

As Introduced

**129th General Assembly
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H. B. No. 200

Representative Beck

Cosponsors: Representatives Rosenberger, Wachtmann, Young

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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 of up to ten thousand 2
dollars for net capital gains. 3

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

Section 1. That section 5747.01 of the Revised Code be 4
amended to read as follows: 5

Sec. 5747.01. Except as otherwise expressly provided or 6
clearly appearing from the context, any term used in this chapter 7
that is not otherwise defined in this section has the same meaning 8
as when used in a comparable context in the laws of the United 9
States relating to federal income taxes or if not used in a 10
comparable context in those laws, has the same meaning as in 11
section 5733.40 of the Revised Code. Any reference in this chapter 12
to the Internal Revenue Code includes other laws of the United 13
States relating to federal income taxes. 14

As used in this chapter: 15

(A) "Adjusted gross income" or "Ohio adjusted gross income" 16
means federal adjusted gross income, as defined and used in the 17
Internal Revenue Code, adjusted as provided in this section: 18

(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.	19 20 21
(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.	22 23 24 25 26
(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.	27 28 29 30 31 32
(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.	33 34
(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.	35 36 37 38
(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	39 40 41 42 43 44 45 46 47 48 49

income required under division (A) of this section and (ii) the 50
personal exemptions allowed to the trust pursuant to section 51
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 52
deductions to adjusted gross income required under division (A) of 53
this section, (ii) the amount of federal income taxes attributable 54
to such income, and (iii) the amount of taxable income that has 55
been included in the adjusted gross income of a beneficiary by 56
reason of a prior accumulation distribution. Any undistributed net 57
income included in the adjusted gross income of a beneficiary 58
shall reduce the undistributed net income of the trust commencing 59
with the earliest years of the accumulation period. 60

(7) Deduct the amount of wages and salaries, if any, not 61
otherwise allowable as a deduction but that would have been 62
allowable as a deduction in computing federal adjusted gross 63
income for the taxable year, had the targeted jobs credit allowed 64
and determined under sections 38, 51, and 52 of the Internal 65
Revenue Code not been in effect. 66

(8) Deduct any interest or interest equivalent on public 67
obligations and purchase obligations to the extent that the 68
interest or interest equivalent is included in federal adjusted 69
gross income. 70

(9) Add any loss or deduct any gain resulting from the sale, 71
exchange, or other disposition of public obligations to the extent 72
that the loss has been deducted or the gain has been included in 73
computing federal adjusted gross income. 74

(10) Deduct or add amounts, as provided under section 5747.70 75
of the Revised Code, related to contributions to variable college 76
savings program accounts made or tuition units purchased pursuant 77
to Chapter 3334. of the Revised Code. 78

(11)(a) Deduct, to the extent not otherwise allowable as a 79
deduction or exclusion in computing federal or Ohio adjusted gross 80

income for the taxable year, the amount the taxpayer paid during 81
the taxable year for medical care insurance and qualified 82
long-term care insurance for the taxpayer, the taxpayer's spouse, 83
and dependents. No deduction for medical care insurance under 84
division (A)(11) of this section shall be allowed either to any 85
taxpayer who is eligible to participate in any subsidized health 86
plan maintained by any employer of the taxpayer or of the 87
taxpayer's spouse, or to any taxpayer who is entitled to, or on 88
application would be entitled to, benefits under part A of Title 89
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 90
301, as amended. For the purposes of division (A)(11)(a) of this 91
section, "subsidized health plan" means a healthplan for which 92
the employer pays any portion of the plan's cost. The deduction 93
allowed under division (A)(11)(a) of this section shall be the net 94
of any related premium refunds, related premium reimbursements, or 95
related insurance premium dividends received during the taxable 96
year. 97

(b) Deduct, to the extent not otherwise deducted or excluded 98
in computing federal or Ohio adjusted gross income during the 99
taxable year, the amount the taxpayer paid during the taxable 100
year, not compensated for by any insurance or otherwise, for 101
medical care of the taxpayer, the taxpayer's spouse, and 102
dependents, to the extent the expenses exceed seven and one-half 103
per cent of the taxpayer's federal adjusted gross income. 104

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

under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 113

(d) For purposes of division (A)(11) of this section, 114
"medical care" has the meaning given in section 213 of the 115
Internal Revenue Code, subject to the special rules, limitations, 116
and exclusions set forth therein, and "qualified long-term care" 117
has the same meaning given in section 7702B(c) of the Internal 118
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 119
of this section, "dependent" includes a person who otherwise would 120
be a "qualifying relative" and thus a "dependent" under section 121
152 of the Internal Revenue Code but for the fact that the person 122
fails to meet the income and support limitations under section 123
152(d)(1)(B) and (C) of the Internal Revenue Code. 124

(12)(a) Deduct any amount included in federal adjusted gross 125
income solely because the amount represents a reimbursement or 126
refund of expenses that in any year the taxpayer had deducted as 127
an itemized deduction pursuant to section 63 of the Internal 128
Revenue Code and applicable United States department of the 129
treasury regulations. The deduction otherwise allowed under 130
division (A)(12)(a) of this section shall be reduced to the extent 131
the reimbursement is attributable to an amount the taxpayer 132
deducted under this section in any taxable year. 133

(b) Add any amount not otherwise included in Ohio adjusted 134
gross income for any taxable year to the extent that the amount is 135
attributable to the recovery during the taxable year of any amount 136
deducted or excluded in computing federal or Ohio adjusted gross 137
income in any taxable year. 138

(13) Deduct any portion of the deduction described in section 139
1341(a)(2) of the Internal Revenue Code, for repaying previously 140
reported income received under a claim of right, that meets both 141
of the following requirements: 142

(a) It is allowable for repayment of an item that was 143

included in the taxpayer's adjusted gross income for a prior	144
taxable year and did not qualify for a credit under division (A)	145
or (B) of section 5747.05 of the Revised Code for that year;	146
(b) It does not otherwise reduce the taxpayer's adjusted	147
gross income for the current or any other taxable year.	148
(14) Deduct an amount equal to the deposits made to, and net	149
investment earnings of, a medical savings account during the	150
taxable year, in accordance with section 3924.66 of the Revised	151
Code. The deduction allowed by division (A)(14) of this section	152
does not apply to medical savings account deposits and earnings	153
otherwise deducted or excluded for the current or any other	154
taxable year from the taxpayer's federal adjusted gross income.	155
(15)(a) Add an amount equal to the funds withdrawn from a	156
medical savings account during the taxable year, and the net	157
investment earnings on those funds, when the funds withdrawn were	158
used for any purpose other than to reimburse an account holder	159
for, or to pay, eligible medical expenses, in accordance with	160
section 3924.66 of the Revised Code;	161
(b) Add the amounts distributed from a medical savings	162
account under division (A)(2) of section 3924.68 of the Revised	163
Code during the taxable year.	164
(16) Add any amount claimed as a credit under section	165
5747.059 of the Revised Code to the extent that such amount	166
satisfies either of the following:	167
(a) The amount was deducted or excluded from the computation	168
of the taxpayer's federal adjusted gross income as required to be	169
reported for the taxpayer's taxable year under the Internal	170
Revenue Code;	171
(b) The amount resulted in a reduction of the taxpayer's	172
federal adjusted gross income as required to be reported for any	173
of the taxpayer's taxable years under the Internal Revenue Code.	174

(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 207
by that subsection to a pass-through entity in which the taxpayer 208
has a direct or indirect ownership interest. 209

(ii) Add five-sixths of the amount of qualifying section 179 210
depreciation expense, including a person's proportionate or 211
distributive share of the amount of qualifying section 179 212
depreciation expense allowed to any pass-through entity in which 213
the person has a direct or indirect ownership. For the purposes of 214
this division, "qualifying section 179 depreciation expense" means 215
the difference between (I) the amount of depreciation expense 216
directly or indirectly allowed to the taxpayer under section 179 217
of the Internal Revenue Code, and (II) the amount of depreciation 218
expense directly or indirectly allowed to the taxpayer under 219
section 179 of the Internal Revenue Code as that section existed 220
on December 31, 2002. 221

The tax commissioner, under procedures established by the 222
commissioner, may waive the add-backs related to a pass-through 223
entity if the taxpayer owns, directly or indirectly, less than 224
five per cent of the pass-through entity. 225

(b) Nothing in division (A)(20) of this section shall be 226
construed to adjust or modify the adjusted basis of any asset. 227

(c) To the extent the add-back required under division 228
(A)(20)(a) of this section is attributable to property generating 229
nonbusiness income or loss allocated under section 5747.20 of the 230
Revised Code, the add-back shall be situated to the same location 231
as the nonbusiness income or loss generated by the property for 232
the purpose of determining the credit under division (A) of 233
section 5747.05 of the Revised Code. Otherwise, the add-back shall 234
be apportioned, subject to one or more of the four alternative 235
methods of apportionment enumerated in section 5747.21 of the 236
Revised Code. 237

(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 269
in computing federal or Ohio adjusted gross income for the taxable 270
year, the amount the taxpayer received during the taxable year as 271
a death benefit paid by the adjutant general under section 5919.33 272
of the Revised Code. 273

(24) Deduct, to the extent included in federal adjusted gross 274
income and not otherwise allowable as a deduction or exclusion in 275
computing federal or Ohio adjusted gross income for the taxable 276
year, military pay and allowances received by the taxpayer during 277
the taxable year for active duty service in the United States 278
army, air force, navy, marine corps, or coast guard or reserve 279
components thereof or the national guard. The deduction may not be 280
claimed for military pay and allowances received by the taxpayer 281
while the taxpayer is stationed in this state. 282

(25) Deduct, to the extent not otherwise allowable as a 283
deduction or exclusion in computing federal or Ohio adjusted gross 284
income for the taxable year and not otherwise compensated for by 285
any other source, the amount of qualified organ donation expenses 286
incurred by the taxpayer during the taxable year, not to exceed 287
ten thousand dollars. A taxpayer may deduct qualified organ 288
donation expenses only once for all taxable years beginning with 289
taxable years beginning in 2007. 290

For the purposes of division (A)(25) of this section: 291

(a) "Human organ" means all or any portion of a human liver, 292
pancreas, kidney, intestine, or lung, and any portion of human 293
bone marrow. 294

(b) "Qualified organ donation expenses" means travel 295
expenses, lodging expenses, and wages and salary forgone by a 296
taxpayer in connection with the taxpayer's donation, while living, 297
of one or more of the taxpayer's human organs to another human 298
being. 299

(26) Deduct, to the extent not otherwise deducted or excluded 300
in computing federal or Ohio adjusted gross income for the taxable 301
year, amounts received by the taxpayer as retired military 302
personnel pay for service in the United States army, navy, air 303
force, coast guard, or marine corps or reserve components thereof, 304
or the national guard, or received by the surviving spouse or 305
former spouse of such a taxpayer under the survivor benefit plan 306
on account of such a taxpayer's death. If the taxpayer receives 307
income on account of retirement paid under the federal civil 308
service retirement system or federal employees retirement system, 309
or under any successor retirement program enacted by the congress 310
of the United States that is established and maintained for 311
retired employees of the United States government, and such 312
retirement income is based, in whole or in part, on credit for the 313
taxpayer's military service, the deduction allowed under this 314
division shall include only that portion of such retirement income 315
that is attributable to the taxpayer's military service, to the 316
extent that portion of such retirement income is otherwise 317
included in federal adjusted gross income and is not otherwise 318
deducted under this section. Any amount deducted under division 319
(A)(26) of this section is not included in a taxpayer's adjusted 320
gross income for the purposes of section 5747.055 of the Revised 321
Code. No amount may be deducted under division (A)(26) of this 322
section on the basis of which a credit was claimed under section 323
5747.055 of the Revised Code. 324

(27) Deduct, to the extent not otherwise deducted or excluded 325
in computing federal or Ohio adjusted gross income for the taxable 326
year, the amount the taxpayer received during the taxable year 327
from the military injury relief fund created in section 5101.98 of 328
the Revised Code. 329

(28) Deduct, to the extent not otherwise deducted or excluded 330
in computing federal or Ohio adjusted gross income for the taxable 331

year, the amount the taxpayer received as a veterans bonus during 332
the taxable year from the Ohio department of veterans services as 333
authorized by Section 2r of Article VIII, Ohio Constitution. 334

(29) Deduct, to the extent not otherwise deducted or excluded 335
in computing federal or Ohio adjusted gross income for the taxable 336
year, any loss from wagering transactions that is allowed as an 337
itemized deduction under section 165 of the Internal Revenue Code 338
and that the taxpayer deducted in computing federal taxable 339
income. 340

(30) Deduct, to the extent not otherwise allowable as a 341
deduction or exclusion in computing federal or Ohio adjusted gross 342
income for the taxable year, the amount of net capital gain 343
realized from the sale, exchange, or other disposition of capital 344
assets, including capital gain distributions, not to exceed ten 345
thousand dollars. 346

(B) "Business income" means income, including gain or loss, 347
arising from transactions, activities, and sources in the regular 348
course of a trade or business and includes income, gain, or loss 349
from real property, tangible property, and intangible property if 350
the acquisition, rental, management, and disposition of the 351
property constitute integral parts of the regular course of a 352
trade or business operation. "Business income" includes income, 353
including gain or loss, from a partial or complete liquidation of 354
a business, including, but not limited to, gain or loss from the 355
sale or other disposition of goodwill. 356

(C) "Nonbusiness income" means all income other than business 357
income and may include, but is not limited to, compensation, rents 358
and royalties from real or tangible personal property, capital 359
gains, interest, dividends and distributions, patent or copyright 360
royalties, or lottery winnings, prizes, and awards. 361

(D) "Compensation" means any form of remuneration paid to an 362

employee for personal services.	363
(E) "Fiduciary" means a guardian, trustee, executor,	364
administrator, receiver, conservator, or any other person acting	365
in any fiduciary capacity for any individual, trust, or estate.	366
(F) "Fiscal year" means an accounting period of twelve months	367
ending on the last day of any month other than December.	368
(G) "Individual" means any natural person.	369
(H) "Internal Revenue Code" means the "Internal Revenue Code	370
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	371
(I) "Resident" means any of the following, provided that	372
division (I)(3) of this section applies only to taxable years of a	373
trust beginning in 2002 or thereafter:	374
(1) An individual who is domiciled in this state, subject to	375
section 5747.24 of the Revised Code;	376
(2) The estate of a decedent who at the time of death was	377
domiciled in this state. The domicile tests of section 5747.24 of	378
the Revised Code are not controlling for purposes of division	379
(I)(2) of this section.	380
(3) A trust that, in whole or part, resides in this state. If	381
only part of a trust resides in this state, the trust is a	382
resident only with respect to that part.	383
For the purposes of division (I)(3) of this section:	384
(a) A trust resides in this state for the trust's current	385
taxable year to the extent, as described in division (I)(3)(d) of	386
this section, that the trust consists directly or indirectly, in	387
whole or in part, of assets, net of any related liabilities, that	388
were transferred, or caused to be transferred, directly or	389
indirectly, to the trust by any of the following:	390
(i) A person, a court, or a governmental entity or	391
instrumentality on account of the death of a decedent, but only if	392

the trust is described in division (I)(3)(e)(i) or (ii) of this section;

(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;

(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.

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

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

(d) For the purposes of division (I)(3)(a) of this section, 424
the extent to which a trust consists directly or indirectly, in 425
whole or in part, of assets, net of any related liabilities, that 426
were transferred directly or indirectly, in whole or part, to the 427
trust by any of the sources enumerated in that division shall be 428
ascertained by multiplying the fair market value of the trust's 429
assets, net of related liabilities, by the qualifying ratio, which 430
shall be computed as follows: 431

(i) The first time the trust receives assets, the numerator 432
of the qualifying ratio is the fair market value of those assets 433
at that time, net of any related liabilities, from sources 434
enumerated in division (I)(3)(a) of this section. The denominator 435
of the qualifying ratio is the fair market value of all the 436
trust's assets at that time, net of any related liabilities. 437

(ii) Each subsequent time the trust receives assets, a 438
revised qualifying ratio shall be computed. The numerator of the 439
revised qualifying ratio is the sum of (1) the fair market value 440
of the trust's assets immediately prior to the subsequent 441
transfer, net of any related liabilities, multiplied by the 442
qualifying ratio last computed without regard to the subsequent 443
transfer, and (2) the fair market value of the subsequently 444
transferred assets at the time transferred, net of any related 445
liabilities, from sources enumerated in division (I)(3)(a) of this 446
section. The denominator of the revised qualifying ratio is the 447
fair market value of all the trust's assets immediately after the 448
subsequent transfer, net of any related liabilities. 449

(iii) Whether a transfer to the trust is by or from any of 450
the sources enumerated in division (I)(3)(a) of this section shall 451
be ascertained without regard to the domicile of the trust's 452
beneficiaries. 453

(e) For the purposes of division (I)(3)(a)(i) of this 454
section: 455

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

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

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

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

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

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

transferor and either the decedent or the estate of the decedent 487
at any time prior to the date of the decedent's death, and the 488
decedent was domiciled in this state at the time of death for 489
purposes of the taxes levied under Chapter 5731. of the Revised 490
Code. 491

(iv) The transfer is made to a trust on account of a 492
contractual relationship existing directly or indirectly between 493
the transferor and another person who at the time of the 494
decedent's death was domiciled in this state for purposes of this 495
chapter. 496

(v) The transfer is made to a trust on account of the will of 497
a testator who was domiciled in this state at the time of the 498
testator's death for purposes of the taxes levied under Chapter 499
5731. of the Revised Code. 500

(vi) The transfer is made to a trust created by or caused to 501
be created by a court, and the trust was directly or indirectly 502
created in connection with or as a result of the death of an 503
individual who, for purposes of the taxes levied under Chapter 504
5731. of the Revised Code, was domiciled in this state at the time 505
of the individual's death. 506

(g) The tax commissioner may adopt rules to ascertain the 507
part of a trust residing in this state. 508

(J) "Nonresident" means an individual or estate that is not a 509
resident. An individual who is a resident for only part of a 510
taxable year is a nonresident for the remainder of that taxable 511
year. 512

(K) "Pass-through entity" has the same meaning as in section 513
5733.04 of the Revised Code. 514

(L) "Return" means the notifications and reports required to 515
be filed pursuant to this chapter for the purpose of reporting the 516
tax due and includes declarations of estimated tax when so 517

required.	518
(M) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the adjusted gross income is calculated pursuant to this chapter.	519 520 521 522
(N) "Taxpayer" means any person subject to the tax imposed by section 5747.02 of the Revised Code or any pass-through entity that makes the election under division (D) of section 5747.08 of the Revised Code.	523 524 525 526
(O) "Dependents" means dependents as defined in the Internal Revenue Code and as claimed in the taxpayer's federal income tax return for the taxable year or which the taxpayer would have been permitted to claim had the taxpayer filed a federal income tax return.	527 528 529 530 531
(P) "Principal county of employment" means, in the case of a nonresident, the county within the state in which a taxpayer performs services for an employer or, if those services are performed in more than one county, the county in which the major portion of the services are performed.	532 533 534 535 536
(Q) As used in sections 5747.50 to 5747.55 of the Revised Code:	537 538
(1) "Subdivision" means any county, municipal corporation, park district, or township.	539 540
(2) "Essential local government purposes" includes all functions that any subdivision is required by general law to exercise, including like functions that are exercised under a charter adopted pursuant to the Ohio Constitution.	541 542 543 544
(R) "Overpayment" means any amount already paid that exceeds the figure determined to be the correct amount of the tax.	545 546
(S) "Taxable income" or "Ohio taxable income" applies only to	547

estates and trusts, and means federal taxable income, as defined 548
and used in the Internal Revenue Code, adjusted as follows: 549

(1) Add interest or dividends, net of ordinary, necessary, 550
and reasonable expenses not deducted in computing federal taxable 551
income, on obligations or securities of any state or of any 552
political subdivision or authority of any state, other than this 553
state and its subdivisions and authorities, but only to the extent 554
that such net amount is not otherwise includible in Ohio taxable 555
income and is described in either division (S)(1)(a) or (b) of 556
this section: 557

(a) The net amount is not attributable to the S portion of an 558
electing small business trust and has not been distributed to 559
beneficiaries for the taxable year; 560

(b) The net amount is attributable to the S portion of an 561
electing small business trust for the taxable year. 562

(2) Add interest or dividends, net of ordinary, necessary, 563
and reasonable expenses not deducted in computing federal taxable 564
income, on obligations of any authority, commission, 565
instrumentality, territory, or possession of the United States to 566
the extent that the interest or dividends are exempt from federal 567
income taxes but not from state income taxes, but only to the 568
extent that such net amount is not otherwise includible in Ohio 569
taxable income and is described in either division (S)(1)(a) or 570
(b) of this section; 571

(3) Add the amount of personal exemption allowed to the 572
estate pursuant to section 642(b) of the Internal Revenue Code; 573

(4) Deduct interest or dividends, net of related expenses 574
deducted in computing federal taxable income, on obligations of 575
the United States and its territories and possessions or of any 576
authority, commission, or instrumentality of the United States to 577
the extent that the interest or dividends are exempt from state 578

taxes under the laws of the United States, but only to the extent 579
that such amount is included in federal taxable income and is 580
described in either division (S)(1)(a) or (b) of this section; 581

(5) Deduct the amount of wages and salaries, if any, not 582
otherwise allowable as a deduction but that would have been 583
allowable as a deduction in computing federal taxable income for 584
the taxable year, had the targeted jobs credit allowed under 585
sections 38, 51, and 52 of the Internal Revenue Code not been in 586
effect, but only to the extent such amount relates either to 587
income included in federal taxable income for the taxable year or 588
to income of the S portion of an electing small business trust for 589
the taxable year; 590

(6) Deduct any interest or interest equivalent, net of 591
related expenses deducted in computing federal taxable income, on 592
public obligations and purchase obligations, but only to the 593
extent that such net amount relates either to income included in 594
federal taxable income for the taxable year or to income of the S 595
portion of an electing small business trust for the taxable year; 596

(7) Add any loss or deduct any gain resulting from sale, 597
exchange, or other disposition of public obligations to the extent 598
that such loss has been deducted or such gain has been included in 599
computing either federal taxable income or income of the S portion 600
of an electing small business trust for the taxable year; 601

(8) Except in the case of the final return of an estate, add 602
any amount deducted by the taxpayer on both its Ohio estate tax 603
return pursuant to section 5731.14 of the Revised Code, and on its 604
federal income tax return in determining federal taxable income; 605

(9)(a) Deduct any amount included in federal taxable income 606
solely because the amount represents a reimbursement or refund of 607
expenses that in a previous year the decedent had deducted as an 608
itemized deduction pursuant to section 63 of the Internal Revenue 609

Code and applicable treasury regulations. The deduction otherwise 610
allowed under division (S)(9)(a) of this section shall be reduced 611
to the extent the reimbursement is attributable to an amount the 612
taxpayer or decedent deducted under this section in any taxable 613
year. 614

(b) Add any amount not otherwise included in Ohio taxable 615
income for any taxable year to the extent that the amount is 616
attributable to the recovery during the taxable year of any amount 617
deducted or excluded in computing federal or Ohio taxable income 618
in any taxable year, but only to the extent such amount has not 619
been distributed to beneficiaries for the taxable year. 620

(10) Deduct any portion of the deduction described in section 621
1341(a)(2) of the Internal Revenue Code, for repaying previously 622
reported income received under a claim of right, that meets both 623
of the following requirements: 624

(a) It is allowable for repayment of an item that was 625
included in the taxpayer's taxable income or the decedent's 626
adjusted gross income for a prior taxable year and did not qualify 627
for a credit under division (A) or (B) of section 5747.05 of the 628
Revised Code for that year. 629

(b) It does not otherwise reduce the taxpayer's taxable 630
income or the decedent's adjusted gross income for the current or 631
any other taxable year. 632

(11) Add any amount claimed as a credit under section 633
5747.059 of the Revised Code to the extent that the amount 634
satisfies either of the following: 635

(a) The amount was deducted or excluded from the computation 636
of the taxpayer's federal taxable income as required to be 637
reported for the taxpayer's taxable year under the Internal 638
Revenue Code; 639

(b) The amount resulted in a reduction in the taxpayer's 640

federal taxable income as required to be reported for any of the 641
taxpayer's taxable years under the Internal Revenue Code. 642

(12) Deduct any amount, net of related expenses deducted in 643
computing federal taxable income, that a trust is required to 644
report as farm income on its federal income tax return, but only 645
if the assets of the trust include at least ten acres of land 646
satisfying the definition of "land devoted exclusively to 647
agricultural use" under section 5713.30 of the Revised Code, 648
regardless of whether the land is valued for tax purposes as such 649
land under sections 5713.30 to 5713.38 of the Revised Code. If the 650
trust is a pass-through entity investor, section 5747.231 of the 651
Revised Code applies in ascertaining if the trust is eligible to 652
claim the deduction provided by division (S)(12) of this section 653
in connection with the pass-through entity's farm income. 654

Except for farm income attributable to the S portion of an 655
electing small business trust, the deduction provided by division 656
(S)(12) of this section is allowed only to the extent that the 657
trust has not distributed such farm income. Division (S)(12) of 658
this section applies only to taxable years of a trust beginning in 659
2002 or thereafter. 660

(13) Add the net amount of income described in section 641(c) 661
of the Internal Revenue Code to the extent that amount is not 662
included in federal taxable income. 663

(14) Add or deduct the amount the taxpayer would be required 664
to add or deduct under division (A)(20) or (21) of this section if 665
the taxpayer's Ohio taxable income were computed in the same 666
manner as an individual's Ohio adjusted gross income is computed 667
under this section. In the case of a trust, division (S)(14) of 668
this section applies only to any of the trust's taxable years 669
beginning in 2002 or thereafter. 670

(15) Deduct, to the extent not otherwise allowable as a 671

deduction or exclusion in computing federal or Ohio taxable 672
income, the amount of net capital gain realized from the sale, 673
exchange, or other disposition of capital assets, including 674
capital gain distributions, not to exceed ten thousand dollars. 675

(T) "School district income" and "school district income tax" 676
have the same meanings as in section 5748.01 of the Revised Code. 677

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 678
of this section, "public obligations," "purchase obligations," and 679
"interest or interest equivalent" have the same meanings as in 680
section 5709.76 of the Revised Code. 681

(V) "Limited liability company" means any limited liability 682
company formed under Chapter 1705. of the Revised Code or under 683
the laws of any other state. 684

(W) "Pass-through entity investor" means any person who, 685
during any portion of a taxable year of a pass-through entity, is 686
a partner, member, shareholder, or equity investor in that 687
pass-through entity. 688

(X) "Banking day" has the same meaning as in section 1304.01 689
of the Revised Code. 690

(Y) "Month" means a calendar month. 691

(Z) "Quarter" means the first three months, the second three 692
months, the third three months, or the last three months of the 693
taxpayer's taxable year. 694

(AA)(1) "Eligible institution" means a state university or 695
state institution of higher education as defined in section 696
3345.011 of the Revised Code, or a private, nonprofit college, 697
university, or other post-secondary institution located in this 698
state that possesses a certificate of authorization issued by the 699
Ohio board of regents pursuant to Chapter 1713. of the Revised 700
Code or a certificate of registration issued by the state board of 701

career colleges and schools under Chapter 3332. of the Revised Code. 702
703

(2) "Qualified tuition and fees" means tuition and fees 704
imposed by an eligible institution as a condition of enrollment or 705
attendance, not exceeding two thousand five hundred dollars in 706
each of the individual's first two years of post-secondary 707
education. If the individual is a part-time student, "qualified 708
tuition and fees" includes tuition and fees paid for the academic 709
equivalent of the first two years of post-secondary education 710
during a maximum of five taxable years, not exceeding a total of 711
five thousand dollars. "Qualified tuition and fees" does not 712
include: 713

(a) Expenses for any course or activity involving sports, 714
games, or hobbies unless the course or activity is part of the 715
individual's degree or diploma program; 716

(b) The cost of books, room and board, student activity fees, 717
athletic fees, insurance expenses, or other expenses unrelated to 718
the individual's academic course of instruction; 719

(c) Tuition, fees, or other expenses paid or reimbursed 720
through an employer, scholarship, grant in aid, or other 721
educational benefit program. 722

(BB)(1) "Modified business income" means the business income 723
included in a trust's Ohio taxable income after such taxable 724
income is first reduced by the qualifying trust amount, if any. 725

(2) "Qualifying trust amount" of a trust means capital gains 726
and losses from the sale, exchange, or other disposition of equity 727
or ownership interests in, or debt obligations of, a qualifying 728
investee to the extent included in the trust's Ohio taxable 729
income, but only if the following requirements are satisfied: 730

(a) The book value of the qualifying investee's physical 731
assets in this state and everywhere, as of the last day of the 732

qualifying investee's fiscal or calendar year ending immediately 733
prior to the date on which the trust recognizes the gain or loss, 734
is available to the trust. 735

(b) The requirements of section 5747.011 of the Revised Code 736
are satisfied for the trust's taxable year in which the trust 737
recognizes the gain or loss. 738

Any gain or loss that is not a qualifying trust amount is 739
modified business income, qualifying investment income, or 740
modified nonbusiness income, as the case may be. 741

(3) "Modified nonbusiness income" means a trust's Ohio 742
taxable income other than modified business income, other than the 743
qualifying trust amount, and other than qualifying investment 744
income, as defined in section 5747.012 of the Revised Code, to the 745
extent such qualifying investment income is not otherwise part of 746
modified business income. 747

(4) "Modified Ohio taxable income" applies only to trusts, 748
and means the sum of the amounts described in divisions (BB)(4)(a) 749
to (c) of this section: 750

(a) The fraction, calculated under section 5747.013, and 751
applying section 5747.231 of the Revised Code, multiplied by the 752
sum of the following amounts: 753

(i) The trust's modified business income; 754

(ii) The trust's qualifying investment income, as defined in 755
section 5747.012 of the Revised Code, but only to the extent the 756
qualifying investment income does not otherwise constitute 757
modified business income and does not otherwise constitute a 758
qualifying trust amount. 759

(b) The qualifying trust amount multiplied by a fraction, the 760
numerator of which is the sum of the book value of the qualifying 761
investee's physical assets in this state on the last day of the 762

qualifying investee's fiscal or calendar year ending immediately 763
prior to the day on which the trust recognizes the qualifying 764
trust amount, and the denominator of which is the sum of the book 765
value of the qualifying investee's total physical assets 766
everywhere on the last day of the qualifying investee's fiscal or 767
calendar year ending immediately prior to the day on which the 768
trust recognizes the qualifying trust amount. If, for a taxable 769
year, the trust recognizes a qualifying trust amount with respect 770
to more than one qualifying investee, the amount described in 771
division (BB)(4)(b) of this section shall equal the sum of the 772
products so computed for each such qualifying investee. 773

(c)(i) With respect to a trust or portion of a trust that is 774
a resident as ascertained in accordance with division (I)(3)(d) of 775
this section, its modified nonbusiness income. 776

(ii) With respect to a trust or portion of a trust that is 777
not a resident as ascertained in accordance with division 778
(I)(3)(d) of this section, the amount of its modified nonbusiness 779
income satisfying the descriptions in divisions (B)(2) to (5) of 780
section 5747.20 of the Revised Code, except as otherwise provided 781
in division (BB)(4)(c)(ii) of this section. With respect to a 782
trust or portion of a trust that is not a resident as ascertained 783
in accordance with division (I)(3)(d) of this section, the trust's 784
portion of modified nonbusiness income recognized from the sale, 785
exchange, or other disposition of a debt interest in or equity 786
interest in a section 5747.212 entity, as defined in section 787
5747.212 of the Revised Code, without regard to division (A) of 788
that section, shall not be allocated to this state in accordance 789
with section 5747.20 of the Revised Code but shall be apportioned 790
to this state in accordance with division (B) of section 5747.212 791
of the Revised Code without regard to division (A) of that 792
section. 793

If the allocation and apportionment of a trust's income under 794

divisions (BB)(4)(a) and (c) of this section do not fairly 795
represent the modified Ohio taxable income of the trust in this 796
state, the alternative methods described in division (C) of 797
section 5747.21 of the Revised Code may be applied in the manner 798
and to the same extent provided in that section. 799

(5)(a) Except as set forth in division (BB)(5)(b) of this 800
section, "qualifying investee" means a person in which a trust has 801
an equity or ownership interest, or a person or unit of government 802
the debt obligations of either of which are owned by a trust. For 803
the purposes of division (BB)(2)(a) of this section and for the 804
purpose of computing the fraction described in division (BB)(4)(b) 805
of this section, all of the following apply: 806

(i) If the qualifying investee is a member of a qualifying 807
controlled group on the last day of the qualifying investee's 808
fiscal or calendar year ending immediately prior to the date on 809
which the trust recognizes the gain or loss, then "qualifying 810
investee" includes all persons in the qualifying controlled group 811
on such last day. 812

(ii) If the qualifying investee, or if the qualifying 813
investee and any members of the qualifying controlled group of 814
which the qualifying investee is a member on the last day of the 815
qualifying investee's fiscal or calendar year ending immediately 816
prior to the date on which the trust recognizes the gain or loss, 817
separately or cumulatively own, directly or indirectly, on the 818
last day of the qualifying investee's fiscal or calendar year 819
ending immediately prior to the date on which the trust recognizes 820
the qualifying trust amount, more than fifty per cent of the 821
equity of a pass-through entity, then the qualifying investee and 822
the other members are deemed to own the proportionate share of the 823
pass-through entity's physical assets which the pass-through 824
entity directly or indirectly owns on the last day of the 825
pass-through entity's calendar or fiscal year ending within or 826

with the last day of the qualifying investee's fiscal or calendar 827
year ending immediately prior to the date on which the trust 828
recognizes the qualifying trust amount. 829

(iii) For the purposes of division (BB)(5)(a)(iii) of this 830
section, "upper level pass-through entity" means a pass-through 831
entity directly or indirectly owning any equity of another 832
pass-through entity, and "lower level pass-through entity" means 833
that other pass-through entity. 834

An upper level pass-through entity, whether or not it is also 835
a qualifying investee, is deemed to own, on the last day of the 836
upper level pass-through entity's calendar or fiscal year, the 837
proportionate share of the lower level pass-through entity's 838
physical assets that the lower level pass-through entity directly 839
or indirectly owns on the last day of the lower level pass-through 840
entity's calendar or fiscal year ending within or with the last 841
day of the upper level pass-through entity's fiscal or calendar 842
year. If the upper level pass-through entity directly and 843
indirectly owns less than fifty per cent of the equity of the 844
lower level pass-through entity on each day of the upper level 845
pass-through entity's calendar or fiscal year in which or with 846
which ends the calendar or fiscal year of the lower level 847
pass-through entity and if, based upon clear and convincing 848
evidence, complete information about the location and cost of the 849
physical assets of the lower pass-through entity is not available 850
to the upper level pass-through entity, then solely for purposes 851
of ascertaining if a gain or loss constitutes a qualifying trust 852
amount, the upper level pass-through entity shall be deemed as 853
owning no equity of the lower level pass-through entity for each 854
day during the upper level pass-through entity's calendar or 855
fiscal year in which or with which ends the lower level 856
pass-through entity's calendar or fiscal year. Nothing in division 857
(BB)(5)(a)(iii) of this section shall be construed to provide for 858

any deduction or exclusion in computing any trust's Ohio taxable income. 859
860

(b) With respect to a trust that is not a resident for the taxable year and with respect to a part of a trust that is not a resident for the taxable year, "qualifying investee" for that taxable year does not include a C corporation if both of the following apply: 861
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(i) During the taxable year the trust or part of the trust recognizes a gain or loss from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, the C corporation. 866
867
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(ii) Such gain or loss constitutes nonbusiness income. 870

(6) "Available" means information is such that a person is able to learn of the information by the due date plus extensions, if any, for filing the return for the taxable year in which the trust recognizes the gain or loss. 871
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(CC) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code. 875
876

(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code. 877
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(EE)(1) For the purposes of division (EE) of this section: 879

(a) "Qualifying person" means any person other than a qualifying corporation. 880
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(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following: 882
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(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; 885
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(ii) A subsidiary that is wholly owned by any corporation 889
that has made an election under subchapter S, chapter one, 890
subtitle A of the Internal Revenue Code for its taxable year 891
ending within, or on the last day of, the investor's taxable year. 892

(2) For the purposes of this chapter, unless expressly stated 893
otherwise, no qualifying person indirectly owns any asset directly 894
or indirectly owned by any qualifying corporation. 895

(FF) For purposes of this chapter and Chapter 5751. of the 896
Revised Code: 897

(1) "Trust" does not include a qualified pre-income tax 898
trust. 899

(2) A "qualified pre-income tax trust" is any pre-income tax 900
trust that makes a qualifying pre-income tax trust election as 901
described in division (FF)(3) of this section. 902

(3) A "qualifying pre-income tax trust election" is an 903
election by a pre-income tax trust to subject to the tax imposed 904
by section 5751.02 of the Revised Code the pre-income tax trust 905
and all pass-through entities of which the trust owns or controls, 906
directly, indirectly, or constructively through related interests, 907
five per cent or more of the ownership or equity interests. The 908
trustee shall notify the tax commissioner in writing of the 909
election on or before April 15, 2006. The election, if timely 910
made, shall be effective on and after January 1, 2006, and shall 911
apply for all tax periods and tax years until revoked by the 912
trustee of the trust. 913

(4) A "pre-income tax trust" is a trust that satisfies all of 914
the following requirements: 915

(a) The document or instrument creating the trust was 916
executed by the grantor before January 1, 1972; 917

(b) The trust became irrevocable upon the creation of the 918

trust; and 919

(c) The grantor was domiciled in this state at the time the 920
trust was created. 921

Section 2. That existing section 5747.01 of the Revised Code 922
is hereby repealed. 923

Section 3. The amendment by this act of section 5747.01 of 924
the Revised Code applies to taxable years ending on or after the 925
effective date of this act. 926