

As Introduced

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Representatives Beck, Dovilla

Cosponsors: Representatives Stebelton, Blessing, Terhar, Hollington

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A B I L L

To amend section 5747.01 of the Revised Code to allow 1
taxpayers who claim an enhanced federal income tax 2
depreciation deduction to reduce the amount of the 3
deduction the taxpayer must add-back for Ohio 4
income tax purposes if the taxpayer increases 5
payroll in the year the enhanced federal deduction 6
is taken. 7

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

Section 1. That section 5747.01 of the Revised Code be 8
amended to read as follows: 9

Sec. 5747.01. Except as otherwise expressly provided or 10
clearly appearing from the context, any term used in this chapter 11
that is not otherwise defined in this section has the same meaning 12
as when used in a comparable context in the laws of the United 13
States relating to federal income taxes or if not used in a 14
comparable context in those laws, has the same meaning as in 15
section 5733.40 of the Revised Code. Any reference in this chapter 16
to the Internal Revenue Code includes other laws of the United 17
States relating to federal income taxes. 18

As used in this chapter: 19

(A) "Adjusted gross income" or "Ohio adjusted gross income" 20
means federal adjusted gross income, as defined and used in the 21
Internal Revenue Code, adjusted as provided in this section: 22

(1) Add interest or dividends on obligations or securities of 23
any state or of any political subdivision or authority of any 24
state, other than this state and its subdivisions and authorities. 25

(2) Add interest or dividends on obligations of any 26
authority, commission, instrumentality, territory, or possession 27
of the United States to the extent that the interest or dividends 28
are exempt from federal income taxes but not from state income 29
taxes. 30

(3) Deduct interest or dividends on obligations of the United 31
States and its territories and possessions or of any authority, 32
commission, or instrumentality of the United States to the extent 33
that the interest or dividends are included in federal adjusted 34
gross income but exempt from state income taxes under the laws of 35
the United States. 36

(4) Deduct disability and survivor's benefits to the extent 37
included in federal adjusted gross income. 38

(5) Deduct benefits under Title II of the Social Security Act 39
and tier 1 railroad retirement benefits to the extent included in 40
federal adjusted gross income under section 86 of the Internal 41
Revenue Code. 42

(6) In the case of a taxpayer who is a beneficiary of a trust 43
that makes an accumulation distribution as defined in section 665 44
of the Internal Revenue Code, add, for the beneficiary's taxable 45
years beginning before 2002, the portion, if any, of such 46
distribution that does not exceed the undistributed net income of 47
the trust for the three taxable years preceding the taxable year 48
in which the distribution is made to the extent that the portion 49
was not included in the trust's taxable income for any of the 50

trust's taxable years beginning in 2002 or thereafter. 51

"Undistributed net income of a trust" means the taxable income of 52
the trust increased by (a)(i) the additions to adjusted gross 53
income required under division (A) of this section and (ii) the 54
personal exemptions allowed to the trust pursuant to section 55
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 56
deductions to adjusted gross income required under division (A) of 57
this section, (ii) the amount of federal income taxes attributable 58
to such income, and (iii) the amount of taxable income that has 59
been included in the adjusted gross income of a beneficiary by 60
reason of a prior accumulation distribution. Any undistributed net 61
income included in the adjusted gross income of a beneficiary 62
shall reduce the undistributed net income of the trust commencing 63
with the earliest years of the accumulation period. 64

(7) Deduct the amount of wages and salaries, if any, not 65
otherwise allowable as a deduction but that would have been 66
allowable as a deduction in computing federal adjusted gross 67
income for the taxable year, had the targeted jobs credit allowed 68
and determined under sections 38, 51, and 52 of the Internal 69
Revenue Code not been in effect. 70

(8) Deduct any interest or interest equivalent on public 71
obligations and purchase obligations to the extent that the 72
interest or interest equivalent is included in federal adjusted 73
gross income. 74

(9) Add any loss or deduct any gain resulting from the sale, 75
exchange, or other disposition of public obligations to the extent 76
that the loss has been deducted or the gain has been included in 77
computing federal adjusted gross income. 78

(10) Deduct or add amounts, as provided under section 5747.70 79
of the Revised Code, related to contributions to variable college 80
savings program accounts made or tuition units purchased pursuant 81
to Chapter 3334. of the Revised Code. 82

(11)(a) Deduct, to the extent not otherwise allowable as a 83
deduction or exclusion in computing federal or Ohio adjusted gross 84
income for the taxable year, the amount the taxpayer paid during 85
the taxable year for medical care insurance and qualified 86
long-term care insurance for the taxpayer, the taxpayer's spouse, 87
and dependents. No deduction for medical care insurance under 88
division (A)(11) of this section shall be allowed either to any 89
taxpayer who is eligible to participate in any subsidized health 90
plan maintained by any employer of the taxpayer or of the 91
taxpayer's spouse, or to any taxpayer who is entitled to, or on 92
application would be entitled to, benefits under part A of Title 93
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 94
301, as amended. For the purposes of division (A)(11)(a) of this 95
section, "subsidized health plan" means a health plan for which 96
the employer pays any portion of the plan's cost. The deduction 97
allowed under division (A)(11)(a) of this section shall be the net 98
of any related premium refunds, related premium reimbursements, or 99
related insurance premium dividends received during the taxable 100
year. 101

(b) Deduct, to the extent not otherwise deducted or excluded 102
in computing federal or Ohio adjusted gross income during the 103
taxable year, the amount the taxpayer paid during the taxable 104
year, not compensated for by any insurance or otherwise, for 105
medical care of the taxpayer, the taxpayer's spouse, and 106
dependents, to the extent the expenses exceed seven and one-half 107
per cent of the taxpayer's federal adjusted gross income. 108

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

under section 152 of the Internal Revenue Code but for the fact 115
that the person fails to meet the income and support limitations 116
under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 117

(d) For purposes of division (A)(11) of this section, 118
"medical care" has the meaning given in section 213 of the 119
Internal Revenue Code, subject to the special rules, limitations, 120
and exclusions set forth therein, and "qualified long-term care" 121
has the same meaning given in section 7702B(c) of the Internal 122
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 123
of this section, "dependent" includes a person who otherwise would 124
be a "qualifying relative" and thus a "dependent" under section 125
152 of the Internal Revenue Code but for the fact that the person 126
fails to meet the income and support limitations under section 127
152(d)(1)(B) and (C) of the Internal Revenue Code. 128

(12)(a) Deduct any amount included in federal adjusted gross 129
income solely because the amount represents a reimbursement or 130
refund of expenses that in any year the taxpayer had deducted as 131
an itemized deduction pursuant to section 63 of the Internal 132
Revenue Code and applicable United States department of the 133
treasury regulations. The deduction otherwise allowed under 134
division (A)(12)(a) of this section shall be reduced to the extent 135
the reimbursement is attributable to an amount the taxpayer 136
deducted under this section in any taxable year. 137

(b) Add any amount not otherwise included in Ohio adjusted 138
gross income for any taxable year to the extent that the amount is 139
attributable to the recovery during the taxable year of any amount 140
deducted or excluded in computing federal or Ohio adjusted gross 141
income in any taxable year. 142

(13) Deduct any portion of the deduction described in section 143
1341(a)(2) of the Internal Revenue Code, for repaying previously 144
reported income received under a claim of right, that meets both 145
of the following requirements: 146

(a) It is allowable for repayment of an item that was 147
included in the taxpayer's adjusted gross income for a prior 148
taxable year and did not qualify for a credit under division (A) 149
or (B) of section 5747.05 of the Revised Code for that year; 150

(b) It does not otherwise reduce the taxpayer's adjusted 151
gross income for the current or any other taxable year. 152

(14) Deduct an amount equal to the deposits made to, and net 153
investment earnings of, a medical savings account during the 154
taxable year, in accordance with section 3924.66 of the Revised 155
Code. The deduction allowed by division (A)(14) of this section 156
does not apply to medical savings account deposits and earnings 157
otherwise deducted or excluded for the current or any other 158
taxable year from the taxpayer's federal adjusted gross income. 159

(15)(a) Add an amount equal to the funds withdrawn from a 160
medical savings account during the taxable year, and the net 161
investment earnings on those funds, when the funds withdrawn were 162
used for any purpose other than to reimburse an account holder 163
for, or to pay, eligible medical expenses, in accordance with 164
section 3924.66 of the Revised Code; 165

(b) Add the amounts distributed from a medical savings 166
account under division (A)(2) of section 3924.68 of the Revised 167
Code during the taxable year. 168

(16) Add any amount claimed as a credit under section 169
5747.059 of the Revised Code to the extent that such amount 170
satisfies either of the following: 171

(a) The amount was deducted or excluded from the computation 172
of the taxpayer's federal adjusted gross income as required to be 173
reported for the taxpayer's taxable year under the Internal 174
Revenue Code; 175

(b) The amount resulted in a reduction of the taxpayer's 176
federal adjusted gross income as required to be reported for any 177

of the taxpayer's taxable years under the Internal Revenue Code. 178

(17) Deduct the amount contributed by the taxpayer to an 179
individual development account program established by a county 180
department of job and family services pursuant to sections 329.11 181
to 329.14 of the Revised Code for the purpose of matching funds 182
deposited by program participants. On request of the tax 183
commissioner, the taxpayer shall provide any information that, in 184
the tax commissioner's opinion, is necessary to establish the 185
amount deducted under division (A)(17) of this section. 186

(18) Beginning in taxable year 2001 but not for any taxable 187
year beginning after December 31, 2005, if the taxpayer is married 188
and files a joint return and the combined federal adjusted gross 189
income of the taxpayer and the taxpayer's spouse for the taxable 190
year does not exceed one hundred thousand dollars, or if the 191
taxpayer is single and has a federal adjusted gross income for the 192
taxable year not exceeding fifty thousand dollars, deduct amounts 193
paid during the taxable year for qualified tuition and fees paid 194
to an eligible institution for the taxpayer, the taxpayer's 195
spouse, or any dependent of the taxpayer, who is a resident of 196
this state and is enrolled in or attending a program that 197
culminates in a degree or diploma at an eligible institution. The 198
deduction may be claimed only to the extent that qualified tuition 199
and fees are not otherwise deducted or excluded for any taxable 200
year from federal or Ohio adjusted gross income. The deduction may 201
not be claimed for educational expenses for which the taxpayer 202
claims a credit under section 5747.27 of the Revised Code. 203

(19) Add any reimbursement received during the taxable year 204
of any amount the taxpayer deducted under division (A)(18) of this 205
section in any previous taxable year to the extent the amount is 206
not otherwise included in Ohio adjusted gross income. 207

(20)(a)(i) Add five-sixths of the amount of adjusted section 208
168 depreciation expense ~~allowed by subsection (k) of section 168~~ 209

~~of the Internal Revenue Code, including the taxpayer's~~ 210
~~proportionate or distributive share of the amount of adjusted~~ 211
~~section 168 depreciation expense allowed by that subsection to~~ 212
~~calculated under this division for a pass-through entity in which~~ 213
~~the taxpayer has a direct or indirect ownership interest.~~ 214

(ii) Add five-sixths of the amount of adjusted qualifying 215
section 179 depreciation expense, including a ~~person's~~ taxpayer's 216
proportionate or distributive share of the amount of adjusted 217
qualifying section 179 depreciation expense ~~allowed to~~ calculated 218
under this division for any pass-through entity in which the 219
person has a direct or indirect ownership. ~~For the purposes of~~ 220
~~this division, "qualifying section 179 depreciation expense" means~~ 221
~~the difference between (I) the amount of depreciation expense~~ 222
~~directly or indirectly allowed to the taxpayer under section 179~~ 223
~~of the Internal Revenue Code, and (II) the amount of depreciation~~ 224
~~expense directly or indirectly allowed to the taxpayer under~~ 225
~~section 179 of the Internal Revenue Code as that section existed~~ 226
~~on December 31, 2002.~~ 227

The tax commissioner, under procedures established by the 228
commissioner, may waive the add-backs related to a pass-through 229
entity if the taxpayer owns, directly or indirectly, less than 230
five per cent of the pass-through entity. 231

(b) Nothing in division (A)(20) of this section shall be 232
construed to adjust or modify the adjusted basis of any asset. 233

(c) To the extent the add-back required under division 234
(A)(20)(a) of this section is attributable to property generating 235
nonbusiness income or loss allocated under section 5747.20 of the 236
Revised Code, the add-back shall be situated to the same location 237
as the nonbusiness income or loss generated by the property for 238
the purpose of determining the credit under division (A) of 239
section 5747.05 of the Revised Code. Otherwise, the add-back shall 240
be apportioned, subject to one or more of the four alternative 241

methods of apportionment enumerated in section 5747.21 of the Revised Code. 242
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(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~~ is attributable to the adjusted section 168 depreciation expense amount or the adjusted qualifying section 179 depreciation expense amount. 244
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(e) For the purposes of division (A)(20) of this section: 252

(i) "Income taxes withheld" means the total amount withheld under section 5747.06 of the Revised Code by an employer during a taxable year. 253
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(ii) "Increase in income taxes withheld" means the amount by which the amount of income taxes withheld by an employer during the taxable year exceeds the amount of income taxes withheld by that employer during the immediately preceding taxable year. 256
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(iii) "Qualifying section 179 depreciation expense" means the difference between (I) the amount of depreciation expense allowed to a person under section 179 of the Internal Revised Code, and (II) the amount of depreciation expense allowed to the person under section 179 of the Internal Revenue Code as that section existed on December 31, 2002. 260
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(iv) "Adjusted qualifying section 179 depreciation expense" means the amount, if any, by which qualifying section 179 depreciation expense allowed to a person for the taxable year exceeds the increase in income taxes withheld by that person. 266
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(v) "Adjusted section 168 depreciation expense" means the amount, if any, by which depreciation expense allowed to a person by subsection (k) of section 168 of the Internal Revenue Code 270
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<u>exceeds the increase in income taxes withheld by that person.</u>	273
(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.	274 275 276 277
(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 sitused 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.	278 279 280 281 282 283 284 285
(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.	286 287 288 289 290 291 292
(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.	293 294 295 296 297
(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.	298 299 300 301 302
(24) Deduct, to the extent included in federal adjusted gross	303

income and not otherwise allowable as a deduction or exclusion in 304
computing federal or Ohio adjusted gross income for the taxable 305
year, military pay and allowances received by the taxpayer during 306
the taxable year for active duty service in the United States 307
army, air force, navy, marine corps, or coast guard or reserve 308
components thereof or the national guard. The deduction may not be 309
claimed for military pay and allowances received by the taxpayer 310
while the taxpayer is stationed in this state. 311

(25) Deduct, to the extent not otherwise allowable as a 312
deduction or exclusion in computing federal or Ohio adjusted gross 313
income for the taxable year and not otherwise compensated for by 314
any other source, the amount of qualified organ donation expenses 315
incurred by the taxpayer during the taxable year, not to exceed 316
ten thousand dollars. A taxpayer may deduct qualified organ 317
donation expenses only once for all taxable years beginning with 318
taxable years beginning in 2007. 319

For the purposes of division (A)(25) of this section: 320

(a) "Human organ" means all or any portion of a human liver, 321
pancreas, kidney, intestine, or lung, and any portion of human 322
bone marrow. 323

(b) "Qualified organ donation expenses" means travel 324
expenses, lodging expenses, and wages and salary forgone by a 325
taxpayer in connection with the taxpayer's donation, while living, 326
of one or more of the taxpayer's human organs to another human 327
being. 328

(26) Deduct, to the extent not otherwise deducted or excluded 329
in computing federal or Ohio adjusted gross income for the taxable 330
year, amounts received by the taxpayer as retired military 331
personnel pay for service in the United States army, navy, air 332
force, coast guard, or marine corps or reserve components thereof, 333
or the national guard, or received by the surviving spouse or 334

former spouse of such a taxpayer under the survivor benefit plan 335
on account of such a taxpayer's death. If the taxpayer receives 336
income on account of retirement paid under the federal civil 337
service retirement system or federal employees retirement system, 338
or under any successor retirement program enacted by the congress 339
of the United States that is established and maintained for 340
retired employees of the United States government, and such 341
retirement income is based, in whole or in part, on credit for the 342
taxpayer's military service, the deduction allowed under this 343
division shall include only that portion of such retirement income 344
that is attributable to the taxpayer's military service, to the 345
extent that portion of such retirement income is otherwise 346
included in federal adjusted gross income and is not otherwise 347
deducted under this section. Any amount deducted under division 348
(A)(26) of this section is not included in a taxpayer's adjusted 349
gross income for the purposes of section 5747.055 of the Revised 350
Code. No amount may be deducted under division (A)(26) of this 351
section on the basis of which a credit was claimed under section 352
5747.055 of the Revised Code. 353

(27) Deduct, to the extent not otherwise deducted or excluded 354
in computing federal or Ohio adjusted gross income for the taxable 355
year, the amount the taxpayer received during the taxable year 356
from the military injury relief fund created in section 5101.98 of 357
the Revised Code. 358

(28) Deduct, to the extent not otherwise deducted or excluded 359
in computing federal or Ohio adjusted gross income for the taxable 360
year, the amount the taxpayer received as a veterans bonus during 361
the taxable year from the Ohio department of veterans services as 362
authorized by Section 2r of Article VIII, Ohio Constitution. 363

(29) Deduct, to the extent not otherwise deducted or excluded 364
in computing federal or Ohio adjusted gross income for the taxable 365
year, any loss from wagering transactions that is allowed as an 366

itemized deduction under section 165 of the Internal Revenue Code 367
and that the taxpayer deducted in computing federal taxable 368
income. 369

(30) Deduct, to the extent not otherwise deducted or excluded 370
in computing federal or Ohio adjusted gross income for the taxable 371
year, any income derived from providing public services under a 372
contract through a project owned by the state, as described in 373
section 126.604 of the Revised Code or derived from a transfer 374
agreement or from the enterprise transferred under that agreement 375
under section 4313.02 of the Revised Code. 376

(B) "Business income" means income, including gain or loss, 377
arising from transactions, activities, and sources in the regular 378
course of a trade or business and includes income, gain, or loss 379
from real property, tangible property, and intangible property if 380
the acquisition, rental, management, and disposition of the 381
property constitute integral parts of the regular course of a 382
trade or business operation. "Business income" includes income, 383
including gain or loss, from a partial or complete liquidation of 384
a business, including, but not limited to, gain or loss from the 385
sale or other disposition of goodwill. 386

(C) "Nonbusiness income" means all income other than business 387
income and may include, but is not limited to, compensation, rents 388
and royalties from real or tangible personal property, capital 389
gains, interest, dividends and distributions, patent or copyright 390
royalties, or lottery winnings, prizes, and awards. 391

(D) "Compensation" means any form of remuneration paid to an 392
employee for personal services. 393

(E) "Fiduciary" means a guardian, trustee, executor, 394
administrator, receiver, conservator, or any other person acting 395
in any fiduciary capacity for any individual, trust, or estate. 396

(F) "Fiscal year" means an accounting period of twelve months 397

ending on the last day of any month other than December.	398
(G) "Individual" means any natural person.	399
(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	400 401
(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:	402 403 404
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	405 406
(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.	407 408 409 410
(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.	411 412 413
For the purposes of division (I)(3) of this section:	414
(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:	415 416 417 418 419 420
(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;	421 422 423 424
(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	425 426 427

one of the trust's qualifying beneficiaries is domiciled in this 428
state for the purposes of this chapter during all or some portion 429
of the trust's current taxable year; 430

(iii) A person who was domiciled in this state for the 431
purposes of this chapter when the trust document or instrument or 432
part of the trust document or instrument became irrevocable, but 433
only if at least one of the trust's qualifying beneficiaries is a 434
resident domiciled in this state for the purposes of this chapter 435
during all or some portion of the trust's current taxable year. If 436
a trust document or instrument became irrevocable upon the death 437
of a person who at the time of death was domiciled in this state 438
for purposes of this chapter, that person is a person described in 439
division (I)(3)(a)(iii) of this section. 440

(b) A trust is irrevocable to the extent that the transferor 441
is not considered to be the owner of the net assets of the trust 442
under sections 671 to 678 of the Internal Revenue Code. 443

(c) With respect to a trust other than a charitable lead 444
trust, "qualifying beneficiary" has the same meaning as "potential 445
current beneficiary" as defined in section 1361(e)(2) of the 446
Internal Revenue Code, and with respect to a charitable lead trust 447
"qualifying beneficiary" is any current, future, or contingent 448
beneficiary, but with respect to any trust "qualifying 449
beneficiary" excludes a person or a governmental entity or 450
instrumentality to any of which a contribution would qualify for 451
the charitable deduction under section 170 of the Internal Revenue 452
Code. 453

(d) For the purposes of division (I)(3)(a) of this section, 454
the extent to which a trust consists directly or indirectly, in 455
whole or in part, of assets, net of any related liabilities, that 456
were transferred directly or indirectly, in whole or part, to the 457
trust by any of the sources enumerated in that division shall be 458
ascertained by multiplying the fair market value of the trust's 459

assets, net of related liabilities, by the qualifying ratio, which 460
shall be computed as follows: 461

(i) The first time the trust receives assets, the numerator 462
of the qualifying ratio is the fair market value of those assets 463
at that time, net of any related liabilities, from sources 464
enumerated in division (I)(3)(a) of this section. The denominator 465
of the qualifying ratio is the fair market value of all the 466
trust's assets at that time, net of any related liabilities. 467

(ii) Each subsequent time the trust receives assets, a 468
revised qualifying ratio shall be computed. The numerator of the 469
revised qualifying ratio is the sum of (1) the fair market value 470
of the trust's assets immediately prior to the subsequent 471
transfer, net of any related liabilities, multiplied by the 472
qualifying ratio last computed without regard to the subsequent 473
transfer, and (2) the fair market value of the subsequently 474
transferred assets at the time transferred, net of any related 475
liabilities, from sources enumerated in division (I)(3)(a) of this 476
section. The denominator of the revised qualifying ratio is the 477
fair market value of all the trust's assets immediately after the 478
subsequent transfer, net of any related liabilities. 479

(iii) Whether a transfer to the trust is by or from any of 480
the sources enumerated in division (I)(3)(a) of this section shall 481
be ascertained without regard to the domicile of the trust's 482
beneficiaries. 483

(e) For the purposes of division (I)(3)(a)(i) of this 484
section: 485

(i) A trust is described in division (I)(3)(e)(i) of this 486
section if the trust is a testamentary trust and the testator of 487
that testamentary trust was domiciled in this state at the time of 488
the testator's death for purposes of the taxes levied under 489
Chapter 5731. of the Revised Code. 490

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

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

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

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

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

(iv) The transfer is made to a trust on account of a 522
contractual relationship existing directly or indirectly between 523
the transferor and another person who at the time of the 524
decedent's death was domiciled in this state for purposes of this 525
chapter. 526

(v) The transfer is made to a trust on account of the will of 527
a testator who was domiciled in this state at the time of the 528
testator's death for purposes of the taxes levied under Chapter 529
5731. of the Revised Code. 530

(vi) The transfer is made to a trust created by or caused to 531
be created by a court, and the trust was directly or indirectly 532
created in connection with or as a result of the death of an 533
individual who, for purposes of the taxes levied under Chapter 534
5731. of the Revised Code, was domiciled in this state at the time 535
of the individual's death. 536

(g) The tax commissioner may adopt rules to ascertain the 537
part of a trust residing in this state. 538

(J) "Nonresident" means an individual or estate that is not a 539
resident. An individual who is a resident for only part of a 540
taxable year is a nonresident for the remainder of that taxable 541
year. 542

(K) "Pass-through entity" has the same meaning as in section 543
5733.04 of the Revised Code. 544

(L) "Return" means the notifications and reports required to 545
be filed pursuant to this chapter for the purpose of reporting the 546
tax due and includes declarations of estimated tax when so 547
required. 548

(M) "Taxable year" means the calendar year or the taxpayer's 549
fiscal year ending during the calendar year, or fractional part 550
thereof, upon which the adjusted gross income is calculated 551
pursuant to this chapter. 552

(N) "Taxpayer" means any person subject to the tax imposed by 553
section 5747.02 of the Revised Code or any pass-through entity 554
that makes the election under division (D) of section 5747.08 of 555
the Revised Code. 556

(O) "Dependents" means dependents as defined in the Internal 557
Revenue Code and as claimed in the taxpayer's federal income tax 558
return for the taxable year or which the taxpayer would have been 559
permitted to claim had the taxpayer filed a federal income tax 560
return. 561

(P) "Principal county of employment" means, in the case of a 562
nonresident, the county within the state in which a taxpayer 563
performs services for an employer or, if those services are 564
performed in more than one county, the county in which the major 565
portion of the services are performed. 566

(Q) As used in sections 5747.50 to 5747.55 of the Revised 567
Code: 568

(1) "Subdivision" means any county, municipal corporation, 569
park district, or township. 570

(2) "Essential local government purposes" includes all 571
functions that any subdivision is required by general law to 572
exercise, including like functions that are exercised under a 573
charter adopted pursuant to the Ohio Constitution. 574

(R) "Overpayment" means any amount already paid that exceeds 575
the figure determined to be the correct amount of the tax. 576

(S) "Taxable income" or "Ohio taxable income" applies only to 577
estates and trusts, and means federal taxable income, as defined 578
and used in the Internal Revenue Code, adjusted as follows: 579

(1) Add interest or dividends, net of ordinary, necessary, 580
and reasonable expenses not deducted in computing federal taxable 581
income, on obligations or securities of any state or of any 582

political subdivision or authority of any state, other than this 583
state and its subdivisions and authorities, but only to the extent 584
that such net amount is not otherwise includible in Ohio taxable 585
income and is described in either division (S)(1)(a) or (b) of 586
this section: 587

(a) The net amount is not attributable to the S portion of an 588
electing small business trust and has not been distributed to 589
beneficiaries for the taxable year; 590

(b) The net amount is attributable to the S portion of an 591
electing small business trust for the taxable year. 592

(2) Add interest or dividends, net of ordinary, necessary, 593
and reasonable expenses not deducted in computing federal taxable 594
income, on obligations of any authority, commission, 595
instrumentality, territory, or possession of the United States to 596
the extent that the interest or dividends are exempt from federal 597
income taxes but not from state income taxes, but only to the 598
extent that such net amount is not otherwise includible in Ohio 599
taxable income and is described in either division (S)(1)(a) or 600
(b) of this section; 601

(3) Add the amount of personal exemption allowed to the 602
estate pursuant to section 642(b) of the Internal Revenue Code; 603

(4) Deduct interest or dividends, net of related expenses 604
deducted in computing federal taxable income, on obligations of 605
the United States and its territories and possessions or of any 606
authority, commission, or instrumentality of the United States to 607
the extent that the interest or dividends are exempt from state 608
taxes under the laws of the United States, but only to the extent 609
that such amount is included in federal taxable income and is 610
described in either division (S)(1)(a) or (b) of this section; 611

(5) Deduct the amount of wages and salaries, if any, not 612
otherwise allowable as a deduction but that would have been 613

allowable as a deduction in computing federal taxable income for 614
the taxable year, had the targeted jobs credit allowed under 615
sections 38, 51, and 52 of the Internal Revenue Code not been in 616
effect, but only to the extent such amount relates either to 617
income included in federal taxable income for the taxable year or 618
to income of the S portion of an electing small business trust for 619
the taxable year; 620

(6) Deduct any interest or interest equivalent, net of 621
related expenses deducted in computing federal taxable income, on 622
public obligations and purchase obligations, but only to the 623
extent that such net amount relates either to income included in 624
federal taxable income for the taxable year or to income of the S 625
portion of an electing small business trust for the taxable year; 626

(7) Add any loss or deduct any gain resulting from sale, 627
exchange, or other disposition of public obligations to the extent 628
that such loss has been deducted or such gain has been included in 629
computing either federal taxable income or income of the S portion 630
of an electing small business trust for the taxable year; 631

(8) Except in the case of the final return of an estate, add 632
any amount deducted by the taxpayer on both its Ohio estate tax 633
return pursuant to section 5731.14 of the Revised Code, and on its 634
federal income tax return in determining federal taxable income; 635

(9)(a) Deduct any amount included in federal taxable income 636
solely because the amount represents a reimbursement or refund of 637
expenses that in a previous year the decedent had deducted as an 638
itemized deduction pursuant to section 63 of the Internal Revenue 639
Code and applicable treasury regulations. The deduction otherwise 640
allowed under division (S)(9)(a) of this section shall be reduced 641
to the extent the reimbursement is attributable to an amount the 642
taxpayer or decedent deducted under this section in any taxable 643
year. 644

(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 676
satisfying the definition of "land devoted exclusively to 677
agricultural use" under section 5713.30 of the Revised Code, 678
regardless of whether the land is valued for tax purposes as such 679
land under sections 5713.30 to 5713.38 of the Revised Code. If the 680
trust is a pass-through entity investor, section 5747.231 of the 681
Revised Code applies in ascertaining if the trust is eligible to 682
claim the deduction provided by division (S)(12) of this section 683
in connection with the pass-through entity's farm income. 684

Except for farm income attributable to the S portion of an 685
electing small business trust, the deduction provided by division 686
(S)(12) of this section is allowed only to the extent that the 687
trust has not distributed such farm income. Division (S)(12) of 688
this section applies only to taxable years of a trust beginning in 689
2002 or thereafter. 690

(13) Add the net amount of income described in section 641(c) 691
of the Internal Revenue Code to the extent that amount is not 692
included in federal taxable income. 693

(14) Add or deduct the amount the taxpayer would be required 694
to add or deduct under division (A)(20) or (21) of this section if 695
the taxpayer's Ohio taxable income were computed in the same 696
manner as an individual's Ohio adjusted gross income is computed 697
under this section. In the case of a trust, division (S)(14) of 698
this section applies only to any of the trust's taxable years 699
beginning in 2002 or thereafter. 700

(T) "School district income" and "school district income tax" 701
have the same meanings as in section 5748.01 of the Revised Code. 702

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 703
of this section, "public obligations," "purchase obligations," and 704
"interest or interest equivalent" have the same meanings as in 705
section 5709.76 of the Revised Code. 706

(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:	738
(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;	739 740 741
(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;	742 743 744
(c) Tuition, fees, or other expenses paid or reimbursed through an employer, scholarship, grant in aid, or other educational benefit program.	745 746 747
(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.	748 749 750
(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:	751 752 753 754 755
(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.	756 757 758 759 760
(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.	761 762 763
Any gain or loss that is not a qualifying trust amount is modified business income, qualifying investment income, or modified nonbusiness income, as the case may be.	764 765 766
(3) "Modified nonbusiness income" means a trust's Ohio	767

taxable income other than modified business income, other than the 768
qualifying trust amount, and other than qualifying investment 769
income, as defined in section 5747.012 of the Revised Code, to the 770
extent such qualifying investment income is not otherwise part of 771
modified business income. 772

(4) "Modified Ohio taxable income" applies only to trusts, 773
and means the sum of the amounts described in divisions (BB)(4)(a) 774
to (c) of this section: 775

(a) The fraction, calculated under section 5747.013, and 776
applying section 5747.231 of the Revised Code, multiplied by the 777
sum of the following amounts: 778

(i) The trust's modified business income; 779

(ii) The trust's qualifying investment income, as defined in 780
section 5747.012 of the Revised Code, but only to the extent the 781
qualifying investment income does not otherwise constitute 782
modified business income and does not otherwise constitute a 783
qualifying trust amount. 784

(b) The qualifying trust amount multiplied by a fraction, the 785
numerator of which is the sum of the book value of the qualifying 786
investee's physical assets in this state on the last day of the 787
qualifying investee's fiscal or calendar year ending immediately 788
prior to the day on which the trust recognizes the qualifying 789
trust amount, and the denominator of which is the sum of the book 790
value of the qualifying investee's total physical assets 791
everywhere on the last day of the qualifying investee's fiscal or 792
calendar year ending immediately prior to the day on which the 793
trust recognizes the qualifying trust amount. If, for a taxable 794
year, the trust recognizes a qualifying trust amount with respect 795
to more than one qualifying investee, the amount described in 796
division (BB)(4)(b) of this section shall equal the sum of the 797
products so computed for each such qualifying investee. 798

(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: 831

(i) If the qualifying investee is a member of a qualifying 832
controlled group on the last day of the qualifying investee's 833
fiscal or calendar year ending immediately prior to the date on 834
which the trust recognizes the gain or loss, then "qualifying 835
investee" includes all persons in the qualifying controlled group 836
on such last day. 837

(ii) If the qualifying investee, or if the qualifying 838
investee and any members of the qualifying controlled group of 839
which the qualifying investee is a member on the last day of the 840
qualifying investee's fiscal or calendar year ending immediately 841
prior to the date on which the trust recognizes the gain or loss, 842
separately or cumulatively own, directly or indirectly, on the 843
last day of the qualifying investee's fiscal or calendar year 844
ending immediately prior to the date on which the trust recognizes 845
the qualifying trust amount, more than fifty per cent of the 846
equity of a pass-through entity, then the qualifying investee and 847
the other members are deemed to own the proportionate share of the 848
pass-through entity's physical assets which the pass-through 849
entity directly or indirectly owns on the last day of the 850
pass-through entity's calendar or fiscal year ending within or 851
with the last day of the qualifying investee's fiscal or calendar 852
year ending immediately prior to the date on which the trust 853
recognizes the qualifying trust amount. 854

(iii) For the purposes of division (BB)(5)(a)(iii) of this 855
section, "upper level pass-through entity" means a pass-through 856
entity directly or indirectly owning any equity of another 857
pass-through entity, and "lower level pass-through entity" means 858
that other pass-through entity. 859

An upper level pass-through entity, whether or not it is also 860
a qualifying investee, is deemed to own, on the last day of the 861
upper level pass-through entity's calendar or fiscal year, the 862

proportionate share of the lower level pass-through entity's 863
physical assets that the lower level pass-through entity directly 864
or indirectly owns on the last day of the lower level pass-through 865
entity's calendar or fiscal year ending within or with the last 866
day of the upper level pass-through entity's fiscal or calendar 867
year. If the upper level pass-through entity directly and 868
indirectly owns less than fifty per cent of the equity of the 869
lower level pass-through entity on each day of the upper level 870
pass-through entity's calendar or fiscal year in which or with 871
which ends the calendar or fiscal year of the lower level 872
pass-through entity and if, based upon clear and convincing 873
evidence, complete information about the location and cost of the 874
physical assets of the lower pass-through entity is not available 875
to the upper level pass-through entity, then solely for purposes 876
of ascertaining if a gain or loss constitutes a qualifying trust 877
amount, the upper level pass-through entity shall be deemed as 878
owning no equity of the lower level pass-through entity for each 879
day during the upper level pass-through entity's calendar or 880
fiscal year in which or with which ends the lower level 881
pass-through entity's calendar or fiscal year. Nothing in division 882
(BB)(5)(a)(iii) of this section shall be construed to provide for 883
any deduction or exclusion in computing any trust's Ohio taxable 884
income. 885

(b) With respect to a trust that is not a resident for the 886
taxable year and with respect to a part of a trust that is not a 887
resident for the taxable year, "qualifying investee" for that 888
taxable year does not include a C corporation if both of the 889
following apply: 890

(i) During the taxable year the trust or part of the trust 891
recognizes a gain or loss from the sale, exchange, or other 892
disposition of equity or ownership interests in, or debt 893
obligations of, the C corporation. 894

(ii) Such gain or loss constitutes nonbusiness income.	895
(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.	896 897 898 899
(CC) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code.	900 901
(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code.	902 903
(EE)(1) For the purposes of division (EE) of this section:	904
(a) "Qualifying person" means any person other than a qualifying corporation.	905 906
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	907 908 909
(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;	910 911 912 913
(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.	914 915 916 917
(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.	918 919 920
(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:	921 922
(1) "Trust" does not include a qualified pre-income tax trust.	923 924

(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.

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