successor retirement program enacted by the congress 668  
of the United States that is established and maintained for 669  
retired employees of the United States government, and such 670  
retirement income is based, in whole or in part, on credit for the 671  
taxpayer's military service, the deduction allowed under this 672  
division shall include only that portion of such retirement income 673  
that is attributable to the taxpayer's military service, to the 674  
extent that portion of such retirement income is otherwise 675  
included in federal adjusted gross income and is not otherwise 676  
deducted under this section. Any amount deducted under division 677  
(A)(26) of this section is not included in a taxpayer's adjusted 678  
gross income for the purposes of section 5747.055 of the Revised 679  
Code. No amount may be deducted under division (A)(26) of this 680  
section on the basis of which a credit was claimed under section 681  
5747.055 of the Revised Code. 682

(27) Deduct, to the extent not otherwise deducted or excluded 683  
in computing federal or Ohio adjusted gross income for the taxable 684  
year, the amount the taxpayer received during the taxable year 685  
from the military injury relief fund created in section 5101.98 of 686  
the Revised Code. 687

(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 employee for personal services.

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

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

(G) "Individual" means any natural person.

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

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

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



(2) The estate of a decedent who at the time of death was 718  
domiciled in this state. The domicile tests of section 5747.24 of 719  
the Revised Code are not controlling for purposes of division 720  
(I)(2) of this section. 721

(3) A trust that, in whole or part, resides in this state. If 722  
only part of a trust resides in this state, the trust is a 723  
resident only with respect to that part. 724

For the purposes of division (I)(3) of this section: 725

(a) A trust resides in this state for the trust's current 726  
taxable year to the extent, as described in division (I)(3)(d) of 727  
this section, that the trust consists directly or indirectly, in 728  
whole or in part, of assets, net of any related liabilities, that 729  
were transferred, or caused to be transferred, directly or 730  
indirectly, to the trust by any of the following: 731

(i) A person, a court, or a governmental entity or 732  
instrumentality on account of the death of a decedent, but only if 733  
the trust is described in division (I)(3)(e)(i) or (ii) of this 734  
section; 735

(ii) A person who was domiciled in this state for the 736  
purposes of this chapter when the person directly or indirectly 737  
transferred assets to an irrevocable trust, but only if at least 738  
one of the trust's qualifying beneficiaries is domiciled in this 739  
state for the purposes of this chapter during all or some portion 740  
of the trust's current taxable year; 741

(iii) A person who was domiciled in this state for the 742  
purposes of this chapter when the trust document or instrument or 743  
part of the trust document or instrument became irrevocable, but 744  
only if at least one of the trust's qualifying beneficiaries is a 745  
resident domiciled in this state for the purposes of this chapter 746  
during all or some portion of the trust's current taxable year. If 747  
a trust document or instrument became irrevocable upon the death 748

of a person who at the time of death was domiciled in this state 749  
for purposes of this chapter, that person is a person described in 750  
division (I)(3)(a)(iii) of this section. 751

(b) A trust is irrevocable to the extent that the transferor 752  
is not considered to be the owner of the net assets of the trust 753  
under sections 671 to 678 of the Internal Revenue Code. 754

(c) With respect to a trust other than a charitable lead 755  
trust, "qualifying beneficiary" has the same meaning as "potential 756  
current beneficiary" as defined in section 1361(e)(2) of the 757  
Internal Revenue Code, and with respect to a charitable lead trust 758  
"qualifying beneficiary" is any current, future, or contingent 759  
beneficiary, but with respect to any trust "qualifying 760  
beneficiary" excludes a person or a governmental entity or 761  
instrumentality to any of which a contribution would qualify for 762  
the charitable deduction under section 170 of the Internal Revenue 763  
Code. 764

(d) For the purposes of division (I)(3)(a) of this section, 765  
the extent to which a trust consists directly or indirectly, in 766  
whole or in part, of assets, net of any related liabilities, that 767  
were transferred directly or indirectly, in whole or part, to the 768  
trust by any of the sources enumerated in that division shall be 769  
ascertained by multiplying the fair market value of the trust's 770  
assets, net of related liabilities, by the qualifying ratio, which 771  
shall be computed as follows: 772

(i) The first time the trust receives assets, the numerator 773  
of the qualifying ratio is the fair market value of those assets 774  
at that time, net of any related liabilities, from sources 775  
enumerated in division (I)(3)(a) of this section. The denominator 776  
of the qualifying ratio is the fair market value of all the 777  
trust's assets at that time, net of any related liabilities. 778

(ii) Each subsequent time the trust receives assets, a 779

revised qualifying ratio shall be computed. The numerator of the 780  
revised qualifying ratio is the sum of (1) the fair market value 781  
of the trust's assets immediately prior to the subsequent 782  
transfer, net of any related liabilities, multiplied by the 783  
qualifying ratio last computed without regard to the subsequent 784  
transfer, and (2) the fair market value of the subsequently 785  
transferred assets at the time transferred, net of any related 786  
liabilities, from sources enumerated in division (I)(3)(a) of this 787  
section. The denominator of the revised qualifying ratio is the 788  
fair market value of all the trust's assets immediately after the 789  
subsequent transfer, net of any related liabilities. 790

(iii) Whether a transfer to the trust is by or from any of 791  
the sources enumerated in division (I)(3)(a) of this section shall 792  
be ascertained without regard to the domicile of the trust's 793  
beneficiaries. 794

(e) For the purposes of division (I)(3)(a)(i) of this 795  
section: 796

(i) A trust is described in division (I)(3)(e)(i) of this 797  
section if the trust is a testamentary trust and the testator of 798  
that testamentary trust was domiciled in this state at the time of 799  
the testator's death for purposes of the taxes levied under 800  
Chapter 5731. of the Revised Code. 801

(ii) A trust is described in division (I)(3)(e)(ii) of this 802  
section if the transfer is a qualifying transfer described in any 803  
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 804  
irrevocable inter vivos trust, and at least one of the trust's 805  
qualifying beneficiaries is domiciled in this state for purposes 806  
of this chapter during all or some portion of the trust's current 807  
taxable year. 808

(f) For the purposes of division (I)(3)(e)(ii) of this 809  
section, a "qualifying transfer" is a transfer of assets, net of 810

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 at any time prior to the date of the decedent's death, and the decedent was domiciled in this state at the time of death for purposes of the taxes levied under Chapter 5731. of the Revised Code.

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

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

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

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

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

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

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

(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.

(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.

(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.

(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.

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

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

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

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

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

(1) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, 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, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section:

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

(b) The net amount is attributable to the S portion of an

electing small business trust for the taxable year.	903
(2) Add interest or dividends, net of ordinary, necessary,	904
and reasonable expenses not deducted in computing federal taxable	905
income, on obligations of any authority, commission,	906
instrumentality, territory, or possession of the United States to	907
the extent that the interest or dividends are exempt from federal	908
income taxes but not from state income taxes, but only to the	909
extent that such net amount is not otherwise includible in Ohio	910
taxable income and is described in either division (S)(1)(a) or	911
(b) of this section;	912
(3) Add the amount of personal exemption allowed to the	913
estate pursuant to section 642(b) of the Internal Revenue Code;	914
(4) Deduct interest or dividends, net of related expenses	915
deducted in computing federal taxable income, on obligations of	916
the United States and its territories and possessions or of any	917
authority, commission, or instrumentality of the United States to	918
the extent that the interest or dividends are exempt from state	919
taxes under the laws of the United States, but only to the extent	920
that such amount is included in federal taxable income and is	921
described in either division (S)(1)(a) or (b) of this section;	922
(5) Deduct the amount of wages and salaries, if any, not	923
otherwise allowable as a deduction but that would have been	924
allowable as a deduction in computing federal taxable income for	925
the taxable year, had the targeted jobs credit allowed under	926
sections 38, 51, and 52 of the Internal Revenue Code not been in	927
effect, but only to the extent such amount relates either to	928
income included in federal taxable income for the taxable year or	929
to income of the S portion of an electing small business trust for	930
the taxable year;	931
(6) Deduct any interest or interest equivalent, net of	932
related expenses deducted in computing federal taxable income, on	933

public obligations and purchase obligations, but only to the 934  
extent that such net amount relates either to income included in 935  
federal taxable income for the taxable year or to income of the S 936  
portion of an electing small business trust for the taxable year; 937

(7) Add any loss or deduct any gain resulting from sale, 938  
exchange, or other disposition of public obligations to the extent 939  
that such loss has been deducted or such gain has been included in 940  
computing either federal taxable income or income of the S portion 941  
of an electing small business trust for the taxable year; 942

(8) Except in the case of the final return of an estate, add 943  
any amount deducted by the taxpayer on both its Ohio estate tax 944  
return pursuant to section 5731.14 of the Revised Code, and on its 945  
federal income tax return in determining federal taxable income; 946

(9)(a) Deduct any amount included in federal taxable income 947  
solely because the amount represents a reimbursement or refund of 948  
expenses that in a previous year the decedent had deducted as an 949  
itemized deduction pursuant to section 63 of the Internal Revenue 950  
Code and applicable treasury regulations. The deduction otherwise 951  
allowed under division (S)(9)(a) of this section shall be reduced 952  
to the extent the reimbursement is attributable to an amount the 953  
taxpayer or decedent deducted under this section in any taxable 954  
year. 955

(b) Add any amount not otherwise included in Ohio taxable 956  
income for any taxable year to the extent that the amount is 957  
attributable to the recovery during the taxable year of any amount 958  
deducted or excluded in computing federal or Ohio taxable income 959  
in any taxable year, but only to the extent such amount has not 960  
been distributed to beneficiaries for the taxable year. 961

(10) Deduct any portion of the deduction described in section 962  
1341(a)(2) of the Internal Revenue Code, for repaying previously 963  
reported income received under a claim of right, that meets both 964



of the following requirements: 965

(a) It is allowable for repayment of an item that was 966  
included in the taxpayer's taxable income or the decedent's 967  
adjusted gross income for a prior taxable year and did not qualify 968  
for a credit under division (A) or (B) of section 5747.05 of the 969  
Revised Code for that year. 970

(b) It does not otherwise reduce the taxpayer's taxable 971  
income or the decedent's adjusted gross income for the current or 972  
any other taxable year. 973

(11) Add any amount claimed as a credit under section 974  
5747.059 of the Revised Code to the extent that the amount 975  
satisfies either of the following: 976

(a) The amount was deducted or excluded from the computation 977  
of the taxpayer's federal taxable income as required to be 978  
reported for the taxpayer's taxable year under the Internal 979  
Revenue Code; 980

(b) The amount resulted in a reduction in the taxpayer's 981  
federal taxable income as required to be reported for any of the 982  
taxpayer's taxable years under the Internal Revenue Code. 983

(12) Deduct any amount, net of related expenses deducted in 984  
computing federal taxable income, that a trust is required to 985  
report as farm income on its federal income tax return, but only 986  
if the assets of the trust include at least ten acres of land 987  
satisfying the definition of "land devoted exclusively to 988  
agricultural use" under section 5713.30 of the Revised Code, 989  
regardless of whether the land is valued for tax purposes as such 990  
land under sections 5713.30 to 5713.38 of the Revised Code. If the 991  
trust is a pass-through entity investor, section 5747.231 of the 992  
Revised Code applies in ascertaining if the trust is eligible to 993  
claim the deduction provided by division (S)(12) of this section 994  
in connection with the pass-through entity's farm income. 995

Except for farm income attributable to the S portion of an 996  
electing small business trust, the deduction provided by division 997  
(S)(12) of this section is allowed only to the extent that the 998  
trust has not distributed such farm income. Division (S)(12) of 999  
this section applies only to taxable years of a trust beginning in 1000  
2002 or thereafter. 1001

(13) Add the net amount of income described in section 641(c) 1002  
of the Internal Revenue Code to the extent that amount is not 1003  
included in federal taxable income. 1004

(14) Add or deduct the amount the taxpayer would be required 1005  
to add or deduct under division (A)(20) or (21) of this section if 1006  
the taxpayer's Ohio taxable income were computed in the same 1007  
manner as an individual's Ohio adjusted gross income is computed 1008  
under this section. In the case of a trust, division (S)(14) of 1009  
this section applies only to any of the trust's taxable years 1010  
beginning in 2002 or thereafter. 1011

(T) "School district income" and "school district income tax" 1012  
have the same meanings as in section 5748.01 of the Revised Code. 1013

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 1014  
of this section, "public obligations," "purchase obligations," and 1015  
"interest or interest equivalent" have the same meanings as in 1016  
section 5709.76 of the Revised Code. 1017

(V) "Limited liability company" means any limited liability 1018  
company formed under Chapter 1705. of the Revised Code or under 1019  
the laws of any other state. 1020

(W) "Pass-through entity investor" means any person who, 1021  
during any portion of a taxable year of a pass-through entity, is 1022  
a partner, member, shareholder, or equity investor in that 1023  
pass-through entity. 1024

(X) "Banking day" has the same meaning as in section 1304.01 1025  
of the Revised Code. 1026

(Y) "Month" means a calendar month.	1027
(Z) "Quarter" means the first three months, the second three months, the third three months, or the last three months of the taxpayer's taxable year.	1028 1029 1030
(AA)(1) "Eligible institution" means a state university or state institution of higher education as defined in section 3345.011 of the Revised Code, or a private, nonprofit college, university, or other post-secondary institution located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code or a certificate of registration issued by the state board of career colleges and schools under Chapter 3332. of the Revised Code.	1031 1032 1033 1034 1035 1036 1037 1038 1039
(2) "Qualified tuition and fees" means tuition and fees imposed by an eligible institution as a condition of enrollment or attendance, not exceeding two thousand five hundred dollars in each of the individual's first two years of post-secondary education. If the individual is a part-time student, "qualified tuition and fees" includes tuition and fees paid for the academic equivalent of the first two years of post-secondary education during a maximum of five taxable years, not exceeding a total of five thousand dollars. "Qualified tuition and fees" does not include:	1040 1041 1042 1043 1044 1045 1046 1047 1048 1049
(a) Expenses for any course or activity involving sports, games, or hobbies unless the course or activity is part of the individual's degree or diploma program;	1050 1051 1052
(b) The cost of books, room and board, student activity fees, athletic fees, insurance expenses, or other expenses unrelated to the individual's academic course of instruction;	1053 1054 1055
(c) Tuition, fees, or other expenses paid or reimbursed through an employer, scholarship, grant in aid, or other	1056 1057

educational benefit program. 1058

(BB)(1) "Modified business income" means the business income 1059  
included in a trust's Ohio taxable income after such taxable 1060  
income is first reduced by the qualifying trust amount, if any. 1061

(2) "Qualifying trust amount" of a trust means capital gains 1062  
and losses from the sale, exchange, or other disposition of equity 1063  
or ownership interests in, or debt obligations of, a qualifying 1064  
investee to the extent included in the trust's Ohio taxable 1065  
income, but only if the following requirements are satisfied: 1066

(a) The book value of the qualifying investee's physical 1067  
assets in this state and everywhere, as of the last day of the 1068  
qualifying investee's fiscal or calendar year ending immediately 1069  
prior to the date on which the trust recognizes the gain or loss, 1070  
is available to the trust. 1071

(b) The requirements of section 5747.011 of the Revised Code 1072  
are satisfied for the trust's taxable year in which the trust 1073  
recognizes the gain or loss. 1074

Any gain or loss that is not a qualifying trust amount is 1075  
modified business income, qualifying investment income, or 1076  
modified nonbusiness income, as the case may be. 1077

(3) "Modified nonbusiness income" means a trust's Ohio 1078  
taxable income other than modified business income, other than the 1079  
qualifying trust amount, and other than qualifying investment 1080  
income, as defined in section 5747.012 of the Revised Code, to the 1081  
extent such qualifying investment income is not otherwise part of 1082  
modified business income. 1083

(4) "Modified Ohio taxable income" applies only to trusts, 1084  
and means the sum of the amounts described in divisions (BB)(4)(a) 1085  
to (c) of this section: 1086

(a) The fraction, calculated under section 5747.013, and 1087

applying section 5747.231 of the Revised Code, multiplied by the 1088  
sum of the following amounts: 1089

(i) The trust's modified business income; 1090

(ii) The trust's qualifying investment income, as defined in 1091  
section 5747.012 of the Revised Code, but only to the extent the 1092  
qualifying investment income does not otherwise constitute 1093  
modified business income and does not otherwise constitute a 1094  
qualifying trust amount. 1095

(b) The qualifying trust amount multiplied by a fraction, the 1096  
numerator of which is the sum of the book value of the qualifying 1097  
investee's physical assets in this state on the last day of the 1098  
qualifying investee's fiscal or calendar year ending immediately 1099  
prior to the day on which the trust recognizes the qualifying 1100  
trust amount, and the denominator of which is the sum of the book 1101  
value of the qualifying investee's total physical assets 1102  
everywhere on the last day of the qualifying investee's fiscal or 1103  
calendar year ending immediately prior to the day on which the 1104  
trust recognizes the qualifying trust amount. If, for a taxable 1105  
year, the trust recognizes a qualifying trust amount with respect 1106  
to more than one qualifying investee, the amount described in 1107  
division (BB)(4)(b) of this section shall equal the sum of the 1108  
products so computed for each such qualifying investee. 1109

(c)(i) With respect to a trust or portion of a trust that is 1110  
a resident as ascertained in accordance with division (I)(3)(d) of 1111  
this section, its modified nonbusiness income. 1112

(ii) With respect to a trust or portion of a trust that is 1113  
not a resident as ascertained in accordance with division 1114  
(I)(3)(d) of this section, the amount of its modified nonbusiness 1115  
income satisfying the descriptions in divisions (B)(2) to (5) of 1116  
section 5747.20 of the Revised Code, except as otherwise provided 1117  
in division (BB)(4)(c)(ii) of this section. With respect to a 1118

trust or portion of a trust that is not a resident as ascertained 1119  
in accordance with division (I)(3)(d) of this section, the trust's 1120  
portion of modified nonbusiness income recognized from the sale, 1121  
exchange, or other disposition of a debt interest in or equity 1122  
interest in a section 5747.212 entity, as defined in section 1123  
5747.212 of the Revised Code, without regard to division (A) of 1124  
that section, shall not be allocated to this state in accordance 1125  
with section 5747.20 of the Revised Code but shall be apportioned 1126  
to this state in accordance with division (B) of section 5747.212 1127  
of the Revised Code without regard to division (A) of that 1128  
section. 1129

If the allocation and apportionment of a trust's income under 1130  
divisions (BB)(4)(a) and (c) of this section do not fairly 1131  
represent the modified Ohio taxable income of the trust in this 1132  
state, the alternative methods described in division (C) of 1133  
section 5747.21 of the Revised Code may be applied in the manner 1134  
and to the same extent provided in that section. 1135

(5)(a) Except as set forth in division (BB)(5)(b) of this 1136  
section, "qualifying investee" means a person in which a trust has 1137  
an equity or ownership interest, or a person or unit of government 1138  
the debt obligations of either of which are owned by a trust. For 1139  
the purposes of division (BB)(2)(a) of this section and for the 1140  
purpose of computing the fraction described in division (BB)(4)(b) 1141  
of this section, all of the following apply: 1142

(i) If the qualifying investee is a member of a qualifying 1143  
controlled group on the last day of the qualifying investee's 1144  
fiscal or calendar year ending immediately prior to the date on 1145  
which the trust recognizes the gain or loss, then "qualifying 1146  
investee" includes all persons in the qualifying controlled group 1147  
on such last day. 1148

(ii) If the qualifying investee, or if the qualifying 1149  
investee and any members of the qualifying controlled group of 1150

which the qualifying investee is a member on the last day of the 1151  
qualifying investee's fiscal or calendar year ending immediately 1152  
prior to the date on which the trust recognizes the gain or loss, 1153  
separately or cumulatively own, directly or indirectly, on the 1154  
last day of the qualifying investee's fiscal or calendar year 1155  
ending immediately prior to the date on which the trust recognizes 1156  
the qualifying trust amount, more than fifty per cent of the 1157  
equity of a pass-through entity, then the qualifying investee and 1158  
the other members are deemed to own the proportionate share of the 1159  
pass-through entity's physical assets which the pass-through 1160  
entity directly or indirectly owns on the last day of the 1161  
pass-through entity's calendar or fiscal year ending within or 1162  
with the last day of the qualifying investee's fiscal or calendar 1163  
year ending immediately prior to the date on which the trust 1164  
recognizes the qualifying trust amount. 1165

(iii) For the purposes of division (BB)(5)(a)(iii) of this 1166  
section, "upper level pass-through entity" means a pass-through 1167  
entity directly or indirectly owning any equity of another 1168  
pass-through entity, and "lower level pass-through entity" means 1169  
that other pass-through entity. 1170

An upper level pass-through entity, whether or not it is also 1171  
a qualifying investee, is deemed to own, on the last day of the 1172  
upper level pass-through entity's calendar or fiscal year, the 1173  
proportionate share of the lower level pass-through entity's 1174  
physical assets that the lower level pass-through entity directly 1175  
or indirectly owns on the last day of the lower level pass-through 1176  
entity's calendar or fiscal year ending within or with the last 1177  
day of the upper level pass-through entity's fiscal or calendar 1178  
year. If the upper level pass-through entity directly and 1179  
indirectly owns less than fifty per cent of the equity of the 1180  
lower level pass-through entity on each day of the upper level 1181  
pass-through entity's calendar or fiscal year in which or with 1182

which ends the calendar or fiscal year of the lower level 1183  
pass-through entity and if, based upon clear and convincing 1184  
evidence, complete information about the location and cost of the 1185  
physical assets of the lower pass-through entity is not available 1186  
to the upper level pass-through entity, then solely for purposes 1187  
of ascertaining if a gain or loss constitutes a qualifying trust 1188  
amount, the upper level pass-through entity shall be deemed as 1189  
owning no equity of the lower level pass-through entity for each 1190  
day during the upper level pass-through entity's calendar or 1191  
fiscal year in which or with which ends the lower level 1192  
pass-through entity's calendar or fiscal year. Nothing in division 1193  
(BB)(5)(a)(iii) of this section shall be construed to provide for 1194  
any deduction or exclusion in computing any trust's Ohio taxable 1195  
income. 1196

(b) With respect to a trust that is not a resident for the 1197  
taxable year and with respect to a part of a trust that is not a 1198  
resident for the taxable year, "qualifying investee" for that 1199  
taxable year does not include a C corporation if both of the 1200  
following apply: 1201

(i) During the taxable year the trust or part of the trust 1202  
recognizes a gain or loss from the sale, exchange, or other 1203  
disposition of equity or ownership interests in, or debt 1204  
obligations of, the C corporation. 1205

(ii) Such gain or loss constitutes nonbusiness income. 1206

(6) "Available" means information is such that a person is 1207  
able to learn of the information by the due date plus extensions, 1208  
if any, for filing the return for the taxable year in which the 1209  
trust recognizes the gain or loss. 1210

(CC) "Qualifying controlled group" has the same meaning as in 1211  
section 5733.04 of the Revised Code. 1212

(DD) "Related member" has the same meaning as in section 1213



5733.042 of the Revised Code.	1214
(EE)(1) For the purposes of division (EE) of this section:	1215
(a) "Qualifying person" means any person other than a qualifying corporation.	1216 1217
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	1218 1219 1220
(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year;	1221 1222 1223 1224
(ii) A subsidiary that is wholly owned by any corporation that has made an election under subchapter S, chapter one, subtitle A of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year.	1225 1226 1227 1228
(2) For the purposes of this chapter, unless expressly stated otherwise, no qualifying person indirectly owns any asset directly or indirectly owned by any qualifying corporation.	1229 1230 1231
(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:	1232 1233
(1) "Trust" does not include a qualified pre-income tax trust.	1234 1235
(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.	1236 1237 1238
(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,	1239 1240 1241 1242 1243

five per cent or more of the ownership or equity interests. The 1244  
trustee shall notify the tax commissioner in writing of the 1245  
election on or before April 15, 2006. The election, if timely 1246  
made, shall be effective on and after January 1, 2006, and shall 1247  
apply for all tax periods and tax years until revoked by the 1248  
trustee of the trust. 1249

(4) A "pre-income tax trust" is a trust that satisfies all of 1250  
the following requirements: 1251

(a) The document or instrument creating the trust was 1252  
executed by the grantor before January 1, 1972; 1253

(b) The trust became irrevocable upon the creation of the 1254  
trust; and 1255

(c) The grantor was domiciled in this state at the time the 1256  
trust was created. 1257

**Sec. 5815.31.** Unless the trust or separation agreement 1258  
provides otherwise, if, after executing a trust in which the 1259  
grantor reserves to self a power to alter, amend, revoke, or 1260  
terminate the provisions of the trust, a grantor is divorced, 1261  
obtains a dissolution of marriage, has the grantor's marriage 1262  
annulled, or, upon actual separation from the grantor's spouse, 1263  
enters into a separation agreement pursuant to which the parties 1264  
intend to fully and finally settle their prospective property 1265  
rights in the property of the other, whether by expected 1266  
inheritance or otherwise, the spouse or former spouse of the 1267  
grantor shall be deemed to have predeceased the grantor, and any 1268  
provision in the trust conferring any beneficial interest or a 1269  
general or special power of appointment on the spouse or former 1270  
spouse or nominating the spouse or former spouse as trustee or 1271  
trust advisor shall be revoked. If the grantor remarries the 1272  
grantor's former spouse or if the separation agreement is 1273  
terminated, the spouse shall not be deemed to have predeceased the 1274

grantor, and any provision in the trust conferring any beneficial 1275  
interest or a general or special power of appointment on the 1276  
spouse or former spouse or nominating the spouse or former spouse 1277  
as trustee or trust advisor shall not be revoked. 1278

**Section 2.** That existing sections 2101.16, 2107.76, 2111.05, 1279  
2111.18, 2305.19, 5747.01, and 5815.31 of the Revised Code are 1280  
hereby repealed. 1281