

**As Introduced**

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**H. B. No. 239**

**Representative Stautberg**

**Cosponsors: Representatives Balderson, Blair, Blessing, Coley, Combs,  
Derickson, Dovilla, Gardner, Grossman, Letson, Maag, McClain, Pillich, Ruhl,  
Sears, Szollosi, Uecker, Weddington**

—

**A B I L L**

To amend section 5747.01 of the Revised Code to 1  
exempt retirement pay related to service in the 2  
Commissioned Corps of the National Oceanic and 3  
Atmospheric Administration and the Commissioned 4  
Corps of the Public Health Service. 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	21
any state or of any political subdivision or authority of any	22
state, other than this state and its subdivisions and authorities.	23
(2) Add interest or dividends on obligations of any	24
authority, commission, instrumentality, territory, or possession	25
of the United States to the extent that the interest or dividends	26
are exempt from federal income taxes but not from state income	27
taxes.	28
(3) Deduct interest or dividends on obligations of the United	29
States and its territories and possessions or of any authority,	30
commission, or instrumentality of the United States to the extent	31
that the interest or dividends are included in federal adjusted	32
gross income but exempt from state income taxes under the laws of	33
the United States.	34
(4) Deduct disability and survivor's benefits to the extent	35
included in federal adjusted gross income.	36
(5) Deduct benefits under Title II of the Social Security Act	37
and tier 1 railroad retirement benefits to the extent included in	38
federal adjusted gross income under section 86 of the Internal	39
Revenue Code.	40
(6) In the case of a taxpayer who is a beneficiary of a trust	41
that makes an accumulation distribution as defined in section 665	42
of the Internal Revenue Code, add, for the beneficiary's taxable	43
years beginning before 2002, the portion, if any, of such	44
distribution that does not exceed the undistributed net income of	45
the trust for the three taxable years preceding the taxable year	46
in which the distribution is made to the extent that the portion	47
was not included in the trust's taxable income for any of the	48

trust's taxable years beginning in 2002 or thereafter. 49

"Undistributed net income of a trust" means the taxable income of 50  
the trust increased by (a)(i) the additions to adjusted gross 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 deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer paid during the taxable year for medical care insurance and qualified long-term care insurance for the taxpayer, the taxpayer's spouse, and dependents. No deduction for medical care insurance under division (A)(11) of this section shall be allowed either to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the taxpayer's spouse, or to any taxpayer who is entitled to, or on application would be entitled to, benefits under part A of Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of division (A)(11)(a) of this section, "subsidized health plan" means a health plan for which the employer pays any portion of the plan's cost. The deduction allowed under division (A)(11)(a) of this section shall be the net of any related premium refunds, related premium reimbursements, or related insurance premium dividends received during the taxable year.

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

(c) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income, any amount included in federal adjusted gross income under section 105 or not excluded under section 106 of the Internal Revenue Code solely because it relates to an accident and health plan for a person who otherwise would be a "qualifying relative" and thus a "dependent"

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 177  
individual development account program established by a county 178  
department of job and family services pursuant to sections 329.11 179  
to 329.14 of the Revised Code for the purpose of matching funds 180  
deposited by program participants. On request of the tax 181  
commissioner, the taxpayer shall provide any information that, in 182  
the tax commissioner's opinion, is necessary to establish the 183  
amount deducted under division (A)(17) of this section. 184

(18) Beginning in taxable year 2001 but not for any taxable 185  
year beginning after December 31, 2005, if the taxpayer is married 186  
and files a joint return and the combined federal adjusted gross 187  
income of the taxpayer and the taxpayer's spouse for the taxable 188  
year does not exceed one hundred thousand dollars, or if the 189  
taxpayer is single and has a federal adjusted gross income for the 190  
taxable year not exceeding fifty thousand dollars, deduct amounts 191  
paid during the taxable year for qualified tuition and fees paid 192  
to an eligible institution for the taxpayer, the taxpayer's 193  
spouse, or any dependent of the taxpayer, who is a resident of 194  
this state and is enrolled in or attending a program that 195  
culminates in a degree or diploma at an eligible institution. The 196  
deduction may be claimed only to the extent that qualified tuition 197  
and fees are not otherwise deducted or excluded for any taxable 198  
year from federal or Ohio adjusted gross income. The deduction may 199  
not be claimed for educational expenses for which the taxpayer 200  
claims a credit under section 5747.27 of the Revised Code. 201

(19) Add any reimbursement received during the taxable year 202  
of any amount the taxpayer deducted under division (A)(18) of this 203  
section in any previous taxable year to the extent the amount is 204  
not otherwise included in Ohio adjusted gross income. 205

(20)(a)(i) Add five-sixths of the amount of depreciation 206  
expense allowed by subsection (k) of section 168 of the Internal 207

Revenue Code, including the taxpayer's proportionate or 208  
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~~ uniformed services or reserve 306  
components thereof, or the national guard, or received by the 307  
surviving spouse or former spouse of such a taxpayer under the 308  
survivor benefit plan on account of such a taxpayer's death. If 309  
the taxpayer receives income on account of retirement paid under 310  
the federal civil service retirement system or federal employees 311  
retirement system, or under any successor retirement program 312  
enacted by the congress of the United States that is established 313  
and maintained for retired employees of the United States 314  
government, and such retirement income is based, in whole or in 315  
part, on credit for the taxpayer's ~~military~~ uniformed service, the 316  
deduction allowed under this division shall include only that 317  
portion of such retirement income that is attributable to the 318  
taxpayer's ~~military~~ uniformed service, to the extent that portion 319  
of such retirement income is otherwise included in federal 320  
adjusted gross income and is not otherwise deducted under this 321  
section. Any amount deducted under division (A)(26) of this 322  
section is not included in a taxpayer's adjusted gross income for 323  
the purposes of section 5747.055 of the Revised Code. No amount 324  
may be deducted under division (A)(26) of this section on the 325  
basis of which a credit was claimed under section 5747.055 of the 326  
Revised Code. 327

(27) Deduct, to the extent not otherwise deducted or excluded 328  
in computing federal or Ohio adjusted gross income for the taxable 329  
year, the amount the taxpayer received during the taxable year 330  
from the military injury relief fund created in section 5101.98 of 331  
the Revised Code. 332

(28) Deduct, to the extent not otherwise deducted or excluded 333

in computing federal or Ohio adjusted gross income for the taxable 334  
year, the amount the taxpayer received as a veterans bonus during 335  
the taxable year from the Ohio department of veterans services as 336  
authorized by Section 2r of Article VIII, Ohio Constitution. 337

(29) Deduct, to the extent not otherwise deducted or excluded 338  
in computing federal or Ohio adjusted gross income for the taxable 339  
year, any loss from wagering transactions that is allowed as an 340  
itemized deduction under section 165 of the Internal Revenue Code 341  
and that the taxpayer deducted in computing federal taxable 342  
income. 343

(B) "Business income" means income, including gain or loss, 344  
arising from transactions, activities, and sources in the regular 345  
course of a trade or business and includes income, gain, or loss 346  
from real property, tangible property, and intangible property if 347  
the acquisition, rental, management, and disposition of the 348  
property constitute integral parts of the regular course of a 349  
trade or business operation. "Business income" includes income, 350  
including gain or loss, from a partial or complete liquidation of 351  
a business, including, but not limited to, gain or loss from the 352  
sale or other disposition of goodwill. 353

(C) "Nonbusiness income" means all income other than business 354  
income and may include, but is not limited to, compensation, rents 355  
and royalties from real or tangible personal property, capital 356  
gains, interest, dividends and distributions, patent or copyright 357  
royalties, or lottery winnings, prizes, and awards. 358

(D) "Compensation" means any form of remuneration paid to an 359  
employee for personal services. 360

(E) "Fiduciary" means a guardian, trustee, executor, 361  
administrator, receiver, conservator, or any other person acting 362  
in any fiduciary capacity for any individual, trust, or estate. 363

(F) "Fiscal year" means an accounting period of twelve months 364

ending on the last day of any month other than December.	365
(G) "Individual" means any natural person.	366
(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	367 368
(I) "Resident" means any of the following, provided that division (I)(3) of this section applies only to taxable years of a trust beginning in 2002 or thereafter:	369 370 371
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	372 373
(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code are not controlling for purposes of division (I)(2) of this section.	374 375 376 377
(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.	378 379 380
For the purposes of division (I)(3) of this section:	381
(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:	382 383 384 385 386 387
(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;	388 389 390 391
(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	392 393 394

one of the trust's qualifying beneficiaries is domiciled in this 395  
state for the purposes of this chapter during all or some portion 396  
of the trust's current taxable year; 397

(iii) A person who was domiciled in this state for the 398  
purposes of this chapter when the trust document or instrument or 399  
part of the trust document or instrument became irrevocable, but 400  
only if at least one of the trust's qualifying beneficiaries is a 401  
resident domiciled in this state for the purposes of this chapter 402  
during all or some portion of the trust's current taxable year. If 403  
a trust document or instrument became irrevocable upon the death 404  
of a person who at the time of death was domiciled in this state 405  
for purposes of this chapter, that person is a person described in 406  
division (I)(3)(a)(iii) of this section. 407

(b) A trust is irrevocable to the extent that the transferor 408  
is not considered to be the owner of the net assets of the trust 409  
under sections 671 to 678 of the Internal Revenue Code. 410

(c) With respect to a trust other than a charitable lead 411  
trust, "qualifying beneficiary" has the same meaning as "potential 412  
current beneficiary" as defined in section 1361(e)(2) of the 413  
Internal Revenue Code, and with respect to a charitable lead trust 414  
"qualifying beneficiary" is any current, future, or contingent 415  
beneficiary, but with respect to any trust "qualifying 416  
beneficiary" excludes a person or a governmental entity or 417  
instrumentality to any of which a contribution would qualify for 418  
the charitable deduction under section 170 of the Internal Revenue 419  
Code. 420

(d) For the purposes of division (I)(3)(a) of this section, 421  
the extent to which a trust consists directly or indirectly, in 422  
whole or in part, of assets, net of any related liabilities, that 423  
were transferred directly or indirectly, in whole or part, to the 424  
trust by any of the sources enumerated in that division shall be 425  
ascertained by multiplying the fair market value of the trust's 426

assets, net of related liabilities, by the qualifying ratio, which 427  
shall be computed as follows: 428

(i) The first time the trust receives assets, the numerator 429  
of the qualifying ratio is the fair market value of those assets 430  
at that time, net of any related liabilities, from sources 431  
enumerated in division (I)(3)(a) of this section. The denominator 432  
of the qualifying ratio is the fair market value of all the 433  
trust's assets at that time, net of any related liabilities. 434

(ii) Each subsequent time the trust receives assets, a 435  
revised qualifying ratio shall be computed. The numerator of the 436  
revised qualifying ratio is the sum of (1) the fair market value 437  
of the trust's assets immediately prior to the subsequent 438  
transfer, net of any related liabilities, multiplied by the 439  
qualifying ratio last computed without regard to the subsequent 440  
transfer, and (2) the fair market value of the subsequently 441  
transferred assets at the time transferred, net of any related 442  
liabilities, from sources enumerated in division (I)(3)(a) of this 443  
section. The denominator of the revised qualifying ratio is the 444  
fair market value of all the trust's assets immediately after the 445  
subsequent transfer, net of any related liabilities. 446

(iii) Whether a transfer to the trust is by or from any of 447  
the sources enumerated in division (I)(3)(a) of this section shall 448  
be ascertained without regard to the domicile of the trust's 449  
beneficiaries. 450

(e) For the purposes of division (I)(3)(a)(i) of this 451  
section: 452

(i) A trust is described in division (I)(3)(e)(i) of this 453  
section if the trust is a testamentary trust and the testator of 454  
that testamentary trust was domiciled in this state at the time of 455  
the testator's death for purposes of the taxes levied under 456  
Chapter 5731. of the Revised Code. 457

(ii) A trust is described in division (I)(3)(e)(ii) of this 458  
section if the transfer is a qualifying transfer described in any 459  
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 460  
irrevocable inter vivos trust, and at least one of the trust's 461  
qualifying beneficiaries is domiciled in this state for purposes 462  
of this chapter during all or some portion of the trust's current 463  
taxable year. 464

(f) For the purposes of division (I)(3)(e)(ii) of this 465  
section, a "qualifying transfer" is a transfer of assets, net of 466  
any related liabilities, directly or indirectly to a trust, if the 467  
transfer is described in any of the following: 468

(i) The transfer is made to a trust, created by the decedent 469  
before the decedent's death and while the decedent was domiciled 470  
in this state for the purposes of this chapter, and, prior to the 471  
death of the decedent, the trust became irrevocable while the 472  
decedent was domiciled in this state for the purposes of this 473  
chapter. 474

(ii) The transfer is made to a trust to which the decedent, 475  
prior to the decedent's death, had directly or indirectly 476  
transferred assets, net of any related liabilities, while the 477  
decedent was domiciled in this state for the purposes of this 478  
chapter, and prior to the death of the decedent the trust became 479  
irrevocable while the decedent was domiciled in this state for the 480  
purposes of this chapter. 481

(iii) The transfer is made on account of a contractual 482  
relationship existing directly or indirectly between the 483  
transferor and either the decedent or the estate of the decedent 484  
at any time prior to the date of the decedent's death, and the 485  
decedent was domiciled in this state at the time of death for 486  
purposes of the taxes levied under Chapter 5731. of the Revised 487  
Code. 488



(iv) The transfer is made to a trust on account of a 489  
contractual relationship existing directly or indirectly between 490  
the transferor and another person who at the time of the 491  
decedent's death was domiciled in this state for purposes of this 492  
chapter. 493

(v) The transfer is made to a trust on account of the will of 494  
a testator who was domiciled in this state at the time of the 495  
testator's death for purposes of the taxes levied under Chapter 496  
5731. of the Revised Code. 497

(vi) The transfer is made to a trust created by or caused to 498  
be created by a court, and the trust was directly or indirectly 499  
created in connection with or as a result of the death of an 500  
individual who, for purposes of the taxes levied under Chapter 501  
5731. of the Revised Code, was domiciled in this state at the time 502  
of the individual's death. 503

(g) The tax commissioner may adopt rules to ascertain the 504  
part of a trust residing in this state. 505

(J) "Nonresident" means an individual or estate that is not a 506  
resident. An individual who is a resident for only part of a 507  
taxable year is a nonresident for the remainder of that taxable 508  
year. 509

(K) "Pass-through entity" has the same meaning as in section 510  
5733.04 of the Revised Code. 511

(L) "Return" means the notifications and reports required to 512  
be filed pursuant to this chapter for the purpose of reporting the 513  
tax due and includes declarations of estimated tax when so 514  
required. 515

(M) "Taxable year" means the calendar year or the taxpayer's 516  
fiscal year ending during the calendar year, or fractional part 517  
thereof, upon which the adjusted gross income is calculated 518  
pursuant to this chapter. 519

(N) "Taxpayer" means any person subject to the tax imposed by 520  
section 5747.02 of the Revised Code or any pass-through entity 521  
that makes the election under division (D) of section 5747.08 of 522  
the Revised Code. 523

(O) "Dependents" means dependents as defined in the Internal 524  
Revenue Code and as claimed in the taxpayer's federal income tax 525  
return for the taxable year or which the taxpayer would have been 526  
permitted to claim had the taxpayer filed a federal income tax 527  
return. 528

(P) "Principal county of employment" means, in the case of a 529  
nonresident, the county within the state in which a taxpayer 530  
performs services for an employer or, if those services are 531  
performed in more than one county, the county in which the major 532  
portion of the services are performed. 533

(Q) As used in sections 5747.50 to 5747.55 of the Revised 534  
Code: 535

(1) "Subdivision" means any county, municipal corporation, 536  
park district, or township. 537

(2) "Essential local government purposes" includes all 538  
functions that any subdivision is required by general law to 539  
exercise, including like functions that are exercised under a 540  
charter adopted pursuant to the Ohio Constitution. 541

(R) "Overpayment" means any amount already paid that exceeds 542  
the figure determined to be the correct amount of the tax. 543

(S) "Taxable income" or "Ohio taxable income" applies only to 544  
estates and trusts, and means federal taxable income, as defined 545  
and used in the Internal Revenue Code, adjusted as follows: 546

(1) Add interest or dividends, net of ordinary, necessary, 547  
and reasonable expenses not deducted in computing federal taxable 548  
income, on obligations or securities of any state or of any 549

political subdivision or authority of any state, other than this 550  
state and its subdivisions and authorities, but only to the extent 551  
that such net amount is not otherwise includible in Ohio taxable 552  
income and is described in either division (S)(1)(a) or (b) of 553  
this section: 554

(a) The net amount is not attributable to the S portion of an 555  
electing small business trust and has not been distributed to 556  
beneficiaries for the taxable year; 557

(b) The net amount is attributable to the S portion of an 558  
electing small business trust for the taxable year. 559

(2) Add interest or dividends, net of ordinary, necessary, 560  
and reasonable expenses not deducted in computing federal taxable 561  
income, on obligations of any authority, commission, 562  
instrumentality, territory, or possession of the United States to 563  
the extent that the interest or dividends are exempt from federal 564  
income taxes but not from state income taxes, but only to the 565  
extent that such net amount is not otherwise includible in Ohio 566  
taxable income and is described in either division (S)(1)(a) or 567  
(b) of this section; 568

(3) Add the amount of personal exemption allowed to the 569  
estate pursuant to section 642(b) of the Internal Revenue Code; 570

(4) Deduct interest or dividends, net of related expenses 571  
deducted in computing federal taxable income, on obligations of 572  
the United States and its territories and possessions or of any 573  
authority, commission, or instrumentality of the United States to 574  
the extent that the interest or dividends are exempt from state 575  
taxes under the laws of the United States, but only to the extent 576  
that such amount is included in federal taxable income and is 577  
described in either division (S)(1)(a) or (b) of this section; 578

(5) Deduct the amount of wages and salaries, if any, not 579  
otherwise allowable as a deduction but that would have been 580

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

(6) Deduct any interest or interest equivalent, net of 588  
related expenses deducted in computing federal taxable income, on 589  
public obligations and purchase obligations, but only to the 590  
extent that such net amount relates either to income included in 591  
federal taxable income for the taxable year or to income of the S 592  
portion of an electing small business trust for the taxable year; 593

(7) Add any loss or deduct any gain resulting from sale, 594  
exchange, or other disposition of public obligations to the extent 595  
that such loss has been deducted or such gain has been included in 596  
computing either federal taxable income or income of the S portion 597  
of an electing small business trust for the taxable year; 598

(8) Except in the case of the final return of an estate, add 599  
any amount deducted by the taxpayer on both its Ohio estate tax 600  
return pursuant to section 5731.14 of the Revised Code, and on its 601  
federal income tax return in determining federal taxable income; 602

(9)(a) Deduct any amount included in federal taxable income 603  
solely because the amount represents a reimbursement or refund of 604  
expenses that in a previous year the decedent had deducted as an 605  
itemized deduction pursuant to section 63 of the Internal Revenue 606  
Code and applicable treasury regulations. The deduction otherwise 607  
allowed under division (S)(9)(a) of this section shall be reduced 608  
to the extent the reimbursement is attributable to an amount the 609  
taxpayer or decedent deducted under this section in any taxable 610  
year. 611

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

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

(a) It is allowable for repayment of an item that was included in the taxpayer's taxable income or the decedent's adjusted gross income for a prior taxable year and did not qualify 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 643  
satisfying the definition of "land devoted exclusively to 644  
agricultural use" under section 5713.30 of the Revised Code, 645  
regardless of whether the land is valued for tax purposes as such 646  
land under sections 5713.30 to 5713.38 of the Revised Code. If the 647  
trust is a pass-through entity investor, section 5747.231 of the 648  
Revised Code applies in ascertaining if the trust is eligible to 649  
claim the deduction provided by division (S)(12) of this section 650  
in connection with the pass-through entity's farm income. 651

Except for farm income attributable to the S portion of an 652  
electing small business trust, the deduction provided by division 653  
(S)(12) of this section is allowed only to the extent that the 654  
trust has not distributed such farm income. Division (S)(12) of 655  
this section applies only to taxable years of a trust beginning in 656  
2002 or thereafter. 657

(13) Add the net amount of income described in section 641(c) 658  
of the Internal Revenue Code to the extent that amount is not 659  
included in federal taxable income. 660

(14) Add or deduct the amount the taxpayer would be required 661  
to add or deduct under division (A)(20) or (21) of this section if 662  
the taxpayer's Ohio taxable income were computed in the same 663  
manner as an individual's Ohio adjusted gross income is computed 664  
under this section. In the case of a trust, division (S)(14) of 665  
this section applies only to any of the trust's taxable years 666  
beginning in 2002 or thereafter. 667

(T) "School district income" and "school district income tax" 668  
have the same meanings as in section 5748.01 of the Revised Code. 669

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 670  
of this section, "public obligations," "purchase obligations," and 671  
"interest or interest equivalent" have the same meanings as in 672  
section 5709.76 of the Revised Code. 673

(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.

(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.

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

(Y) "Month" means a calendar month.

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

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

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

include: 705

(a) Expenses for any course or activity involving sports, 706  
games, or hobbies unless the course or activity is part of the 707  
individual's degree or diploma program; 708

(b) The cost of books, room and board, student activity fees, 709  
athletic fees, insurance expenses, or other expenses unrelated to 710  
the individual's academic course of instruction; 711

(c) Tuition, fees, or other expenses paid or reimbursed 712  
through an employer, scholarship, grant in aid, or other 713  
educational benefit program. 714

(BB)(1) "Modified business income" means the business income 715  
included in a trust's Ohio taxable income after such taxable 716  
income is first reduced by the qualifying trust amount, if any. 717

(2) "Qualifying trust amount" of a trust means capital gains 718  
and losses from the sale, exchange, or other disposition of equity 719  
or ownership interests in, or debt obligations of, a qualifying 720  
investee to the extent included in the trust's Ohio taxable 721  
income, but only if the following requirements are satisfied: 722

(a) The book value of the qualifying investee's physical 723  
assets in this state and everywhere, as of the last day of the 724  
qualifying investee's fiscal or calendar year ending immediately 725  
prior to the date on which the trust recognizes the gain or loss, 726  
is available to the trust. 727

(b) The requirements of section 5747.011 of the Revised Code 728  
are satisfied for the trust's taxable year in which the trust 729  
recognizes the gain or loss. 730

Any gain or loss that is not a qualifying trust amount is 731  
modified business income, qualifying investment income, or 732  
modified nonbusiness income, as the case may be. 733

(3) "Modified nonbusiness income" means a trust's Ohio 734



taxable income other than modified business income, other than the 735  
qualifying trust amount, and other than qualifying investment 736  
income, as defined in section 5747.012 of the Revised Code, to the 737  
extent such qualifying investment income is not otherwise part of 738  
modified business income. 739

(4) "Modified Ohio taxable income" applies only to trusts, 740  
and means the sum of the amounts described in divisions (BB)(4)(a) 741  
to (c) of this section: 742

(a) The fraction, calculated under section 5747.013, and 743  
applying section 5747.231 of the Revised Code, multiplied by the 744  
sum of the following amounts: 745

(i) The trust's modified business income; 746

(ii) The trust's qualifying investment income, as defined in 747  
section 5747.012 of the Revised Code, but only to the extent the 748  
qualifying investment income does not otherwise constitute 749  
modified business income and does not otherwise constitute a 750  
qualifying trust amount. 751

(b) The qualifying trust amount multiplied by a fraction, the 752  
numerator of which is the sum of the book value of the qualifying 753  
investee's physical assets in this state on the last day of the 754  
qualifying investee's fiscal or calendar year ending immediately 755  
prior to the day on which the trust recognizes the qualifying 756  
trust amount, and the denominator of which is the sum of the book 757  
value of the qualifying investee's total physical assets 758  
everywhere on the last day of the qualifying investee's fiscal or 759  
calendar year ending immediately prior to the day on which the 760  
trust recognizes the qualifying trust amount. If, for a taxable 761  
year, the trust recognizes a qualifying trust amount with respect 762  
to more than one qualifying investee, the amount described in 763  
division (BB)(4)(b) of this section shall equal the sum of the 764  
products so computed for each such qualifying investee. 765

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

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

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

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

of this section, all of the following apply: 798

(i) If the qualifying investee is a member of a qualifying 799  
controlled group on the last day of the qualifying investee's 800  
fiscal or calendar year ending immediately prior to the date on 801  
which the trust recognizes the gain or loss, then "qualifying 802  
investee" includes all persons in the qualifying controlled group 803  
on such last day. 804

(ii) If the qualifying investee, or if the qualifying 805  
investee and any members of the qualifying controlled group of 806  
which the qualifying investee is a member on the last day of the 807  
qualifying investee's fiscal or calendar year ending immediately 808  
prior to the date on which the trust recognizes the gain or loss, 809  
separately or cumulatively own, directly or indirectly, on the 810  
last day of the qualifying investee's fiscal or calendar year 811  
ending immediately prior to the date on which the trust recognizes 812  
the qualifying trust amount, more than fifty per cent of the 813  
equity of a pass-through entity, then the qualifying investee and 814  
the other members are deemed to own the proportionate share of the 815  
pass-through entity's physical assets which the pass-through 816  
entity directly or indirectly owns on the last day of the 817  
pass-through entity's calendar or fiscal year ending within or 818  
with the last day of the qualifying investee's fiscal or calendar 819  
year ending immediately prior to the date on which the trust 820  
recognizes the qualifying trust amount. 821

(iii) For the purposes of division (BB)(5)(a)(iii) of this 822  
section, "upper level pass-through entity" means a pass-through 823  
entity directly or indirectly owning any equity of another 824  
pass-through entity, and "lower level pass-through entity" means 825  
that other pass-through entity. 826

An upper level pass-through entity, whether or not it is also 827  
a qualifying investee, is deemed to own, on the last day of the 828  
upper level pass-through entity's calendar or fiscal year, the 829

proportionate share of the lower level pass-through entity's 830  
physical assets that the lower level pass-through entity directly 831  
or indirectly owns on the last day of the lower level pass-through 832  
entity's calendar or fiscal year ending within or with the last 833  
day of the upper level pass-through entity's fiscal or calendar 834  
year. If the upper level pass-through entity directly and 835  
indirectly owns less than fifty per cent of the equity of the 836  
lower level pass-through entity on each day of the upper level 837  
pass-through entity's calendar or fiscal year in which or with 838  
which ends the calendar or fiscal year of the lower level 839  
pass-through entity and if, based upon clear and convincing 840  
evidence, complete information about the location and cost of the 841  
physical assets of the lower pass-through entity is not available 842  
to the upper level pass-through entity, then solely for purposes 843  
of ascertaining if a gain or loss constitutes a qualifying trust 844  
amount, the upper level pass-through entity shall be deemed as 845  
owning no equity of the lower level pass-through entity for each 846  
day during the upper level pass-through entity's calendar or 847  
fiscal year in which or with which ends the lower level 848  
pass-through entity's calendar or fiscal year. Nothing in division 849  
(BB)(5)(a)(iii) of this section shall be construed to provide for 850  
any deduction or exclusion in computing any trust's Ohio taxable 851  
income. 852

(b) With respect to a trust that is not a resident for the 853  
taxable year and with respect to a part of a trust that is not a 854  
resident for the taxable year, "qualifying investee" for that 855  
taxable year does not include a C corporation if both of the 856  
following apply: 857

(i) During the taxable year the trust or part of the trust 858  
recognizes a gain or loss from the sale, exchange, or other 859  
disposition of equity or ownership interests in, or debt 860  
obligations of, the C corporation. 861

(ii) Such gain or loss constitutes nonbusiness income.	862
(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.	863 864 865 866
(CC) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code.	867 868
(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code.	869 870
(EE)(1) For the purposes of division (EE) of this section:	871
(a) "Qualifying person" means any person other than a qualifying corporation.	872 873
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	874 875 876
(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;	877 878 879 880
(ii) A subsidiary that is wholly owned by any corporation that has made an election under subchapter S, chapter one, subtitle A of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year.	881 882 883 884
(2) For the purposes of this chapter, unless expressly stated otherwise, no qualifying person indirectly owns any asset directly or indirectly owned by any qualifying corporation.	885 886 887
(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:	888 889
(1) "Trust" does not include a qualified pre-income tax trust.	890 891

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

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

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

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

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

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

(GG) "Uniformed services" has the same meaning as in 10 U.S.C. 101.

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

**Section 3.** That the amendment by this act of section 5747.01 of the Revised Code applies to taxable years ending on or after the effective date of this act.