

As Introduced

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S. B. No. 285

Senator Kearney

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A B I L L

To amend section 5747.01 of the Revised Code to allow 1
an income tax deduction for amounts spent by law 2
enforcement officials for items used in 3
furtherance of official law enforcement 4
activities. 5

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

Section 1. That section 5747.01 of the Revised Code be 6
amended to read as follows: 7

Sec. 5747.01. Except as otherwise expressly provided or 8
clearly appearing from the context, any term used in this chapter 9
that is not otherwise defined in this section has the same meaning 10
as when used in a comparable context in the laws of the United 11
States relating to federal income taxes or if not used in a 12
comparable context in those laws, has the same meaning as in 13
section 5733.40 of the Revised Code. Any reference in this chapter 14
to the Internal Revenue Code includes other laws of the United 15
States relating to federal income taxes. 16

As used in this chapter: 17

(A) "Adjusted gross income" or "Ohio adjusted gross income" 18
means federal adjusted gross income, as defined and used in the 19
Internal Revenue Code, adjusted as provided in this section: 20

(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.	21 22 23
(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.	24 25 26 27 28
(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.	29 30 31 32 33 34
(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.	35 36
(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.	37 38 39 40
(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	41 42 43 44 45 46 47 48 49 50 51

income required under division (A) of this section and (ii) the 52
personal exemptions allowed to the trust pursuant to section 53
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 54
deductions to adjusted gross income required under division (A) of 55
this section, (ii) the amount of federal income taxes attributable 56
to such income, and (iii) the amount of taxable income that has 57
been included in the adjusted gross income of a beneficiary by 58
reason of a prior accumulation distribution. Any undistributed net 59
income included in the adjusted gross income of a beneficiary 60
shall reduce the undistributed net income of the trust commencing 61
with the earliest years of the accumulation period. 62

(7) Deduct the amount of wages and salaries, if any, not 63
otherwise allowable as a deduction but that would have been 64
allowable as a deduction in computing federal adjusted gross 65
income for the taxable year, had the targeted jobs credit allowed 66
and determined under sections 38, 51, and 52 of the Internal 67
Revenue Code not been in effect. 68

(8) Deduct any interest or interest equivalent on public 69
obligations and purchase obligations to the extent that the 70
interest or interest equivalent is included in federal adjusted 71
gross income. 72

(9) Add any loss or deduct any gain resulting from the sale, 73
exchange, or other disposition of public obligations to the extent 74
that the loss has been deducted or the gain has been included in 75
computing federal adjusted gross income. 76

(10) Deduct or add amounts, as provided under section 5747.70 77
of the Revised Code, related to contributions to variable college 78
savings program accounts made or tuition units purchased pursuant 79
to Chapter 3334. of the Revised Code. 80

(11)(a) Deduct, to the extent not otherwise allowable as a 81
deduction or exclusion in computing federal or Ohio adjusted gross 82

income for the taxable year, the amount the taxpayer paid during 83
the taxable year for medical care insurance and qualified 84
long-term care insurance for the taxpayer, the taxpayer's spouse, 85
and dependents. No deduction for medical care insurance under 86
division (A)(11) of this section shall be allowed either to any 87
taxpayer who is eligible to participate in any subsidized health 88
plan maintained by any employer of the taxpayer or of the 89
taxpayer's spouse, or to any taxpayer who is entitled to, or on 90
application would be entitled to, benefits under part A of Title 91
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 92
301, as amended. For the purposes of division (A)(11)(a) of this 93
section, "subsidized health plan" means a healthplan for which 94
the employer pays any portion of the plan's cost. The deduction 95
allowed under division (A)(11)(a) of this section shall be the net 96
of any related premium refunds, related premium reimbursements, or 97
related insurance premium dividends received during the taxable 98
year. 99

(b) Deduct, to the extent not otherwise deducted or excluded 100
in computing federal or Ohio adjusted gross income during the 101
taxable year, the amount the taxpayer paid during the taxable 102
year, not compensated for by any insurance or otherwise, for 103
medical care of the taxpayer, the taxpayer's spouse, and 104
dependents, to the extent the expenses exceed seven and one-half 105
per cent of the taxpayer's federal adjusted gross income. 106

(c) Deduct, to the extent not otherwise deducted or excluded 107
in computing federal or Ohio adjusted gross income, any amount 108
included in federal adjusted gross income under section 105 or not 109
excluded under section 106 of the Internal Revenue Code solely 110
because it relates to an accident and health plan for a person who 111
otherwise would be a "qualifying relative" and thus a "dependent" 112
under section 152 of the Internal Revenue Code but for the fact 113
that the person fails to meet the income and support limitations 114

under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 115

(d) For purposes of division (A)(11) of this section, 116
"medical care" has the meaning given in section 213 of the 117
Internal Revenue Code, subject to the special rules, limitations, 118
and exclusions set forth therein, and "qualified long-term care" 119
has the same meaning given in section 7702B(c) of the Internal 120
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 121
of this section, "dependent" includes a person who otherwise would 122
be a "qualifying relative" and thus a "dependent" under section 123
152 of the Internal Revenue Code but for the fact that the person 124
fails to meet the income and support limitations under section 125
152(d)(1)(B) and (C) of the Internal Revenue Code. 126

(12)(a) Deduct any amount included in federal adjusted gross 127
income solely because the amount represents a reimbursement or 128
refund of expenses that in any year the taxpayer had deducted as 129
an itemized deduction pursuant to section 63 of the Internal 130
Revenue Code and applicable United States department of the 131
treasury regulations. The deduction otherwise allowed under 132
division (A)(12)(a) of this section shall be reduced to the extent 133
the reimbursement is attributable to an amount the taxpayer 134
deducted under this section in any taxable year. 135

(b) Add any amount not otherwise included in Ohio adjusted 136
gross income for any taxable year to the extent that the amount is 137
attributable to the recovery during the taxable year of any amount 138
deducted or excluded in computing federal or Ohio adjusted gross 139
income in any taxable year. 140

(13) Deduct any portion of the deduction described in section 141
1341(a)(2) of the Internal Revenue Code, for repaying previously 142
reported income received under a claim of right, that meets both 143
of the following requirements: 144

(a) It is allowable for repayment of an item that was 145

included in the taxpayer's adjusted gross income for a prior 146
taxable year and did not qualify for a credit under division (A) 147
or (B) of section 5747.05 of the Revised Code for that year; 148

(b) It does not otherwise reduce the taxpayer's adjusted 149
gross income for the current or any other taxable year. 150

(14) Deduct an amount equal to the deposits made to, and net 151
investment earnings of, a medical savings account during the 152
taxable year, in accordance with section 3924.66 of the Revised 153
Code. The deduction allowed by division (A)(14) of this section 154
does not apply to medical savings account deposits and earnings 155
otherwise deducted or excluded for the current or any other 156
taxable year from the taxpayer's federal adjusted gross income. 157

(15)(a) Add an amount equal to the funds withdrawn from a 158
medical savings account during the taxable year, and the net 159
investment earnings on those funds, when the funds withdrawn were 160
used for any purpose other than to reimburse an account holder 161
for, or to pay, eligible medical expenses, in accordance with 162
section 3924.66 of the Revised Code; 163

(b) Add the amounts distributed from a medical savings 164
account under division (A)(2) of section 3924.68 of the Revised 165
Code during the taxable year. 166

(16) Add any amount claimed as a credit under section 167
5747.059 of the Revised Code to the extent that such amount 168
satisfies either of the following: 169

(a) The amount was deducted or excluded from the computation 170
of the taxpayer's federal adjusted gross income as required to be 171
reported for the taxpayer's taxable year under the Internal 172
Revenue Code; 173

(b) The amount resulted in a reduction of the taxpayer's 174
federal adjusted gross income as required to be reported for any 175
of the taxpayer's taxable years under the Internal Revenue Code. 176

(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 209
by that subsection to a pass-through entity in which the taxpayer 210
has a direct or indirect ownership interest. 211

(ii) Add five-sixths of the amount of qualifying section 179 212
depreciation expense, including a person's proportionate or 213
distributive share of the amount of qualifying section 179 214
depreciation expense allowed to any pass-through entity in which 215
the person has a direct or indirect ownership. For the purposes of 216
this division, "qualifying section 179 depreciation expense" means 217
the difference between (I) the amount of depreciation expense 218
directly or indirectly allowed to the taxpayer under section 179 219
of the Internal Revenue Code, and (II) the amount of depreciation 220
expense directly or indirectly allowed to the taxpayer under 221
section 179 of the Internal Revenue Code as that section existed 222
on December 31, 2002. 223

The tax commissioner, under procedures established by the 224
commissioner, may waive the add-backs related to a pass-through 225
entity if the taxpayer owns, directly or indirectly, less than 226
five per cent of the pass-through entity. 227

(b) Nothing in division (A)(20) of this section shall be 228
construed to adjust or modify the adjusted basis of any asset. 229

(c) To the extent the add-back required under division 230
(A)(20)(a) of this section is attributable to property generating 231
nonbusiness income or loss allocated under section 5747.20 of the 232
Revised Code, the add-back shall be situated to the same location 233
as the nonbusiness income or loss generated by the property for 234
the purpose of determining the credit under division (A) of 235
section 5747.05 of the Revised Code. Otherwise, the add-back shall 236
be apportioned, subject to one or more of the four alternative 237
methods of apportionment enumerated in section 5747.21 of the 238
Revised Code. 239

(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 271
in computing federal or Ohio adjusted gross income for the taxable 272
year, the amount the taxpayer received during the taxable year as 273
a death benefit paid by the adjutant general under section 5919.33 274
of the Revised Code. 275

(24) Deduct, to the extent included in federal adjusted gross 276
income and not otherwise allowable as a deduction or exclusion in 277
computing federal or Ohio adjusted gross income for the taxable 278
year, military pay and allowances received by the taxpayer during 279
the taxable year for active duty service in the United States 280
army, air force, navy, marine corps, or coast guard or reserve 281
components thereof or the national guard. The deduction may not be 282
claimed for military pay and allowances received by the taxpayer 283
while the taxpayer is stationed in this state. 284

(25) Deduct, to the extent not otherwise allowable as a 285
deduction or exclusion in computing federal or Ohio adjusted gross 286
income for the taxable year and not otherwise compensated for by 287
any other source, the amount of qualified organ donation expenses 288
incurred by the taxpayer during the taxable year, not to exceed 289
ten thousand dollars. A taxpayer may deduct qualified organ 290
donation expenses only once for all taxable years beginning with 291
taxable years beginning in 2007. 292

For the purposes of division (A)(25) of this section: 293

(a) "Human organ" means all or any portion of a human liver, 294
pancreas, kidney, intestine, or lung, and any portion of human 295
bone marrow. 296

(b) "Qualified organ donation expenses" means travel 297
expenses, lodging expenses, and wages and salary forgone by a 298
taxpayer in connection with the taxpayer's donation, while living, 299
of one or more of the taxpayer's human organs to another human 300
being. 301

(26) Deduct, to the extent not otherwise deducted or excluded 302
in computing federal or Ohio adjusted gross income for the taxable 303
year, amounts received by the taxpayer as retired military 304
personnel pay for service in the United States army, navy, air 305
force, coast guard, or marine corps or reserve components thereof, 306
or the national guard, or received by the surviving spouse or 307
former spouse of such a taxpayer under the survivor benefit plan 308
on account of such a taxpayer's death. If the taxpayer receives 309
income on account of retirement paid under the federal civil 310
service retirement system or federal employees retirement system, 311
or under any successor retirement program enacted by the congress 312
of the United States that is established and maintained for 313
retired employees of the United States government, and such 314
retirement income is based, in whole or in part, on credit for the 315
taxpayer's military service, the deduction allowed under this 316
division shall include only that portion of such retirement income 317
that is attributable to the taxpayer's military service, to the 318
extent that portion of such retirement income is otherwise 319
included in federal adjusted gross income and is not otherwise 320
deducted under this section. Any amount deducted under division 321
(A)(26) of this section is not included in a taxpayer's adjusted 322
gross income for the purposes of section 5747.055 of the Revised 323
Code. No amount may be deducted under division (A)(26) of this 324
section on the basis of which a credit was claimed under section 325
5747.055 of the Revised Code. 326

(27) Deduct, to the extent not otherwise deducted or excluded 327
in computing federal or Ohio adjusted gross income for the taxable 328
year, the amount the taxpayer received during the taxable year 329
from the military injury relief fund created in section 5101.98 of 330
the Revised Code. 331

(28) Deduct, to the extent not otherwise deducted or excluded 332
in computing federal or Ohio adjusted gross income for the taxable 333

year, the amount the taxpayer received as a veterans bonus during 334
the taxable year from the Ohio department of veterans services as 335
authorized by Section 2r of Article VIII, Ohio Constitution. 336

(29) Deduct, to the extent not otherwise deducted or excluded 337
in computing federal or Ohio adjusted gross income for the taxable 338
year, any loss from wagering transactions that is allowed as an 339
itemized deduction under section 165 of the Internal Revenue Code 340
and that the taxpayer deducted in computing federal taxable 341
income. 342

(30) Deduct, to the extent not otherwise deducted or excluded 343
in computing federal or Ohio adjusted gross income for the taxable 344
year, amounts spent by a law enforcement officer during the 345
taxable year on items used by that individual for official law 346
enforcement activities, not to exceed one thousand dollars. 347

On request of the tax commissioner, the law enforcement 348
officer shall provide a receipt for each item used in calculating 349
the deduction and a letter from the law enforcement officer's 350
employer confirming that the items were used for official law 351
enforcement activities. 352

For purposes of division (A)(30) of this section, "law 353
enforcement officer" means a sheriff, deputy sheriff, constable, 354
municipal police officer, police officer of a township or joint 355
township police district, marshal, deputy marshal, or state 356
highway patrolman, and also means any officer, agent, or employee 357
of the state or any of its agencies, instrumentalities, or 358
political subdivisions, upon whom, by statute, the authority to 359
arrest violators is conferred, when the officer, agent, or 360
employee is acting within the limits of statutory authority. 361

(B) "Business income" means income, including gain or loss, 362
arising from transactions, activities, and sources in the regular 363
course of a trade or business and includes income, gain, or loss 364

from real property, tangible property, and intangible property if 365
the acquisition, rental, management, and disposition of the 366
property constitute integral parts of the regular course of a 367
trade or business operation. "Business income" includes income, 368
including gain or loss, from a partial or complete liquidation of 369
a business, including, but not limited to, gain or loss from the 370
sale or other disposition of goodwill. 371

(C) "Nonbusiness income" means all income other than business 372
income and may include, but is not limited to, compensation, rents 373
and royalties from real or tangible personal property, capital 374
gains, interest, dividends and distributions, patent or copyright 375
royalties, or lottery winnings, prizes, and awards. 376

(D) "Compensation" means any form of remuneration paid to an 377
employee for personal services. 378

(E) "Fiduciary" means a guardian, trustee, executor, 379
administrator, receiver, conservator, or any other person acting 380
in any fiduciary capacity for any individual, trust, or estate. 381

(F) "Fiscal year" means an accounting period of twelve months 382
ending on the last day of any month other than December. 383

(G) "Individual" means any natural person. 384

(H) "Internal Revenue Code" means the "Internal Revenue Code 385
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 386

(I) "Resident" means any of the following, provided that 387
division (I)(3) of this section applies only to taxable years of a 388
trust beginning in 2002 or thereafter: 389

(1) An individual who is domiciled in this state, subject to 390
section 5747.24 of the Revised Code; 391

(2) The estate of a decedent who at the time of death was 392
domiciled in this state. The domicile tests of section 5747.24 of 393
the Revised Code are not controlling for purposes of division 394

(I)(2) of this section.	395
(3) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part.	396 397 398
For the purposes of division (I)(3) of this section:	399
(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I)(3)(d) of this section, that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred, or caused to be transferred, directly or indirectly, to the trust by any of the following:	400 401 402 403 404 405
(i) A person, a court, or a governmental entity or instrumentality on account of the death of a decedent, but only if the trust is described in division (I)(3)(e)(i) or (ii) of this section;	406 407 408 409
(ii) A person who was domiciled in this state for the purposes of this chapter when the person directly or indirectly transferred assets to an irrevocable trust, but only if at least one of the trust's qualifying beneficiaries is domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year;	410 411 412 413 414 415
(iii) A person who was domiciled in this state for the purposes of this chapter when the trust document or instrument or part of the trust document or instrument became irrevocable, but only if at least one of the trust's qualifying beneficiaries is a resident domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year. If a trust document or instrument became irrevocable upon the death of a person who at the time of death was domiciled in this state for purposes of this chapter, that person is a person described in division (I)(3)(a)(iii) of this section.	416 417 418 419 420 421 422 423 424 425

(b) A trust is irrevocable to the extent that the transferor 426
is not considered to be the owner of the net assets of the trust 427
under sections 671 to 678 of the Internal Revenue Code. 428

(c) With respect to a trust other than a charitable lead 429
trust, "qualifying beneficiary" has the same meaning as "potential 430
current beneficiary" as defined in section 1361(e)(2) of the 431
Internal Revenue Code, and with respect to a charitable lead trust 432
"qualifying beneficiary" is any current, future, or contingent 433
beneficiary, but with respect to any trust "qualifying 434
beneficiary" excludes a person or a governmental entity or 435
instrumentality to any of which a contribution would qualify for 436
the charitable deduction under section 170 of the Internal Revenue 437
Code. 438

(d) For the purposes of division (I)(3)(a) of this section, 439
the extent to which a trust consists directly or indirectly, in 440
whole or in part, of assets, net of any related liabilities, that 441
were transferred directly or indirectly, in whole or part, to the 442
trust by any of the sources enumerated in that division shall be 443
ascertained by multiplying the fair market value of the trust's 444
assets, net of related liabilities, by the qualifying ratio, which 445
shall be computed as follows: 446

(i) The first time the trust receives assets, the numerator 447
of the qualifying ratio is the fair market value of those assets 448
at that time, net of any related liabilities, from sources 449
enumerated in division (I)(3)(a) of this section. The denominator 450
of the qualifying ratio is the fair market value of all the 451
trust's assets at that time, net of any related liabilities. 452

(ii) Each subsequent time the trust receives assets, a 453
revised qualifying ratio shall be computed. The numerator of the 454
revised qualifying ratio is the sum of (1) the fair market value 455
of the trust's assets immediately prior to the subsequent 456
transfer, net of any related liabilities, multiplied by the 457

qualifying ratio last computed without regard to the subsequent 458
transfer, and (2) the fair market value of the subsequently 459
transferred assets at the time transferred, net of any related 460
liabilities, from sources enumerated in division (I)(3)(a) of this 461
section. The denominator of the revised qualifying ratio is the 462
fair market value of all the trust's assets immediately after the 463
subsequent transfer, net of any related liabilities. 464

(iii) Whether a transfer to the trust is by or from any of 465
the sources enumerated in division (I)(3)(a) of this section shall 466
be ascertained without regard to the domicile of the trust's 467
beneficiaries. 468

(e) For the purposes of division (I)(3)(a)(i) of this 469
section: 470

(i) A trust is described in division (I)(3)(e)(i) of this 471
section if the trust is a testamentary trust and the testator of 472
that testamentary trust was domiciled in this state at the time of 473
the testator's death for purposes of the taxes levied under 474
Chapter 5731. of the Revised Code. 475

(ii) A trust is described in division (I)(3)(e)(ii) of this 476
section if the transfer is a qualifying transfer described in any 477
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 478
irrevocable inter vivos trust, and at least one of the trust's 479
qualifying beneficiaries is domiciled in this state for purposes 480
of this chapter during all or some portion of the trust's current 481
taxable year. 482

(f) For the purposes of division (I)(3)(e)(ii) of this 483
section, a "qualifying transfer" is a transfer of assets, net of 484
any related liabilities, directly or indirectly to a trust, if the 485
transfer is described in any of the following: 486

(i) The transfer is made to a trust, created by the decedent 487
before the decedent's death and while the decedent was domiciled 488

in this state for the purposes of this chapter, and, prior to the 489
death of the decedent, the trust became irrevocable while the 490
decedent was domiciled in this state for the purposes of this 491
chapter. 492

(ii) The transfer is made to a trust to which the decedent, 493
prior to the decedent's death, had directly or indirectly 494
transferred assets, net of any related liabilities, while the 495
decedent was domiciled in this state for the purposes of this 496
chapter, and prior to the death of the decedent the trust became 497
irrevocable while the decedent was domiciled in this state for the 498
purposes of this chapter. 499

(iii) The transfer is made on account of a contractual 500
relationship existing directly or indirectly between the 501
transferor and either the decedent or the estate of the decedent 502
at any time prior to the date of the decedent's death, and the 503
decedent was domiciled in this state at the time of death for 504
purposes of the taxes levied under Chapter 5731. of the Revised 505
Code. 506

(iv) The transfer is made to a trust on account of a 507
contractual relationship existing directly or indirectly between 508
the transferor and another person who at the time of the 509
decedent's death was domiciled in this state for purposes of this 510
chapter. 511

(v) The transfer is made to a trust on account of the will of 512
a testator who was domiciled in this state at the time of the 513
testator's death for purposes of the taxes levied under Chapter 514
5731. of the Revised Code. 515

(vi) The transfer is made to a trust created by or caused to 516
be created by a court, and the trust was directly or indirectly 517
created in connection with or as a result of the death of an 518
individual who, for purposes of the taxes levied under Chapter 519

5731. of the Revised Code, was domiciled in this state at the time 520
of the individual's death. 521

(g) The tax commissioner may adopt rules to ascertain the 522
part of a trust residing in this state. 523

(J) "Nonresident" means an individual or estate that is not a 524
resident. An individual who is a resident for only part of a 525
taxable year is a nonresident for the remainder of that taxable 526
year. 527

(K) "Pass-through entity" has the same meaning as in section 528
5733.04 of the Revised Code. 529

(L) "Return" means the notifications and reports required to 530
be filed pursuant to this chapter for the purpose of reporting the 531
tax due and includes declarations of estimated tax when so 532
required. 533

(M) "Taxable year" means the calendar year or the taxpayer's 534
fiscal year ending during the calendar year, or fractional part 535
thereof, upon which the adjusted gross income is calculated 536
pursuant to this chapter. 537

(N) "Taxpayer" means any person subject to the tax imposed by 538
section 5747.02 of the Revised Code or any pass-through entity 539
that makes the election under division (D) of section 5747.08 of 540
the Revised Code. 541

(O) "Dependents" means dependents as defined in the Internal 542
Revenue Code and as claimed in the taxpayer's federal income tax 543
return for the taxable year or which the taxpayer would have been 544
permitted to claim had the taxpayer filed a federal income tax 545
return. 546

(P) "Principal county of employment" means, in the case of a 547
nonresident, the county within the state in which a taxpayer 548
performs services for an employer or, if those services are 549

performed in more than one county, the county in which the major 550
portion of the services are performed. 551

(Q) As used in sections 5747.50 to 5747.55 of the Revised 552
Code: 553

(1) "Subdivision" means any county, municipal corporation, 554
park district, or township. 555

(2) "Essential local government purposes" includes all 556
functions that any subdivision is required by general law to 557
exercise, including like functions that are exercised under a 558
charter adopted pursuant to the Ohio Constitution. 559

(R) "Overpayment" means any amount already paid that exceeds 560
the figure determined to be the correct amount of the tax. 561

(S) "Taxable income" or "Ohio taxable income" applies only to 562
estates and trusts, and means federal taxable income, as defined 563
and used in the Internal Revenue Code, adjusted as follows: 564

(1) Add interest or dividends, net of ordinary, necessary, 565
and reasonable expenses not deducted in computing federal taxable 566
income, on obligations or securities of any state or of any 567
political subdivision or authority of any state, other than this 568
state and its subdivisions and authorities, but only to the extent 569
that such net amount is not otherwise includible in Ohio taxable 570
income and is described in either division (S)(1)(a) or (b) of 571
this section: 572

(a) The net amount is not attributable to the S portion of an 573
electing small business trust and has not been distributed to 574
beneficiaries for the taxable year; 575

(b) The net amount is attributable to the S portion of an 576
electing small business trust for the taxable year. 577

(2) Add interest or dividends, net of ordinary, necessary, 578
and reasonable expenses not deducted in computing federal taxable 579

income, on obligations of any authority, commission, 580
instrumentality, territory, or possession of the United States to 581
the extent that the interest or dividends are exempt from federal 582
income taxes but not from state income taxes, but only to the 583
extent that such net amount is not otherwise includible in Ohio 584
taxable income and is described in either division (S)(1)(a) or 585
(b) of this section; 586

(3) Add the amount of personal exemption allowed to the 587
estate pursuant to section 642(b) of the Internal Revenue Code; 588

(4) Deduct interest or dividends, net of related expenses 589
deducted in computing federal taxable income, on obligations of 590
the United States and its territories and possessions or of any 591
authority, commission, or instrumentality of the United States to 592
the extent that the interest or dividends are exempt from state 593
taxes under the laws of the United States, but only to the extent 594
that such amount is included in federal taxable income and is 595
described in either division (S)(1)(a) or (b) of this section; 596

(5) Deduct the amount of wages and salaries, if any, not 597
otherwise allowable as a deduction but that would have been 598
allowable as a deduction in computing federal taxable income for 599
the taxable year, had the targeted jobs credit allowed under 600
sections 38, 51, and 52 of the Internal Revenue Code not been in 601
effect, but only to the extent such amount relates either to 602
income included in federal taxable income for the taxable year or 603
to income of the S portion of an electing small business trust for 604
the taxable year; 605

(6) Deduct any interest or interest equivalent, net of 606
related expenses deducted in computing federal taxable income, on 607
public obligations and purchase obligations, but only to the 608
extent that such net amount relates either to income included in 609
federal taxable income for the taxable year or to income of the S 610
portion of an electing small business trust for the taxable year; 611

(7) Add any loss or deduct any gain resulting from sale, 612
exchange, or other disposition of public obligations to the extent 613
that such loss has been deducted or such gain has been included in 614
computing either federal taxable income or income of the S portion 615
of an electing small business trust for the taxable year; 616

(8) Except in the case of the final return of an estate, add 617
any amount deducted by the taxpayer on both its Ohio estate tax 618
return pursuant to section 5731.14 of the Revised Code, and on its 619
federal income tax return in determining federal taxable income; 620

(9)(a) Deduct any amount included in federal taxable income 621
solely because the amount represents a reimbursement or refund of 622
expenses that in a previous year the decedent had deducted as an 623
itemized deduction pursuant to section 63 of the Internal Revenue 624
Code and applicable treasury regulations. The deduction otherwise 625
allowed under division (S)(9)(a) of this section shall be reduced 626
to the extent the reimbursement is attributable to an amount the 627
taxpayer or decedent deducted under this section in any taxable 628
year. 629

(b) Add any amount not otherwise included in Ohio taxable 630
income for any taxable year to the extent that the amount is 631
attributable to the recovery during the taxable year of any amount 632
deducted or excluded in computing federal or Ohio taxable income 633
in any taxable year, but only to the extent such amount has not 634
been distributed to beneficiaries for the taxable year. 635

(10) Deduct any portion of the deduction described in section 636
1341(a)(2) of the Internal Revenue Code, for repaying previously 637
reported income received under a claim of right, that meets both 638
of the following requirements: 639

(a) It is allowable for repayment of an item that was 640
included in the taxpayer's taxable income or the decedent's 641
adjusted gross income for a prior taxable year and did not qualify 642

for a credit under division (A) or (B) of section 5747.05 of the Revised Code for that year.

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

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

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

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

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

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

this section applies only to taxable years of a trust beginning in 2002 or thereafter. 674
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(13) Add the net amount of income described in section 641(c) of the Internal Revenue Code to the extent that amount is not included in federal taxable income. 676
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(14) Add or deduct the amount the taxpayer would be required to add or deduct under division (A)(20) or (21) of this section if the taxpayer's Ohio taxable income were computed in the same manner as an individual's Ohio adjusted gross income is computed under this section. In the case of a trust, division (S)(14) of this section applies only to any of the trust's taxable years beginning in 2002 or thereafter. 679
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(T) "School district income" and "school district income tax" have the same meanings as in section 5748.01 of the Revised Code. 686
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(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code. 688
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(V) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state. 692
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(W) "Pass-through entity investor" means any person who, during any portion of a taxable year of a pass-through entity, is a partner, member, shareholder, or equity investor in that pass-through entity. 695
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(X) "Banking day" has the same meaning as in section 1304.01 of the Revised Code. 699
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(Y) "Month" means a calendar month. 701

(Z) "Quarter" means the first three months, the second three months, the third three months, or the last three months of the 702
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taxpayer's taxable year. 704

(AA)(1) "Eligible institution" means a state university or 705
state institution of higher education as defined in section 706
3345.011 of the Revised Code, or a private, nonprofit college, 707
university, or other post-secondary institution located in this 708
state that possesses a certificate of authorization issued by the 709
Ohio board of regents pursuant to Chapter 1713. of the Revised 710
Code or a certificate of registration issued by the state board of 711
career colleges and schools under Chapter 3332. of the Revised 712
Code. 713

(2) "Qualified tuition and fees" means tuition and fees 714
imposed by an eligible institution as a condition of enrollment or 715
attendance, not exceeding two thousand five hundred dollars in 716
each of the individual's first two years of post-secondary 717
education. If the individual is a part-time student, "qualified 718
tuition and fees" includes tuition and fees paid for the academic 719
equivalent of the first two years of post-secondary education 720
during a maximum of five taxable years, not exceeding a total of 721
five thousand dollars. "Qualified tuition and fees" does not 722
include: 723

(a) Expenses for any course or activity involving sports, 724
games, or hobbies unless the course or activity is part of the 725
individual's degree or diploma program; 726

(b) The cost of books, room and board, student activity fees, 727
athletic fees, insurance expenses, or other expenses unrelated to 728
the individual's academic course of instruction; 729

(c) Tuition, fees, or other expenses paid or reimbursed 730
through an employer, scholarship, grant in aid, or other 731
educational benefit program. 732

(BB)(1) "Modified business income" means the business income 733
included in a trust's Ohio taxable income after such taxable 734

income is first reduced by the qualifying trust amount, if any. 735

(2) "Qualifying trust amount" of a trust means capital gains 736
and losses from the sale, exchange, or other disposition of equity 737
or ownership interests in, or debt obligations of, a qualifying 738
investee to the extent included in the trust's Ohio taxable 739
income, but only if the following requirements are satisfied: 740

(a) The book value of the qualifying investee's physical 741
assets in this state and everywhere, as of the last day of the 742
qualifying investee's fiscal or calendar year ending immediately 743
prior to the date on which the trust recognizes the gain or loss, 744
is available to the trust. 745

(b) The requirements of section 5747.011 of the Revised Code 746
are satisfied for the trust's taxable year in which the trust 747
recognizes the gain or loss. 748

Any gain or loss that is not a qualifying trust amount is 749
modified business income, qualifying investment income, or 750
modified nonbusiness income, as the case may be. 751

(3) "Modified nonbusiness income" means a trust's Ohio 752
taxable income other than modified business income, other than the 753
qualifying trust amount, and other than qualifying investment 754
income, as defined in section 5747.012 of the Revised Code, to the 755
extent such qualifying investment income is not otherwise part of 756
modified business income. 757

(4) "Modified Ohio taxable income" applies only to trusts, 758
and means the sum of the amounts described in divisions (BB)(4)(a) 759
to (c) of this section: 760

(a) The fraction, calculated under section 5747.013, and 761
applying section 5747.231 of the Revised Code, multiplied by the 762
sum of the following amounts: 763

(i) The trust's modified business income; 764

(ii) The trust's qualifying investment income, as defined in 765
section 5747.012 of the Revised Code, but only to the extent the 766
qualifying investment income does not otherwise constitute 767
modified business income and does not otherwise constitute a 768
qualifying trust amount. 769

(b) The qualifying trust amount multiplied by a fraction, the 770
numerator of which is the sum of the book value of the qualifying 771
investee's physical assets in this state on the last day of the 772
qualifying investee's fiscal or calendar year ending immediately 773
prior to the day on which the trust recognizes the qualifying 774
trust amount, and the denominator of which is the sum of the book 775
value of the qualifying investee's total physical assets 776
everywhere on the last day of the qualifying investee's fiscal or 777
calendar year ending immediately prior to the day on which the 778
trust recognizes the qualifying trust amount. If, for a taxable 779
year, the trust recognizes a qualifying trust amount with respect 780
to more than one qualifying investee, the amount described in 781
division (BB)(4)(b) of this section shall equal the sum of the 782
products so computed for each such qualifying investee. 783

(c)(i) With respect to a trust or portion of a trust that is 784
a resident as ascertained in accordance with division (I)(3)(d) of 785
this section, its modified nonbusiness income. 786

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

interest in a section 5747.212 entity, as defined in section 797
5747.212 of the Revised Code, without regard to division (A) of 798
that section, shall not be allocated to this state in accordance 799
with section 5747.20 of the Revised Code but shall be apportioned 800
to this state in accordance with division (B) of section 5747.212 801
of the Revised Code without regard to division (A) of that 802
section. 803

If the allocation and apportionment of a trust's income under 804
divisions (BB)(4)(a) and (c) of this section do not fairly 805
represent the modified Ohio taxable income of the trust in this 806
state, the alternative methods described in division (C) of 807
section 5747.21 of the Revised Code may be applied in the manner 808
and to the same extent provided in that section. 809

(5)(a) Except as set forth in division (BB)(5)(b) of this 810
section, "qualifying investee" means a person in which a trust has 811
an equity or ownership interest, or a person or unit of government 812
the debt obligations of either of which are owned by a trust. For 813
the purposes of division (BB)(2)(a) of this section and for the 814
purpose of computing the fraction described in division (BB)(4)(b) 815
of this section, all of the following apply: 816

(i) If the qualifying investee is a member of a qualifying 817
controlled group on the last day of the qualifying investee's 818
fiscal or calendar year ending immediately prior to the date on 819
which the trust recognizes the gain or loss, then "qualifying 820
investee" includes all persons in the qualifying controlled group 821
on such last day. 822

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

last day of the qualifying investee's fiscal or calendar year 829
ending immediately prior to the date on which the trust recognizes 830
the qualifying trust amount, more than fifty per cent of the 831
equity of a pass-through entity, then the qualifying investee and 832
the other members are deemed to own the proportionate share of the 833
pass-through entity's physical assets which the pass-through 834
entity directly or indirectly owns on the last day of the 835
pass-through entity's calendar or fiscal year ending within or 836
with the last day of the qualifying investee's fiscal or calendar 837
year ending immediately prior to the date on which the trust 838
recognizes the qualifying trust amount. 839

(iii) For the purposes of division (BB)(5)(a)(iii) of this 840
section, "upper level pass-through entity" means a pass-through 841
entity directly or indirectly owning any equity of another 842
pass-through entity, and "lower level pass-through entity" means 843
that other pass-through entity. 844

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

to the upper level pass-through entity, then solely for purposes 861
of ascertaining if a gain or loss constitutes a qualifying trust 862
amount, the upper level pass-through entity shall be deemed as 863
owning no equity of the lower level pass-through entity for each 864
day during the upper level pass-through entity's calendar or 865
fiscal year in which or with which ends the lower level 866
pass-through entity's calendar or fiscal year. Nothing in division 867
(BB)(5)(a)(iii) of this section shall be construed to provide for 868
any deduction or exclusion in computing any trust's Ohio taxable 869
income. 870

(b) With respect to a trust that is not a resident for the 871
taxable year and with respect to a part of a trust that is not a 872
resident for the taxable year, "qualifying investee" for that 873
taxable year does not include a C corporation if both of the 874
following apply: 875

(i) During the taxable year the trust or part of the trust 876
recognizes a gain or loss from the sale, exchange, or other 877
disposition of equity or ownership interests in, or debt 878
obligations of, the C corporation. 879

(ii) Such gain or loss constitutes nonbusiness income. 880

(6) "Available" means information is such that a person is 881
able to learn of the information by the due date plus extensions, 882
if any, for filing the return for the taxable year in which the 883
trust recognizes the gain or loss. 884

(CC) "Qualifying controlled group" has the same meaning as in 885
section 5733.04 of the Revised Code. 886

(DD) "Related member" has the same meaning as in section 887
5733.042 of the Revised Code. 888

(EE)(1) For the purposes of division (EE) of this section: 889

(a) "Qualifying person" means any person other than a 890

qualifying corporation. 891

(b) "Qualifying corporation" means any person classified for 892
federal income tax purposes as an association taxable as a 893
corporation, except either of the following: 894

(i) A corporation that has made an election under subchapter 895
S, chapter one, subtitle A, of the Internal Revenue Code for its 896
taxable year ending within, or on the last day of, the investor's 897
taxable year; 898

(ii) A subsidiary that is wholly owned by any corporation 899
that has made an election under subchapter S, chapter one, 900
subtitle A of the Internal Revenue Code for its taxable year 901
ending within, or on the last day of, the investor's taxable year. 902

(2) For the purposes of this chapter, unless expressly stated 903
otherwise, no qualifying person indirectly owns any asset directly 904
or indirectly owned by any qualifying corporation. 905

(FF) For purposes of this chapter and Chapter 5751. of the 906
Revised Code: 907

(1) "Trust" does not include a qualified pre-income tax 908
trust. 909

(2) A "qualified pre-income tax trust" is any pre-income tax 910
trust that makes a qualifying pre-income tax trust election as 911
described in division (FF)(3) of this section. 912

(3) A "qualifying pre-income tax trust election" is an 913
election by a pre-income tax trust to subject to the tax imposed 914
by section 5751.02 of the Revised Code the pre-income tax trust 915
and all pass-through entities of which the trust owns or controls, 916
directly, indirectly, or constructively through related interests, 917
five per cent or more of the ownership or equity interests. The 918
trustee shall notify the tax commissioner in writing of the 919
election on or before April 15, 2006. The election, if timely 920

made, shall be effective on and after January 1, 2006, and shall 921
apply for all tax periods and tax years until revoked by the 922
trustee of the trust. 923

(4) A "pre-income tax trust" is a trust that satisfies all of 924
the following requirements: 925

(a) The document or instrument creating the trust was 926
executed by the grantor before January 1, 1972; 927

(b) The trust became irrevocable upon the creation of the 928
trust; and 929

(c) The grantor was domiciled in this state at the time the 930
trust was created. 931

Section 2. That existing section 5747.01 of the Revised Code 932
is hereby repealed. 933

Section 3. The amendment by this act of section 5747.01 of 934
the Revised Code applies to taxable years ending on or after the 935
effective date of this act. 936