

As Passed by the House

**129th General Assembly
Regular Session
2011-2012**

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, Wachtmann, Fende, Antonio, Boyd, Carney, Garland, Hackett, Johnson, Pelanda, Smith, Amstutz, Anielski, Baker, Beck, Bubp, Celeste, DeVitis, Gerberry, Hagan, C., Hall, Heard, Hill, Luckie, Lynch, Mallory, McGregor, Milkovich, Newbold, O'Brien, Stinziano, Terhar, Winburn, Yuko Speaker Batchelder

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A B I L L

To amend section 5747.01 of the Revised Code to
exempt retirement pay related to service in the
Commissioned Corps of the National Oceanic and
Atmospheric Administration and the Commissioned
Corps of the Public Health Service.

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

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

Sec. 5747.01. Except as otherwise expressly provided or
clearly appearing from the context, any term used in this chapter
that is not otherwise defined in this section has the same meaning
as when used in a comparable context in the laws of the United
States relating to federal income taxes or if not used in a
comparable context in those laws, has the same meaning as in

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 81
deduction or exclusion in computing federal or Ohio adjusted gross 82
income for the taxable year, the amount the taxpayer paid during 83
the taxable year for medical care insurance and qualified 84
long-term care insurance for the taxpayer, the taxpayer's spouse, 85
and dependents. No deduction for medical care insurance under 86
division (A)(11) of this section shall be allowed either to any 87
taxpayer who is eligible to participate in any subsidized health 88
plan maintained by any employer of the taxpayer or of the 89
taxpayer's spouse, or to any taxpayer who is entitled to, or on 90
application would be entitled to, benefits under part A of Title 91
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 92
301, as amended. For the purposes of division (A)(11)(a) of this 93
section, "subsidized health plan" means a health plan for which 94
the employer pays any portion of the plan's cost. The deduction 95
allowed under division (A)(11)(a) of this section shall be the net 96
of any related premium refunds, related premium reimbursements, or 97
related insurance premium dividends received during the taxable 98
year. 99

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

(c) Deduct, to the extent not otherwise deducted or excluded 107

in computing federal or Ohio adjusted gross income, any amount 108
included in federal adjusted gross income under section 105 or not 109
excluded under section 106 of the Internal Revenue Code solely 110
because it relates to an accident and health plan for a person who 111
otherwise would be a "qualifying relative" and thus a "dependent" 112
under section 152 of the Internal Revenue Code but for the fact 113
that the person fails to meet the income and support limitations 114
under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 115

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

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

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

income in any taxable year. 140

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

(a) It is allowable for repayment of an item that was 145
included in the taxpayer's adjusted gross income for a prior 146
taxable year and did not qualify for a credit under division (A) 147
or (B) of section 5747.05 of the Revised Code for that year; 148

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

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

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

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

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

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

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

(17) Deduct the amount contributed by the taxpayer to an 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 240
operating loss carryback and carryforward shall not include 241
five-sixths of the allowance of any net operating loss deduction 242
carryback or carryforward to the taxable year to the extent such 243
loss resulted from depreciation allowed by section 168(k) of the 244
Internal Revenue Code and by the qualifying section 179 245
depreciation expense amount. 246

(21)(a) If the taxpayer was required to add an amount under 247
division (A)(20)(a) of this section for a taxable year, deduct 248
one-fifth of the amount so added for each of the five succeeding 249
taxable years. 250

(b) If the amount deducted under division (A)(21)(a) of this 251
section is attributable to an add-back allocated under division 252
(A)(20)(c) of this section, the amount deducted shall be situated 253
to the same location. Otherwise, the add-back shall be apportioned 254
using the apportionment factors for the taxable year in which the 255
deduction is taken, subject to one or more of the four alternative 256
methods of apportionment enumerated in section 5747.21 of the 257
Revised Code. 258

(c) No deduction is available under division (A)(21)(a) of 259
this section with regard to any depreciation allowed by section 260
168(k) of the Internal Revenue Code and by the qualifying section 261
179 depreciation expense amount to the extent that such 262
depreciation resulted in or increased a federal net operating loss 263
carryback or carryforward to a taxable year to which division 264

(A)(20)(d) of this section does not apply.	265
(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.	266 267 268 269 270
(23) 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 a death benefit paid by the adjutant general under section 5919.33 of the Revised Code.	271 272 273 274 275
(24) Deduct, to the extent included in federal adjusted gross income and not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, military pay and allowances received by the taxpayer during the taxable year for active duty service in the United States army, air force, navy, marine corps, or coast guard or reserve components thereof or the national guard. The deduction may not be claimed for military pay and allowances received by the taxpayer while the taxpayer is stationed in this state.	276 277 278 279 280 281 282 283 284
(25) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year and not otherwise compensated for by any other source, the amount of qualified organ donation expenses incurred by the taxpayer during the taxable year, not to exceed ten thousand dollars. A taxpayer may deduct qualified organ donation expenses only once for all taxable years beginning with taxable years beginning in 2007.	285 286 287 288 289 290 291 292
For the purposes of division (A)(25) of this section:	293
(a) "Human organ" means all or any portion of a human liver, pancreas, kidney, intestine, or lung, and any portion of human	294 295

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 employee for personal services.

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

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

(G) "Individual" means any natural person.

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

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

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

(2) The estate of a decedent who at the time of death was 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.

(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.

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

(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:

(i) A person, a court, or a governmental entity or

instrumentality on account of the death of a decedent, but only if 389
the trust is described in division (I)(3)(e)(i) or (ii) of this 390
section; 391

(ii) A person who was domiciled in this state for the 392
purposes of this chapter when the person directly or indirectly 393
transferred assets to an irrevocable trust, but only if at least 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 fiscal year ending during the calendar year, or fractional part thereof, upon which the adjusted gross income is calculated pursuant to this chapter.	516 517 518 519
(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.	520 521 522 523
(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.	524 525 526 527 528
(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.	529 530 531 532 533
(Q) As used in sections 5747.50 to 5747.55 of the Revised Code:	534 535
(1) "Subdivision" means any county, municipal corporation, park district, or township.	536 537
(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.	538 539 540 541
(R) "Overpayment" means any amount already paid that exceeds the figure determined to be the correct amount of the tax.	542 543
(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 612
income for any taxable year to the extent that the amount is 613
attributable to the recovery during the taxable year of any amount 614
deducted or excluded in computing federal or Ohio taxable income 615
in any taxable year, but only to the extent such amount has not 616
been distributed to beneficiaries for the taxable year. 617

(10) Deduct any portion of the deduction described in section 618
1341(a)(2) of the Internal Revenue Code, for repaying previously 619
reported income received under a claim of right, that meets both 620
of the following requirements: 621

(a) It is allowable for repayment of an item that was 622
included in the taxpayer's taxable income or the decedent's 623
adjusted gross income for a prior taxable year and did not qualify 624
for a credit under division (A) or (B) of section 5747.05 of the 625
Revised Code for that year. 626

(b) It does not otherwise reduce the taxpayer's taxable 627
income or the decedent's adjusted gross income for the current or 628
any other taxable year. 629

(11) Add any amount claimed as a credit under section 630
5747.059 of the Revised Code to the extent that the amount 631
satisfies either of the following: 632

(a) The amount was deducted or excluded from the computation 633
of the taxpayer's federal taxable income as required to be 634
reported for the taxpayer's taxable year under the Internal 635
Revenue Code; 636

(b) The amount resulted in a reduction in the taxpayer's 637

federal taxable income as required to be reported for any of the 638
taxpayer's taxable years under the Internal Revenue Code. 639

(12) Deduct any amount, net of related expenses deducted in 640
computing federal taxable income, that a trust is required to 641
report as farm income on its federal income tax return, but only 642
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 674
company formed under Chapter 1705. of the Revised Code or under 675
the laws of any other state. 676

(W) "Pass-through entity investor" means any person who, 677
during any portion of a taxable year of a pass-through entity, is 678
a partner, member, shareholder, or equity investor in that 679
pass-through entity. 680

(X) "Banking day" has the same meaning as in section 1304.01 681
of the Revised Code. 682

(Y) "Month" means a calendar month. 683

(Z) "Quarter" means the first three months, the second three 684
months, the third three months, or the last three months of the 685
taxpayer's taxable year. 686

(AA)(1) "Eligible institution" means a state university or 687
state institution of higher education as defined in section 688
3345.011 of the Revised Code, or a private, nonprofit college, 689
university, or other post-secondary institution located in this 690
state that possesses a certificate of authorization issued by the 691
Ohio board of regents pursuant to Chapter 1713. of the Revised 692
Code or a certificate of registration issued by the state board of 693
career colleges and schools under Chapter 3332. of the Revised 694
Code. 695

(2) "Qualified tuition and fees" means tuition and fees 696
imposed by an eligible institution as a condition of enrollment or 697
attendance, not exceeding two thousand five hundred dollars in 698

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:

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

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

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

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

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

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

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

recognizes the gain or loss. 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 766
a resident as ascertained in accordance with division (I)(3)(d) of 767
this section, its modified nonbusiness income. 768

(ii) With respect to a trust or portion of a trust that is 769
not a resident as ascertained in accordance with division 770
(I)(3)(d) of this section, the amount of its modified nonbusiness 771
income satisfying the descriptions in divisions (B)(2) to (5) of 772
section 5747.20 of the Revised Code, except as otherwise provided 773
in division (BB)(4)(c)(ii) of this section. With respect to a 774
trust or portion of a trust that is not a resident as ascertained 775
in accordance with division (I)(3)(d) of this section, the trust's 776
portion of modified nonbusiness income recognized from the sale, 777
exchange, or other disposition of a debt interest in or equity 778
interest in a section 5747.212 entity, as defined in section 779
5747.212 of the Revised Code, without regard to division (A) of 780
that section, shall not be allocated to this state in accordance 781
with section 5747.20 of the Revised Code but shall be apportioned 782
to this state in accordance with division (B) of section 5747.212 783
of the Revised Code without regard to division (A) of that 784
section. 785

If the allocation and apportionment of a trust's income under 786
divisions (BB)(4)(a) and (c) of this section do not fairly 787
represent the modified Ohio taxable income of the trust in this 788
state, the alternative methods described in division (C) of 789
section 5747.21 of the Revised Code may be applied in the manner 790
and to the same extent provided in that section. 791

(5)(a) Except as set forth in division (BB)(5)(b) of this 792

section, "qualifying investee" means a person in which a trust has 793
an equity or ownership interest, or a person or unit of government 794
the debt obligations of either of which are owned by a trust. For 795
the purposes of division (BB)(2)(a) of this section and for the 796
purpose of computing the fraction described in division (BB)(4)(b) 797
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 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.	858 859 860 861
(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	885 886

or indirectly owned by any qualifying corporation. 887

(FF) For purposes of this chapter and Chapter 5751. of the 888
Revised Code: 889

(1) "Trust" does not include a qualified pre-income tax 890
trust. 891

(2) A "qualified pre-income tax trust" is any pre-income tax 892
trust that makes a qualifying pre-income tax trust election as 893
described in division (FF)(3) of this section. 894

(3) A "qualifying pre-income tax trust election" is an 895
election by a pre-income tax trust to subject to the tax imposed 896
by section 5751.02 of the Revised Code the pre-income tax trust 897
and all pass-through entities of which the trust owns or controls, 898
directly, indirectly, or constructively through related interests, 899
five per cent or more of the ownership or equity interests. The 900
trustee shall notify the tax commissioner in writing of the 901
election on or before April 15, 2006. The election, if timely 902
made, shall be effective on and after January 1, 2006, and shall 903
apply for all tax periods and tax years until revoked by the 904
trustee of the trust. 905

(4) A "pre-income tax trust" is a trust that satisfies all of 906
the following requirements: 907

(a) The document or instrument creating the trust was 908
executed by the grantor before January 1, 1972; 909

(b) The trust became irrevocable upon the creation of the 910
trust; and 911

(c) The grantor was domiciled in this state at the time the 912
trust was created. 913

(GG) "Uniformed services" has the same meaning as in 10 914
U.S.C. 101. 915

Section 2. That existing section 5747.01 of the Revised Code 916
is hereby repealed. 917

Section 3. That the amendment by this act of section 5747.01 918
of the Revised Code applies to taxable years ending on or after 919
the effective date of this act. 920