

**As Introduced**

**128th General Assembly  
Regular Session  
2009-2010**

**S. B. No. 279**

**Senator Kearney**

—

**A B I L L**

To amend section 5747.01 of the Revised Code to 1  
exempt from taxation gains from the sale of Ohio 2  
property used in a trade or business and held for 3  
at least two years. 4

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

**Section 1.** That section 5747.01 of the Revised Code be 5  
amended to read as follows: 6

**Sec. 5747.01.** Except as otherwise expressly provided or 7  
clearly appearing from the context, any term used in this chapter 8  
that is not otherwise defined in this section has the same meaning 9  
as when used in a comparable context in the laws of the United 10  
States relating to federal income taxes or if not used in a 11  
comparable context in those laws, has the same meaning as in 12  
section 5733.40 of the Revised Code. Any reference in this chapter 13  
to the Internal Revenue Code includes other laws of the United 14  
States relating to federal income taxes. 15

As used in this chapter: 16

(A) "Adjusted gross income" or "Ohio adjusted gross income" 17  
means federal adjusted gross income, as defined and used in the 18  
Internal Revenue Code, adjusted as provided in this section: 19

(1) Add interest or dividends on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities.	20 21 22
(2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes.	23 24 25 26 27
(3) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.	28 29 30 31 32 33
(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.	34 35
(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.	36 37 38 39
(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. "Undistributed net income of a trust" means the taxable income of the trust increased by (a)(i) the additions to adjusted gross	40 41 42 43 44 45 46 47 48 49 50

income required under division (A) of this section and (ii) the 51  
personal exemptions allowed to the trust pursuant to section 52  
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 53  
deductions to adjusted gross income required under division (A) of 54  
this section, (ii) the amount of federal income taxes attributable 55  
to such income, and (iii) the amount of taxable income that has 56  
been included in the adjusted gross income of a beneficiary by 57  
reason of a prior accumulation distribution. Any undistributed net 58  
income included in the adjusted gross income of a beneficiary 59  
shall reduce the undistributed net income of the trust commencing 60  
with the earliest years of the accumulation period. 61

(7) Deduct the amount of wages and salaries, if any, not 62  
otherwise allowable as a deduction but that would have been 63  
allowable as a deduction in computing federal adjusted gross 64  
income for the taxable year, had the targeted jobs credit allowed 65  
and determined under sections 38, 51, and 52 of the Internal 66  
Revenue Code not been in effect. 67

(8) Deduct any interest or interest equivalent on public 68  
obligations and purchase obligations to the extent that the 69  
interest or interest equivalent is included in federal adjusted 70  
gross income. 71

(9) Add any loss or deduct any gain resulting from the sale, 72  
exchange, or other disposition of public obligations to the extent 73  
that the loss has been deducted or the gain has been included in 74  
computing federal adjusted gross income. 75

(10) Deduct or add amounts, as provided under section 5747.70 76  
of the Revised Code, related to contributions to variable college 77  
savings program accounts made or tuition units purchased pursuant 78  
to Chapter 3334. of the Revised Code. 79

(11)(a) Deduct, to the extent not otherwise allowable as a 80  
deduction or exclusion in computing federal or Ohio adjusted gross 81

income for the taxable year, the amount the taxpayer paid during 82  
the taxable year for medical care insurance and qualified 83  
long-term care insurance for the taxpayer, the taxpayer's spouse, 84  
and dependents. No deduction for medical care insurance under 85  
division (A)(11) of this section shall be allowed either to any 86  
taxpayer who is eligible to participate in any subsidized health 87  
plan maintained by any employer of the taxpayer or of the 88  
taxpayer's spouse, or to any taxpayer who is entitled to, or on 89  
application would be entitled to, benefits under part A of Title 90  
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 91  
301, as amended. For the purposes of division (A)(11)(a) of this 92  
section, "subsidized health plan" means a healthplan for which 93  
the employer pays any portion of the plan's cost. The deduction 94  
allowed under division (A)(11)(a) of this section shall be the net 95  
of any related premium refunds, related premium reimbursements, or 96  
related insurance premium dividends received during the taxable 97  
year. 98

(b) Deduct, to the extent not otherwise deducted or excluded 99  
in computing federal or Ohio adjusted gross income during the 100  
taxable year, the amount the taxpayer paid during the taxable 101  
year, not compensated for by any insurance or otherwise, for 102  
medical care of the taxpayer, the taxpayer's spouse, and 103  
dependents, to the extent the expenses exceed seven and one-half 104  
per cent of the taxpayer's federal adjusted gross income. 105

(c) Deduct, to the extent not otherwise deducted or excluded 106  
in computing federal or Ohio adjusted gross income, any amount 107  
included in federal adjusted gross income under section 105 or not 108  
excluded under section 106 of the Internal Revenue Code solely 109  
because it relates to an accident and health plan for a person who 110  
otherwise would be a "qualifying relative" and thus a "dependent" 111  
under section 152 of the Internal Revenue Code but for the fact 112  
that the person fails to meet the income and support limitations 113

under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 114

(d) For purposes of division (A)(11) of this section, 115  
"medical care" has the meaning given in section 213 of the 116  
Internal Revenue Code, subject to the special rules, limitations, 117  
and exclusions set forth therein, and "qualified long-term care" 118  
has the same meaning given in section 7702B(c) of the Internal 119  
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 120  
of this section, "dependent" includes a person who otherwise would 121  
be a "qualifying relative" and thus a "dependent" under section 122  
152 of the Internal Revenue Code but for the fact that the person 123  
fails to meet the income and support limitations under section 124  
152(d)(1)(B) and (C) of the Internal Revenue Code. 125

(12)(a) Deduct any amount included in federal adjusted gross 126  
income solely because the amount represents a reimbursement or 127  
refund of expenses that in any year the taxpayer had deducted as 128  
an itemized deduction pursuant to section 63 of the Internal 129  
Revenue Code and applicable United States department of the 130  
treasury regulations. The deduction otherwise allowed under 131  
division (A)(12)(a) of this section shall be reduced to the extent 132  
the reimbursement is attributable to an amount the taxpayer 133  
deducted under this section in any taxable year. 134

(b) Add any amount not otherwise included in Ohio adjusted 135  
gross income for any taxable year to the extent that the amount is 136  
attributable to the recovery during the taxable year of any amount 137  
deducted or excluded in computing federal or Ohio adjusted gross 138  
income in any taxable year. 139

(13) Deduct any portion of the deduction described in section 140  
1341(a)(2) of the Internal Revenue Code, for repaying previously 141  
reported income received under a claim of right, that meets both 142  
of the following requirements: 143

(a) It is allowable for repayment of an item that was 144

included in the taxpayer's adjusted gross income for a prior 145  
taxable year and did not qualify for a credit under division (A) 146  
or (B) of section 5747.05 of the Revised Code for that year; 147

(b) It does not otherwise reduce the taxpayer's adjusted 148  
gross income for the current or any other taxable year. 149

(14) Deduct an amount equal to the deposits made to, and net 150  
investment earnings of, a medical savings account during the 151  
taxable year, in accordance with section 3924.66 of the Revised 152  
Code. The deduction allowed by division (A)(14) of this section 153  
does not apply to medical savings account deposits and earnings 154  
otherwise deducted or excluded for the current or any other 155  
taxable year from the taxpayer's federal adjusted gross income. 156

(15)(a) Add an amount equal to the funds withdrawn from a 157  
medical savings account during the taxable year, and the net 158  
investment earnings on those funds, when the funds withdrawn were 159  
used for any purpose other than to reimburse an account holder 160  
for, or to pay, eligible medical expenses, in accordance with 161  
section 3924.66 of the Revised Code; 162

(b) Add the amounts distributed from a medical savings 163  
account under division (A)(2) of section 3924.68 of the Revised 164  
Code during the taxable year. 165

(16) Add any amount claimed as a credit under section 166  
5747.059 of the Revised Code to the extent that such amount 167  
satisfies either of the following: 168

(a) The amount was deducted or excluded from the computation 169  
of the taxpayer's federal adjusted gross income as required to be 170  
reported for the taxpayer's taxable year under the Internal 171  
Revenue Code; 172

(b) The amount resulted in a reduction of the taxpayer's 173  
federal adjusted gross income as required to be reported for any 174  
of the taxpayer's taxable years under the Internal Revenue Code. 175

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

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

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

(20)(a)(i) Add five-sixths of the amount of depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code, including the taxpayer's proportionate or

distributive share of the amount of depreciation expense allowed 208  
by that subsection to a pass-through entity in which the taxpayer 209  
has a direct or indirect ownership interest. 210

(ii) Add five-sixths of the amount of qualifying section 179 211  
depreciation expense, including a person's proportionate or 212  
distributive share of the amount of qualifying section 179 213  
depreciation expense allowed to any pass-through entity in which 214  
the person has a direct or indirect ownership. For the purposes of 215  
this division, "qualifying section 179 depreciation expense" means 216  
the difference between (I) the amount of depreciation expense 217  
directly or indirectly allowed to the taxpayer under section 179 218  
of the Internal Revenue Code, and (II) the amount of depreciation 219  
expense directly or indirectly allowed to the taxpayer under 220  
section 179 of the Internal Revenue Code as that section existed 221  
on December 31, 2002. 222

The tax commissioner, under procedures established by the 223  
commissioner, may waive the add-backs related to a pass-through 224  
entity if the taxpayer owns, directly or indirectly, less than 225  
five per cent of the pass-through entity. 226

(b) Nothing in division (A)(20) of this section shall be 227  
construed to adjust or modify the adjusted basis of any asset. 228

(c) To the extent the add-back required under division 229  
(A)(20)(a) of this section is attributable to property generating 230  
nonbusiness income or loss allocated under section 5747.20 of the 231  
Revised Code, the add-back shall be situated to the same location 232  
as the nonbusiness income or loss generated by the property for 233  
the purpose of determining the credit under division (A) of 234  
section 5747.05 of the Revised Code. Otherwise, the add-back shall 235  
be apportioned, subject to one or more of the four alternative 236  
methods of apportionment enumerated in section 5747.21 of the 237  
Revised Code. 238



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

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

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

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

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

(23) Deduct, to the extent not otherwise deducted or excluded 270  
in computing federal or Ohio adjusted gross income for the taxable 271  
year, the amount the taxpayer received during the taxable year as 272  
a death benefit paid by the adjutant general under section 5919.33 273  
of the Revised Code. 274

(24) Deduct, to the extent included in federal adjusted gross 275  
income and not otherwise allowable as a deduction or exclusion in 276  
computing federal or Ohio adjusted gross income for the taxable 277  
year, military pay and allowances received by the taxpayer during 278  
the taxable year for active duty service in the United States 279  
army, air force, navy, marine corps, or coast guard or reserve 280  
components thereof or the national guard. The deduction may not be 281  
claimed for military pay and allowances received by the taxpayer 282  
while the taxpayer is stationed in this state. 283

(25) Deduct, to the extent not otherwise allowable as a 284  
deduction or exclusion in computing federal or Ohio adjusted gross 285  
income for the taxable year and not otherwise compensated for by 286  
any other source, the amount of qualified organ donation expenses 287  
incurred by the taxpayer during the taxable year, not to exceed 288  
ten thousand dollars. A taxpayer may deduct qualified organ 289  
donation expenses only once for all taxable years beginning with 290  
taxable years beginning in 2007. 291

For the purposes of division (A)(25) of this section: 292

(a) "Human organ" means all or any portion of a human liver, 293  
pancreas, kidney, intestine, or lung, and any portion of human 294  
bone marrow. 295

(b) "Qualified organ donation expenses" means travel 296  
expenses, lodging expenses, and wages and salary forgone by a 297  
taxpayer in connection with the taxpayer's donation, while living, 298  
of one or more of the taxpayer's human organs to another human 299  
being. 300

(26) Deduct, to the extent not otherwise deducted or excluded 301  
in computing federal or Ohio adjusted gross income for the taxable 302  
year, amounts received by the taxpayer as retired military 303  
personnel pay for service in the United States army, navy, air 304  
force, coast guard, or marine corps or reserve components thereof, 305  
or the national guard, or received by the surviving spouse or 306  
former spouse of such a taxpayer under the survivor benefit plan 307  
on account of such a taxpayer's death. If the taxpayer receives 308  
income on account of retirement paid under the federal civil 309  
service retirement system or federal employees retirement system, 310  
or under any successor retirement program enacted by the congress 311  
of the United States that is established and maintained for 312  
retired employees of the United States government, and such 313  
retirement income is based, in whole or in part, on credit for the 314  
taxpayer's military service, the deduction allowed under this 315  
division shall include only that portion of such retirement income 316  
that is attributable to the taxpayer's military service, to the 317  
extent that portion of such retirement income is otherwise 318  
included in federal adjusted gross income and is not otherwise 319  
deducted under this section. Any amount deducted under division 320  
(A)(26) of this section is not included in a taxpayer's adjusted 321  
gross income for the purposes of section 5747.055 of the Revised 322  
Code. No amount may be deducted under division (A)(26) of this 323  
section on the basis of which a credit was claimed under section 324  
5747.055 of the Revised Code. 325

(27) Deduct, to the extent not otherwise deducted or excluded 326  
in computing federal or Ohio adjusted gross income for the taxable 327  
year, the amount the taxpayer received during the taxable year 328  
from the military injury relief fund created in section 5101.98 of 329  
the Revised Code. 330

(28) Deduct, to the extent not otherwise deducted or excluded 331  
in computing federal or Ohio adjusted gross income, any gain 332

realized by the taxpayer from the sale, exchange, or involuntary 333  
conversion of section 1245 property or section 1250 property 334  
during the taxable year, including the taxpayer's distributive or 335  
proportionate share of any such gain realized by a pass-through 336  
entity in which the taxpayer has a direct or indirect ownership 337  
interest, to the extent the gain is apportionable or allocable to 338  
this state under sections 5747.20 to 5747.23 of the Revised Code. 339  
For purposes of division (A)(28) of this section, "section 1245 340  
property" and "section 1250 property" have the same meanings as in 341  
sections 1245 and 1250 of the Internal Revenue Code, respectively, 342  
except the property disposed of must have been purchased in 2011 343  
or 2012 from a person located in Ohio and held by the taxpayer or 344  
pass-through entity for at least two years. 345

(B) "Business income" means income, including gain or loss, 346  
arising from transactions, activities, and sources in the regular 347  
course of a trade or business and includes income, gain, or loss 348  
from real property, tangible property, and intangible property if 349  
the acquisition, rental, management, and disposition of the 350  
property constitute integral parts of the regular course of a 351  
trade or business operation. "Business income" includes income, 352  
including gain or loss, from a partial or complete liquidation of 353  
a business, including, but not limited to, gain or loss from the 354  
sale or other disposition of goodwill. 355

(C) "Nonbusiness income" means all income other than business 356  
income and may include, but is not limited to, compensation, rents 357  
and royalties from real or tangible personal property, capital 358  
gains, interest, dividends and distributions, patent or copyright 359  
royalties, or lottery winnings, prizes, and awards. 360

(D) "Compensation" means any form of remuneration paid to an 361  
employee for personal services. 362

(E) "Fiduciary" means a guardian, trustee, executor, 363  
administrator, receiver, conservator, or any other person acting 364

in any fiduciary capacity for any individual, trust, or estate. 365

(F) "Fiscal year" means an accounting period of twelve months 366  
ending on the last day of any month other than December. 367

(G) "Individual" means any natural person. 368

(H) "Internal Revenue Code" means the "Internal Revenue Code 369  
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 370

(I) "Resident" means any of the following, provided that 371  
division (I)(3) of this section applies only to taxable years of a 372  
trust beginning in 2002 or thereafter: 373

(1) An individual who is domiciled in this state, subject to 374  
section 5747.24 of the Revised Code; 375

(2) The estate of a decedent who at the time of death was 376  
domiciled in this state. The domicile tests of section 5747.24 of 377  
the Revised Code are not controlling for purposes of division 378  
(I)(2) of this section. 379

(3) A trust that, in whole or part, resides in this state. If 380  
only part of a trust resides in this state, the trust is a 381  
resident only with respect to that part. 382

For the purposes of division (I)(3) of this section: 383

(a) A trust resides in this state for the trust's current 384  
taxable year to the extent, as described in division (I)(3)(d) of 385  
this section, that the trust consists directly or indirectly, in 386  
whole or in part, of assets, net of any related liabilities, that 387  
were transferred, or caused to be transferred, directly or 388  
indirectly, to the trust by any of the following: 389

(i) A person, a court, or a governmental entity or 390  
instrumentality on account of the death of a decedent, but only if 391  
the trust is described in division (I)(3)(e)(i) or (ii) of this 392  
section; 393

(ii) A person who was domiciled in this state for the 394

purposes of this chapter when the person directly or indirectly 395  
transferred assets to an irrevocable trust, but only if at least 396  
one of the trust's qualifying beneficiaries is domiciled in this 397  
state for the purposes of this chapter during all or some portion 398  
of the trust's current taxable year; 399

(iii) A person who was domiciled in this state for the 400  
purposes of this chapter when the trust document or instrument or 401  
part of the trust document or instrument became irrevocable, but 402  
only if at least one of the trust's qualifying beneficiaries is a 403  
resident domiciled in this state for the purposes of this chapter 404  
during all or some portion of the trust's current taxable year. If 405  
a trust document or instrument became irrevocable upon the death 406  
of a person who at the time of death was domiciled in this state 407  
for purposes of this chapter, that person is a person described in 408  
division (I)(3)(a)(iii) of this section. 409

(b) A trust is irrevocable to the extent that the transferor 410  
is not considered to be the owner of the net assets of the trust 411  
under sections 671 to 678 of the Internal Revenue Code. 412

(c) With respect to a trust other than a charitable lead 413  
trust, "qualifying beneficiary" has the same meaning as "potential 414  
current beneficiary" as defined in section 1361(e)(2) of the 415  
Internal Revenue Code, and with respect to a charitable lead trust 416  
"qualifying beneficiary" is any current, future, or contingent 417  
beneficiary, but with respect to any trust "qualifying 418  
beneficiary" excludes a person or a governmental entity or 419  
instrumentality to any of which a contribution would qualify for 420  
the charitable deduction under section 170 of the Internal Revenue 421  
Code. 422

(d) For the purposes of division (I)(3)(a) of this section, 423  
the extent to which a trust consists directly or indirectly, in 424  
whole or in part, of assets, net of any related liabilities, that 425  
were transferred directly or indirectly, in whole or part, to the 426

trust by any of the sources enumerated in that division shall be 427  
ascertained by multiplying the fair market value of the trust's 428  
assets, net of related liabilities, by the qualifying ratio, which 429  
shall be computed as follows: 430

(i) The first time the trust receives assets, the numerator 431  
of the qualifying ratio is the fair market value of those assets 432  
at that time, net of any related liabilities, from sources 433  
enumerated in division (I)(3)(a) of this section. The denominator 434  
of the qualifying ratio is the fair market value of all the 435  
trust's assets at that time, net of any related liabilities. 436

(ii) Each subsequent time the trust receives assets, a 437  
revised qualifying ratio shall be computed. The numerator of the 438  
revised qualifying ratio is the sum of (1) the fair market value 439  
of the trust's assets immediately prior to the subsequent 440  
transfer, net of any related liabilities, multiplied by the 441  
qualifying ratio last computed without regard to the subsequent 442  
transfer, and (2) the fair market value of the subsequently 443  
transferred assets at the time transferred, net of any related 444  
liabilities, from sources enumerated in division (I)(3)(a) of this 445  
section. The denominator of the revised qualifying ratio is the 446  
fair market value of all the trust's assets immediately after the 447  
subsequent transfer, net of any related liabilities. 448

(iii) Whether a transfer to the trust is by or from any of 449  
the sources enumerated in division (I)(3)(a) of this section shall 450  
be ascertained without regard to the domicile of the trust's 451  
beneficiaries. 452

(e) For the purposes of division (I)(3)(a)(i) of this 453  
section: 454

(i) A trust is described in division (I)(3)(e)(i) of this 455  
section if the trust is a testamentary trust and the testator of 456  
that testamentary trust was domiciled in this state at the time of 457

the testator's death for purposes of the taxes levied under 458  
Chapter 5731. of the Revised Code. 459

(ii) A trust is described in division (I)(3)(e)(ii) of this 460  
section if the transfer is a qualifying transfer described in any 461  
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 462  
irrevocable inter vivos trust, and at least one of the trust's 463  
qualifying beneficiaries is domiciled in this state for purposes 464  
of this chapter during all or some portion of the trust's current 465  
taxable year. 466

(f) For the purposes of division (I)(3)(e)(ii) of this 467  
section, a "qualifying transfer" is a transfer of assets, net of 468  
any related liabilities, directly or indirectly to a trust, if the 469  
transfer is described in any of the following: 470

(i) The transfer is made to a trust, created by the decedent 471  
before the decedent's death and while the decedent was domiciled 472  
in this state for the purposes of this chapter, and, prior to the 473  
death of the decedent, the trust became irrevocable while the 474  
decedent was domiciled in this state for the purposes of this 475  
chapter. 476

(ii) The transfer is made to a trust to which the decedent, 477  
prior to the decedent's death, had directly or indirectly 478  
transferred assets, net of any related liabilities, while the 479  
decedent was domiciled in this state for the purposes of this 480  
chapter, and prior to the death of the decedent the trust became 481  
irrevocable while the decedent was domiciled in this state for the 482  
purposes of this chapter. 483

(iii) The transfer is made on account of a contractual 484  
relationship existing directly or indirectly between the 485  
transferor and either the decedent or the estate of the decedent 486  
at any time prior to the date of the decedent's death, and the 487  
decedent was domiciled in this state at the time of death for 488



purposes of the taxes levied under Chapter 5731. of the Revised Code. 489  
490

(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. 491  
492  
493  
494  
495

(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. 496  
497  
498  
499

(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. 500  
501  
502  
503  
504  
505

(g) The tax commissioner may adopt rules to ascertain the part of a trust residing in this state. 506  
507

(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. 508  
509  
510  
511

(K) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code. 512  
513

(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. 514  
515  
516  
517

(M) "Taxable year" means the calendar year or the taxpayer's 518

fiscal year ending during the calendar year, or fractional part 519  
thereof, upon which the adjusted gross income is calculated 520  
pursuant to this chapter. 521

(N) "Taxpayer" means any person subject to the tax imposed by 522  
section 5747.02 of the Revised Code or any pass-through entity 523  
that makes the election under division (D) of section 5747.08 of 524  
the Revised Code. 525

(O) "Dependents" means dependents as defined in the Internal 526  
Revenue Code and as claimed in the taxpayer's federal income tax 527  
return for the taxable year or which the taxpayer would have been 528  
permitted to claim had the taxpayer filed a federal income tax 529  
return. 530

(P) "Principal county of employment" means, in the case of a 531  
nonresident, the county within the state in which a taxpayer 532  
performs services for an employer or, if those services are 533  
performed in more than one county, the county in which the major 534  
portion of the services are performed. 535

(Q) As used in sections 5747.50 to 5747.55 of the Revised 536  
Code: 537

(1) "Subdivision" means any county, municipal corporation, 538  
park district, or township. 539

(2) "Essential local government purposes" includes all 540  
functions that any subdivision is required by general law to 541  
exercise, including like functions that are exercised under a 542  
charter adopted pursuant to the Ohio Constitution. 543

(R) "Overpayment" means any amount already paid that exceeds 544  
the figure determined to be the correct amount of the tax. 545

(S) "Taxable income" or "Ohio taxable income" applies only to 546  
estates and trusts, and means federal taxable income, as defined 547  
and used in the Internal Revenue Code, adjusted as follows: 548

(1) Add interest or dividends, net of ordinary, necessary, 549  
and reasonable expenses not deducted in computing federal taxable 550  
income, on obligations or securities of any state or of any 551  
political subdivision or authority of any state, other than this 552  
state and its subdivisions and authorities, but only to the extent 553  
that such net amount is not otherwise includible in Ohio taxable 554  
income and is described in either division (S)(1)(a) or (b) of 555  
this section: 556

(a) The net amount is not attributable to the S portion of an 557  
electing small business trust and has not been distributed to 558  
beneficiaries for the taxable year; 559

(b) The net amount is attributable to the S portion of an 560  
electing small business trust for the taxable year. 561

(2) Add interest or dividends, net of ordinary, necessary, 562  
and reasonable expenses not deducted in computing federal taxable 563  
income, on obligations of any authority, commission, 564  
instrumentality, territory, or possession of the United States to 565  
the extent that the interest or dividends are exempt from federal 566  
income taxes but not from state income taxes, but only to the 567  
extent that such net amount is not otherwise includible in Ohio 568  
taxable income and is described in either division (S)(1)(a) or 569  
(b) of this section; 570

(3) Add the amount of personal exemption allowed to the 571  
estate pursuant to section 642(b) of the Internal Revenue Code; 572

(4) Deduct interest or dividends, net of related expenses 573  
deducted in computing federal taxable income, on obligations of 574  
the United States and its territories and possessions or of any 575  
authority, commission, or instrumentality of the United States to 576  
the extent that the interest or dividends are exempt from state 577  
taxes under the laws of the United States, but only to the extent 578  
that such amount is included in federal taxable income and is 579

described in either division (S)(1)(a) or (b) of this section; 580

(5) Deduct the amount of wages and salaries, if any, not 581  
otherwise allowable as a deduction but that would have been 582  
allowable as a deduction in computing federal taxable income for 583  
the taxable year, had the targeted jobs credit allowed under 584  
sections 38, 51, and 52 of the Internal Revenue Code not been in 585  
effect, but only to the extent such amount relates either to 586  
income included in federal taxable income for the taxable year or 587  
to income of the S portion of an electing small business trust for 588  
the taxable year; 589

(6) Deduct any interest or interest equivalent, net of 590  
related expenses deducted in computing federal taxable income, on 591  
public obligations and purchase obligations, but only to the 592  
extent that such net amount relates either to income included in 593  
federal taxable income for the taxable year or to income of the S 594  
portion of an electing small business trust for the taxable year; 595

(7) Add any loss or deduct any gain resulting from sale, 596  
exchange, or other disposition of public obligations to the extent 597  
that such loss has been deducted or such gain has been included in 598  
computing either federal taxable income or income of the S portion 599  
of an electing small business trust for the taxable year; 600

(8) Except in the case of the final return of an estate, add 601  
any amount deducted by the taxpayer on both its Ohio estate tax 602  
return pursuant to section 5731.14 of the Revised Code, and on its 603  
federal income tax return in determining federal taxable income; 604

(9)(a) Deduct any amount included in federal taxable income 605  
solely because the amount represents a reimbursement or refund of 606  
expenses that in a previous year the decedent had deducted as an 607  
itemized deduction pursuant to section 63 of the Internal Revenue 608  
Code and applicable treasury regulations. The deduction otherwise 609  
allowed under division (S)(9)(a) of this section shall be reduced 610

to the extent the reimbursement is attributable to an amount the 611  
taxpayer or decedent deducted under this section in any taxable 612  
year. 613

(b) Add any amount not otherwise included in Ohio taxable 614  
income for any taxable year to the extent that the amount is 615  
attributable to the recovery during the taxable year of any amount 616  
deducted or excluded in computing federal or Ohio taxable income 617  
in any taxable year, but only to the extent such amount has not 618  
been distributed to beneficiaries for the taxable year. 619

(10) Deduct any portion of the deduction described in section 620  
1341(a)(2) of the Internal Revenue Code, for repaying previously 621  
reported income received under a claim of right, that meets both 622  
of the following requirements: 623

(a) It is allowable for repayment of an item that was 624  
included in the taxpayer's taxable income or the decedent's 625  
adjusted gross income for a prior taxable year and did not qualify 626  
for a credit under division (A) or (B) of section 5747.05 of the 627  
Revised Code for that year. 628

(b) It does not otherwise reduce the taxpayer's taxable 629  
income or the decedent's adjusted gross income for the current or 630  
any other taxable year. 631

(11) Add any amount claimed as a credit under section 632  
5747.059 of the Revised Code to the extent that the amount 633  
satisfies either of the following: 634

(a) The amount was deducted or excluded from the computation 635  
of the taxpayer's federal taxable income as required to be 636  
reported for the taxpayer's taxable year under the Internal 637  
Revenue Code; 638

(b) The amount resulted in a reduction in the taxpayer's 639  
federal taxable income as required to be reported for any of the 640  
taxpayer's taxable years under the Internal Revenue Code. 641

(12) Deduct any amount, net of related expenses deducted in 642  
computing federal taxable income, that a trust is required to 643  
report as farm income on its federal income tax return, but only 644  
if the assets of the trust include at least ten acres of land 645  
satisfying the definition of "land devoted exclusively to 646  
agricultural use" under section 5713.30 of the Revised Code, 647  
regardless of whether the land is valued for tax purposes as such 648  
land under sections 5713.30 to 5713.38 of the Revised Code. If the 649  
trust is a pass-through entity investor, section 5747.231 of the 650  
Revised Code applies in ascertaining if the trust is eligible to 651  
claim the deduction provided by division (S)(12) of this section 652  
in connection with the pass-through entity's farm income. 653

Except for farm income attributable to the S portion of an 654  
electing small business trust, the deduction provided by division 655  
(S)(12) of this section is allowed only to the extent that the 656  
trust has not distributed such farm income. Division (S)(12) of 657  
this section applies only to taxable years of a trust beginning in 658  
2002 or thereafter. 659

(13) Add the net amount of income described in section 641(c) 660  
of the Internal Revenue Code to the extent that amount is not 661  
included in federal taxable income. 662

(14) Add or deduct the amount the taxpayer would be required 663  
to add or deduct under division (A)(20) or (21) of this section if 664  
the taxpayer's Ohio taxable income were computed in the same 665  
manner as an individual's Ohio adjusted gross income is computed 666  
under this section. In the case of a trust, division (S)(14) of 667  
this section applies only to any of the trust's taxable years 668  
beginning in 2002 or thereafter. 669

(15) Deduct, to the extent not otherwise deducted or excluded 670  
in computing federal or Ohio taxable income, any gain realized by 671  
the taxpayer from the sale, exchange, or involuntary conversion of 672  
section 1245 property or section 1250 property during the taxable 673

year, including the taxpayer's distributive or proportionate share 674  
of any such gain realized by a pass-through entity in which the 675  
taxpayer has a direct or indirect ownership interest, to the 676  
extent the gain is apportionable or allocable to this state under 677  
sections 5747.20 to 5747.23 of the Revised Code. For purposes of 678  
division (A)(28) of this section, "section 1245 property" and 679  
"section 1250 property" have the same meanings as in sections 1245 680  
and 1250 of the Internal Revenue Code, respectively, except the 681  
property disposed of must have been purchased in 2011 or 2012 from 682  
a person located in Ohio and held by the taxpayer or pass-through 683  
entity for at least two years. 684

(T) "School district income" and "school district income tax" 685  
have the same meanings as in section 5748.01 of the Revised Code. 686

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 687  
of this section, "public obligations," "purchase obligations," and 688  
"interest or interest equivalent" have the same meanings as in 689  
section 5709.76 of the Revised Code. 690

(V) "Limited liability company" means any limited liability 691  
company formed under Chapter 1705. of the Revised Code or under 692  
the laws of any other state. 693

(W) "Pass-through entity investor" means any person who, 694  
during any portion of a taxable year of a pass-through entity, is 695  
a partner, member, shareholder, or equity investor in that 696  
pass-through entity. 697

(X) "Banking day" has the same meaning as in section 1304.01 698  
of the Revised Code. 699

(Y) "Month" means a calendar month. 700

(Z) "Quarter" means the first three months, the second three 701  
months, the third three months, or the last three months of the 702  
taxpayer's taxable year. 703

(AA)(1) "Eligible institution" means a state university or 704  
state institution of higher education as defined in section 705  
3345.011 of the Revised Code, or a private, nonprofit college, 706  
university, or other post-secondary institution located in this 707  
state that possesses a certificate of authorization issued by the 708  
Ohio board of regents pursuant to Chapter 1713. of the Revised 709  
Code or a certificate of registration issued by the state board of 710  
career colleges and schools under Chapter 3332. of the Revised 711  
Code. 712

(2) "Qualified tuition and fees" means tuition and fees 713  
imposed by an eligible institution as a condition of enrollment or 714  
attendance, not exceeding two thousand five hundred dollars in 715  
each of the individual's first two years of post-secondary 716  
education. If the individual is a part-time student, "qualified 717  
tuition and fees" includes tuition and fees paid for the academic 718  
equivalent of the first two years of post-secondary education 719  
during a maximum of five taxable years, not exceeding a total of 720  
five thousand dollars. "Qualified tuition and fees" does not 721  
include: 722

(a) Expenses for any course or activity involving sports, 723  
games, or hobbies unless the course or activity is part of the 724  
individual's degree or diploma program; 725

(b) The cost of books, room and board, student activity fees, 726  
athletic fees, insurance expenses, or other expenses unrelated to 727  
the individual's academic course of instruction; 728

(c) Tuition, fees, or other expenses paid or reimbursed 729  
through an employer, scholarship, grant in aid, or other 730  
educational benefit program. 731

(BB)(1) "Modified business income" means the business income 732  
included in a trust's Ohio taxable income after such taxable 733  
income is first reduced by the qualifying trust amount, if any. 734



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

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

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

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

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

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

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

(i) The trust's modified business income;

(ii) The trust's qualifying investment income, as defined in

section 5747.012 of the Revised Code, but only to the extent the 765  
qualifying investment income does not otherwise constitute 766  
modified business income and does not otherwise constitute a 767  
qualifying trust amount. 768

(b) The qualifying trust amount multiplied by a fraction, the 769  
numerator of which is the sum of the book value of the qualifying 770  
investee's physical assets in this state on the last day of the 771  
qualifying investee's fiscal or calendar year ending immediately 772  
prior to the day on which the trust recognizes the qualifying 773  
trust amount, and the denominator of which is the sum of the book 774  
value of the qualifying investee's total physical assets 775  
everywhere on the last day of the qualifying investee's fiscal or 776  
calendar year ending immediately prior to the day on which the 777  
trust recognizes the qualifying trust amount. If, for a taxable 778  
year, the trust recognizes a qualifying trust amount with respect 779  
to more than one qualifying investee, the amount described in 780  
division (BB)(4)(b) of this section shall equal the sum of the 781  
products so computed for each such qualifying investee. 782

(c)(i) With respect to a trust or portion of a trust that is 783  
a resident as ascertained in accordance with division (I)(3)(d) of 784  
this section, its modified nonbusiness income. 785

(ii) With respect to a trust or portion of a trust that is 786  
not a resident as ascertained in accordance with division 787  
(I)(3)(d) of this section, the amount of its modified nonbusiness 788  
income satisfying the descriptions in divisions (B)(2) to (5) of 789  
section 5747.20 of the Revised Code, except as otherwise provided 790  
in division (BB)(4)(c)(ii) of this section. With respect to a 791  
trust or portion of a trust that is not a resident as ascertained 792  
in accordance with division (I)(3)(d) of this section, the trust's 793  
portion of modified nonbusiness income recognized from the sale, 794  
exchange, or other disposition of a debt interest in or equity 795  
interest in a section 5747.212 entity, as defined in section 796

5747.212 of the Revised Code, without regard to division (A) of 797  
that section, shall not be allocated to this state in accordance 798  
with section 5747.20 of the Revised Code but shall be apportioned 799  
to this state in accordance with division (B) of section 5747.212 800  
of the Revised Code without regard to division (A) of that 801  
section. 802

If the allocation and apportionment of a trust's income under 803  
divisions (BB)(4)(a) and (c) of this section do not fairly 804  
represent the modified Ohio taxable income of the trust in this 805  
state, the alternative methods described in division (C) of 806  
section 5747.21 of the Revised Code may be applied in the manner 807  
and to the same extent provided in that section. 808

(5)(a) Except as set forth in division (BB)(5)(b) of this 809  
section, "qualifying investee" means a person in which a trust has 810  
an equity or ownership interest, or a person or unit of government 811  
the debt obligations of either of which are owned by a trust. For 812  
the purposes of division (BB)(2)(a) of this section and for the 813  
purpose of computing the fraction described in division (BB)(4)(b) 814  
of this section, all of the following apply: 815

(i) If the qualifying investee is a member of a qualifying 816  
controlled group on the last day of the qualifying investee's 817  
fiscal or calendar year ending immediately prior to the date on 818  
which the trust recognizes the gain or loss, then "qualifying 819  
investee" includes all persons in the qualifying controlled group 820  
on such last day. 821

(ii) If the qualifying investee, or if the qualifying 822  
investee and any members of the qualifying controlled group of 823  
which the qualifying investee is a member on the last day of the 824  
qualifying investee's fiscal or calendar year ending immediately 825  
prior to the date on which the trust recognizes the gain or loss, 826  
separately or cumulatively own, directly or indirectly, on the 827  
last day of the qualifying investee's fiscal or calendar year 828

ending immediately prior to the date on which the trust recognizes 829  
the qualifying trust amount, more than fifty per cent of the 830  
equity of a pass-through entity, then the qualifying investee and 831  
the other members are deemed to own the proportionate share of the 832  
pass-through entity's physical assets which the pass-through 833  
entity directly or indirectly owns on the last day of the 834  
pass-through entity's calendar or fiscal year ending within or 835  
with the last day of the qualifying investee's fiscal or calendar 836  
year ending immediately prior to the date on which the trust 837  
recognizes the qualifying trust amount. 838

(iii) For the purposes of division (BB)(5)(a)(iii) of this 839  
section, "upper level pass-through entity" means a pass-through 840  
entity directly or indirectly owning any equity of another 841  
pass-through entity, and "lower level pass-through entity" means 842  
that other pass-through entity. 843

An upper level pass-through entity, whether or not it is also 844  
a qualifying investee, is deemed to own, on the last day of the 845  
upper level pass-through entity's calendar or fiscal year, the 846  
proportionate share of the lower level pass-through entity's 847  
physical assets that the lower level pass-through entity directly 848  
or indirectly owns on the last day of the lower level pass-through 849  
entity's calendar or fiscal year ending within or with the last 850  
day of the upper level pass-through entity's fiscal or calendar 851  
year. If the upper level pass-through entity directly and 852  
indirectly owns less than fifty per cent of the equity of the 853  
lower level pass-through entity on each day of the upper level 854  
pass-through entity's calendar or fiscal year in which or with 855  
which ends the calendar or fiscal year of the lower level 856  
pass-through entity and if, based upon clear and convincing 857  
evidence, complete information about the location and cost of the 858  
physical assets of the lower pass-through entity is not available 859  
to the upper level pass-through entity, then solely for purposes 860

of ascertaining if a gain or loss constitutes a qualifying trust 861  
amount, the upper level pass-through entity shall be deemed as 862  
owning no equity of the lower level pass-through entity for each 863  
day during the upper level pass-through entity's calendar or 864  
fiscal year in which or with which ends the lower level 865  
pass-through entity's calendar or fiscal year. Nothing in division 866  
(BB)(5)(a)(iii) of this section shall be construed to provide for 867  
any deduction or exclusion in computing any trust's Ohio taxable 868  
income. 869

(b) With respect to a trust that is not a resident for the 870  
taxable year and with respect to a part of a trust that is not a 871  
resident for the taxable year, "qualifying investee" for that 872  
taxable year does not include a C corporation if both of the 873  
following apply: 874

(i) During the taxable year the trust or part of the trust 875  
recognizes a gain or loss from the sale, exchange, or other 876  
disposition of equity or ownership interests in, or debt 877  
obligations of, the C corporation. 878

(ii) Such gain or loss constitutes nonbusiness income. 879

(6) "Available" means information is such that a person is 880  
able to learn of the information by the due date plus extensions, 881  
if any, for filing the return for the taxable year in which the 882  
trust recognizes the gain or loss. 883

(CC) "Qualifying controlled group" has the same meaning as in 884  
section 5733.04 of the Revised Code. 885

(DD) "Related member" has the same meaning as in section 886  
5733.042 of the Revised Code. 887

(EE)(1) For the purposes of division (EE) of this section: 888

(a) "Qualifying person" means any person other than a 889  
qualifying corporation. 890

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

(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;

(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.

(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.

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

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

(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.

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

trustee of the trust. 922

(4) A "pre-income tax trust" is a trust that satisfies all of 923  
the following requirements: 924

(a) The document or instrument creating the trust was 925  
executed by the grantor before January 1, 1972; 926

(b) The trust became irrevocable upon the creation of the 927  
trust; and 928

(c) The grantor was domiciled in this state at the time the 929  
trust was created. 930

**Section 2.** That existing section 5747.01 of the Revised Code 931  
is hereby repealed. 932

**Section 3.** Section 5747.01 of the Revised Code is presented 933  
in this act as a composite of the section as amended by both Am. 934  
Sub. H.B. 1 and Sub. S.B. 106 of the 128th General Assembly. The 935  
General Assembly, applying the principle stated in division (B) of 936  
section 1.52 of the Revised Code that amendments are to be 937  
harmonized if reasonably capable of simultaneous operation, finds 938  
that the composite is the resulting version of the section in 939  
effect prior to the effective date of the section as presented in 940  
this act. 941