

As Passed by the Senate

129th General Assembly

Regular Session

2011-2012

Sub. H. B. No. 365

Representatives Beck, Dovilla

Cosponsors: Representatives Stebelton, Blessing, Terhar, Hollington, Adams, J., Adams, R., Amstutz, Anielski, Antonio, Baker, Barnes, Blair, Boose, Boyd, Brenner, Bubp, Buchy, Butler, Combs, Conditt, Damschroder, Derickson, DeVitis, Duffey, Gardner, Garland, Grossman, Hackett, Hagan, C., Hall, Hayes, Henne, Hill, Hottinger, Johnson, Kozlowski, Landis, Letson, Maag, Martin, McGregor, Milkovich, Newbold, O'Brien, Peterson, Roegner, Rose, Rosenberger, Ruhl, Schuring, Sears, Slaby, Slesnick, Sprague, Stinziano, Szollosi, Thompson, Uecker, Winburn, Young

Speaker Batchelder

Senators Schaffer, Beagle, Bacon, Balderson, Coley, Eklund, Faber, Hite, Hughes, Jones, LaRose, Lehner, Obhof, Oelslager, Patton, Sawyer, Tavares, Wagoner, Widener

—

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 by at least ten per cent over the 7
preceding year. 8

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

Section 1. That section 5747.01 of the Revised Code be 9
amended to read as follows: 10

Sec. 5747.01. Except as otherwise expressly provided or 11
clearly appearing from the context, any term used in this chapter 12
that is not otherwise defined in this section has the same meaning 13
as when used in a comparable context in the laws of the United 14
States relating to federal income taxes or if not used in a 15
comparable context in those laws, has the same meaning as in 16
section 5733.40 of the Revised Code. Any reference in this chapter 17
to the Internal Revenue Code includes other laws of the United 18
States relating to federal income taxes. 19

As used in this chapter: 20

(A) "Adjusted gross income" or "Ohio adjusted gross income" 21
means federal adjusted gross income, as defined and used in the 22
Internal Revenue Code, adjusted as provided in this section: 23

(1) Add interest or dividends on obligations or securities of 24
any state or of any political subdivision or authority of any 25
state, other than this state and its subdivisions and authorities. 26

(2) Add interest or dividends on obligations of any 27
authority, commission, instrumentality, territory, or possession 28
of the United States to the extent that the interest or dividends 29
are exempt from federal income taxes but not from state income 30
taxes. 31

(3) Deduct interest or dividends on obligations of the United 32
States and its territories and possessions or of any authority, 33
commission, or instrumentality of the United States to the extent 34
that the interest or dividends are included in federal adjusted 35
gross income but exempt from state income taxes under the laws of 36
the United States. 37

(4) Deduct disability and survivor's benefits to the extent 38

included in federal adjusted gross income. 39

(5) Deduct benefits under Title II of the Social Security Act 40
and tier 1 railroad retirement benefits to the extent included in 41
federal adjusted gross income under section 86 of the Internal 42
Revenue Code. 43

(6) In the case of a taxpayer who is a beneficiary of a trust 44
that makes an accumulation distribution as defined in section 665 45
of the Internal Revenue Code, add, for the beneficiary's taxable 46
years beginning before 2002, the portion, if any, of such 47
distribution that does not exceed the undistributed net income of 48
the trust for the three taxable years preceding the taxable year 49
in which the distribution is made to the extent that the portion 50
was not included in the trust's taxable income for any of the 51
trust's taxable years beginning in 2002 or thereafter. 52

"Undistributed net income of a trust" means the taxable income of 53
the trust increased by (a)(i) the additions to adjusted gross 54
income required under division (A) of this section and (ii) the 55
personal exemptions allowed to the trust pursuant to section 56
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 57
deductions to adjusted gross income required under division (A) of 58
this section, (ii) the amount of federal income taxes attributable 59
to such income, and (iii) the amount of taxable income that has 60
been included in the adjusted gross income of a beneficiary by 61
reason of a prior accumulation distribution. Any undistributed net 62
income included in the adjusted gross income of a beneficiary 63
shall reduce the undistributed net income of the trust commencing 64
with the earliest years of the accumulation period. 65

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

Revenue Code not been in effect. 71

(8) Deduct any interest or interest equivalent on public 72
obligations and purchase obligations to the extent that the 73
interest or interest equivalent is included in federal adjusted 74
gross income. 75

(9) Add any loss or deduct any gain resulting from the sale, 76
exchange, or other disposition of public obligations to the extent 77
that the loss has been deducted or the gain has been included in 78
computing federal adjusted gross income. 79

(10) Deduct or add amounts, as provided under section 5747.70 80
of the Revised Code, related to contributions to variable college 81
savings program accounts made or tuition units purchased pursuant 82
to Chapter 3334. of the Revised Code. 83

(11)(a) Deduct, to the extent not otherwise allowable as a 84
deduction or exclusion in computing federal or Ohio adjusted gross 85
income for the taxable year, the amount the taxpayer paid during 86
the taxable year for medical care insurance and qualified 87
long-term care insurance for the taxpayer, the taxpayer's spouse, 88
and dependents. No deduction for medical care insurance under 89
division (A)(11) of this section shall be allowed either to any 90
taxpayer who is eligible to participate in any subsidized health 91
plan maintained by any employer of the taxpayer or of the 92
taxpayer's spouse, or to any taxpayer who is entitled to, or on 93
application would be entitled to, benefits under part A of Title 94
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 95
301, as amended. For the purposes of division (A)(11)(a) of this 96
section, "subsidized health plan" means a health plan for which 97
the employer pays any portion of the plan's cost. The deduction 98
allowed under division (A)(11)(a) of this section shall be the net 99
of any related premium refunds, related premium reimbursements, or 100
related insurance premium dividends received during the taxable 101
year. 102

(b) Deduct, to the extent not otherwise deducted or excluded 103
in computing federal or Ohio adjusted gross income during the 104
taxable year, the amount the taxpayer paid during the taxable 105
year, not compensated for by any insurance or otherwise, for 106
medical care of the taxpayer, the taxpayer's spouse, and 107
dependents, to the extent the expenses exceed seven and one-half 108
per cent of the taxpayer's federal adjusted gross income. 109

(c) Deduct, to the extent not otherwise deducted or excluded 110
in computing federal or Ohio adjusted gross income, any amount 111
included in federal adjusted gross income under section 105 or not 112
excluded under section 106 of the Internal Revenue Code solely 113
because it relates to an accident and health plan for a person who 114
otherwise would be a "qualifying relative" and thus a "dependent" 115
under section 152 of the Internal Revenue Code but for the fact 116
that the person fails to meet the income and support limitations 117
under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 118

(d) For purposes of division (A)(11) of this section, 119
"medical care" has the meaning given in section 213 of the 120
Internal Revenue Code, subject to the special rules, limitations, 121
and exclusions set forth therein, and "qualified long-term care" 122
has the same meaning given in section 7702B(c) of the Internal 123
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 124
of this section, "dependent" includes a person who otherwise would 125
be a "qualifying relative" and thus a "dependent" under section 126
152 of the Internal Revenue Code but for the fact that the person 127
fails to meet the income and support limitations under section 128
152(d)(1)(B) and (C) of the Internal Revenue Code. 129

(12)(a) Deduct any amount included in federal adjusted gross 130
income solely because the amount represents a reimbursement or 131
refund of expenses that in any year the taxpayer had deducted as 132
an itemized deduction pursuant to section 63 of the Internal 133
Revenue Code and applicable United States department of the 134

treasury regulations. The deduction otherwise allowed under 135
division (A)(12)(a) of this section shall be reduced to the extent 136
the reimbursement is attributable to an amount the taxpayer 137
deducted under this section in any taxable year. 138

(b) Add any amount not otherwise included in Ohio adjusted 139
gross income for any taxable year to the extent that the amount is 140
attributable to the recovery during the taxable year of any amount 141
deducted or excluded in computing federal or Ohio adjusted gross 142
income in any taxable year. 143

(13) Deduct any portion of the deduction described in section 144
1341(a)(2) of the Internal Revenue Code, for repaying previously 145
reported income received under a claim of right, that meets both 146
of the following requirements: 147

(a) It is allowable for repayment of an item that was 148
included in the taxpayer's adjusted gross income for a prior 149
taxable year and did not qualify for a credit under division (A) 150
or (B) of section 5747.05 of the Revised Code for that year; 151

(b) It does not otherwise reduce the taxpayer's adjusted 152
gross income for the current or any other taxable year. 153

(14) Deduct an amount equal to the deposits made to, and net 154
investment earnings of, a medical savings account during the 155
taxable year, in accordance with section 3924.66 of the Revised 156
Code. The deduction allowed by division (A)(14) of this section 157
does not apply to medical savings account deposits and earnings 158
otherwise deducted or excluded for the current or any other 159
taxable year from the taxpayer's federal adjusted gross income. 160

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

section 3924.66 of the Revised Code;	166
(b) Add the amounts distributed from a medical savings account under division (A)(2) of section 3924.68 of the Revised Code during the taxable year.	167 168 169
(16) Add any amount claimed as a credit under section 5747.059 of the Revised Code to the extent that such amount satisfies either of the following:	170 171 172
(a) The amount was deducted or excluded from the computation of the taxpayer's federal adjusted gross income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;	173 174 175 176
(b) The amount resulted in a reduction of the taxpayer's federal adjusted gross income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.	177 178 179
(17) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of job and family services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax commissioner, the taxpayer shall provide any information that, in the tax commissioner's opinion, is necessary to establish the amount deducted under division (A)(17) of this section.	180 181 182 183 184 185 186 187
(18) Beginning in taxable year 2001 but not for any taxable year beginning after December 31, 2005, if the taxpayer is married and files a joint return and the combined federal adjusted gross income of the taxpayer and the taxpayer's spouse for the taxable year does not exceed one hundred thousand dollars, or if the taxpayer is single and has a federal adjusted gross income for the taxable year not exceeding fifty thousand dollars, deduct amounts paid during the taxable year for qualified tuition and fees paid to an eligible institution for the taxpayer, the taxpayer's	188 189 190 191 192 193 194 195 196

spouse, or any dependent of the taxpayer, who is a resident of 197
this state and is enrolled in or attending a program that 198
culminates in a degree or diploma at an eligible institution. The 199
deduction may be claimed only to the extent that qualified tuition 200
and fees are not otherwise deducted or excluded for any taxable 201
year from federal or Ohio adjusted gross income. The deduction may 202
not be claimed for educational expenses for which the taxpayer 203
claims a credit under section 5747.27 of the Revised Code. 204

(19) Add any reimbursement received during the taxable year 205
of any amount the taxpayer deducted under division (A)(18) of this 206
section in any previous taxable year to the extent the amount is 207
not otherwise included in Ohio adjusted gross income. 208

(20)(a)(i) ~~Add~~ Subject to divisions (A)(20)(a)(iii), (iv), 209
and (v) of this section, add five-sixths of the amount of 210
depreciation expense allowed by subsection (k) of section 168 of 211
the Internal Revenue Code, including the taxpayer's proportionate 212
or distributive share of the amount of depreciation expense 213
allowed by that subsection to a pass-through entity in which the 214
taxpayer has a direct or indirect ownership interest. 215

(ii) ~~Add~~ Subject to divisions (A)(20)(a)(iii), (iv), and (v) 216
of this section, add five-sixths of the amount of qualifying 217
section 179 depreciation expense, including ~~a person's~~ the 218
taxpayer's proportionate or distributive share of the amount of 219
qualifying section 179 depreciation expense allowed to any 220
pass-through entity in which the ~~person~~ taxpayer has a direct or 221
indirect ownership interest. ~~For the purposes of this division,~~ 222
~~"qualifying section 179 depreciation expense" means the difference~~ 223
~~between (I) the amount of depreciation expense directly or~~ 224
~~indirectly allowed to the taxpayer under section 179 of the~~ 225
~~Internal Revenue Code, and (II) the amount of depreciation expense~~ 226
~~directly or indirectly allowed to the taxpayer under section 179~~ 227
~~of the Internal Revenue Code as that section existed on December~~ 228

~~31, 2002.~~ 229

(iii) Subject to division (A)(20)(a)(v) of this section, for 230
taxable years beginning in 2012 or thereafter, if the increase in 231
income taxes withheld by the taxpayer is equal to or greater than 232
ten per cent of income taxes withheld by the taxpayer during the 233
taxpayer's immediately preceding taxable year, "two-thirds" shall 234
be substituted for "five-sixths" for the purpose of divisions 235
(A)(20)(a)(i) and (ii) of this section. 236

(iv) Subject to division (A)(20)(a)(v) of this section, for 237
taxable years beginning in 2012 or thereafter, a taxpayer is not 238
required to add an amount under division (A)(20) of this section 239
if the increase in income taxes withheld by the taxpayer and by 240
any pass-through entity in which the taxpayer has a direct or 241
indirect ownership interest is equal to or greater than the sum of 242
(I) the amount of qualifying section 179 depreciation expense and 243
(II) the amount of depreciation expense allowed to the taxpayer by 244
subsection (k) of section 168 of the Internal Revenue Code, and 245
including the taxpayer's proportionate or distributive shares of 246
such amounts allowed to any such pass-through entities. 247

(v) If a taxpayer directly or indirectly incurs a net 248
operating loss for the taxable year for federal income tax 249
purposes, to the extent such loss resulted from depreciation 250
expense allowed by subsection (k) of section 168 of the Internal 251
Revenue Code and by qualifying section 179 depreciation expense, 252
"the entire" shall be substituted for "five-sixths of the" for the 253
purpose of divisions (A)(20)(a)(i) and (ii) of this section. 254

The tax commissioner, under procedures established by the 255
commissioner, may waive the add-backs related to a pass-through 256
entity if the taxpayer owns, directly or indirectly, less than 257
five per cent of the pass-through entity. 258

(b) Nothing in division (A)(20) of this section shall be 259

construed to adjust or modify the adjusted basis of any asset. 260

(c) To the extent the add-back required under division 261
(A)(20)(a) of this section is attributable to property generating 262
nonbusiness income or loss allocated under section 5747.20 of the 263
Revised Code, the add-back shall be situated to the same location 264
as the nonbusiness income or loss generated by the property for 265
the purpose of determining the credit under division (A) of 266
section 5747.05 of the Revised Code. Otherwise, the add-back shall 267
be apportioned, subject to one or more of the four alternative 268
methods of apportionment enumerated in section 5747.21 of the 269
Revised Code. 270

(d) For the purposes of division (A)(20)(a)(v) of this 271
section, net operating loss carryback and carryforward shall not 272
include ~~five-sixths~~ of the allowance of any net operating loss 273
deduction carryback or carryforward to the taxable year to the 274
extent such loss resulted from depreciation allowed by section 275
168(k) of the Internal Revenue Code and by the qualifying section 276
179 depreciation expense amount. 277

(e) For the purposes of divisions (A)(20) and (21) of this 278
section: 279

(i) "Income taxes withheld" means the total amount withheld 280
and remitted under sections 5747.06 and 5747.07 of the Revised 281
Code by an employer during the employer's taxable year. 282

(ii) "Increase in income taxes withheld" means the amount by 283
which the amount of income taxes withheld by an employer during 284
the employer's current taxable year exceeds the amount of income 285
taxes withheld by that employer during the employer's immediately 286
preceding taxable year. 287

(iii) "Qualifying section 179 depreciation expense" means the 288
difference between (I) the amount of depreciation expense directly 289
or indirectly allowed to a taxpayer under section 179 of the 290

Internal Revised Code, and (II) the amount of depreciation expense 291
directly or indirectly allowed to the taxpayer under section 179 292
of the Internal Revenue Code as that section existed on December 293
31, 2002. 294

(21)(a) If the taxpayer was required to add an amount under 295
division (A)(20)(a) of this section for a taxable year, deduct 296
~~one-fifth~~ one of the following: 297

(i) One-fifth of the amount so added for each of the five 298
succeeding taxable years if the amount so added was five-sixths of 299
qualifying section 179 depreciation expense or depreciation 300
expense allowed by subsection (k) of section 168 of the Internal 301
Revenue Code; 302

(ii) One-half of the amount so added for each of the two 303
succeeding taxable years if the amount so added was two-thirds of 304
such depreciation expense; 305

(iii) One-sixth of the amount so added for each of the six 306
succeeding taxable years if the entire amount of such depreciation 307
expense was so added. 308

(b) If the amount deducted under division (A)(21)(a) of this 309
section is attributable to an add-back allocated under division 310
(A)(20)(c) of this section, the amount deducted shall be sitused 311
to the same location. Otherwise, the add-back shall be apportioned 312
using the apportionment factors for the taxable year in which the 313
deduction is taken, subject to one or more of the four alternative 314
methods of apportionment enumerated in section 5747.21 of the 315
Revised Code. 316

(c) No deduction is available under division (A)(21)(a) of 317
this section with regard to any depreciation allowed by section 318
168(k) of the Internal Revenue Code and by the qualifying section 319
179 depreciation expense amount to the extent that such 320
depreciation ~~resulted~~ results in or ~~increased~~ increases a federal 321

net operating loss carryback or carryforward ~~to a taxable year to~~ 322
~~which division (A)(20)(d) of this section does not apply. If no~~ 323
such deduction is available for a taxable year, the taxpayer may 324
carry forward the amount not deducted in such taxable year to the 325
next taxable year and add that amount to any deduction otherwise 326
available under division (A)(21)(a) of this section for that next 327
taxable year. The carryforward of amounts not so deducted shall 328
continue until the entire addition required by division (A)(20)(a) 329
of this section has been deducted. 330

(d) No refund shall be allowed as a result of adjustments 331
made by division (A)(21) of this section. 332

(22) 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 during the taxable year as 335
reimbursement for life insurance premiums under section 5919.31 of 336
the Revised Code. 337

(23) Deduct, to the extent not otherwise deducted or excluded 338
in computing federal or Ohio adjusted gross income for the taxable 339
year, the amount the taxpayer received during the taxable year as 340
a death benefit paid by the adjutant general under section 5919.33 341
of the Revised Code. 342

(24) Deduct, to the extent included in federal adjusted gross 343
income and not otherwise allowable as a deduction or exclusion in 344
computing federal or Ohio adjusted gross income for the taxable 345
year, military pay and allowances received by the taxpayer during 346
the taxable year for active duty service in the United States 347
army, air force, navy, marine corps, or coast guard or reserve 348
components thereof or the national guard. The deduction may not be 349
claimed for military pay and allowances received by the taxpayer 350
while the taxpayer is stationed in this state. 351

(25) Deduct, to the extent not otherwise allowable as a 352

deduction or exclusion in computing federal or Ohio adjusted gross 353
income for the taxable year and not otherwise compensated for by 354
any other source, the amount of qualified organ donation expenses 355
incurred by the taxpayer during the taxable year, not to exceed 356
ten thousand dollars. A taxpayer may deduct qualified organ 357
donation expenses only once for all taxable years beginning with 358
taxable years beginning in 2007. 359

For the purposes of division (A)(25) of this section: 360

(a) "Human organ" means all or any portion of a human liver, 361
pancreas, kidney, intestine, or lung, and any portion of human 362
bone marrow. 363

(b) "Qualified organ donation expenses" means travel 364
expenses, lodging expenses, and wages and salary forgone by a 365
taxpayer in connection with the taxpayer's donation, while living, 366
of one or more of the taxpayer's human organs to another human 367
being. 368

(26) Deduct, to the extent not otherwise deducted or excluded 369
in computing federal or Ohio adjusted gross income for the taxable 370
year, amounts received by the taxpayer as retired military 371
personnel pay for service in the United States army, navy, air 372
force, coast guard, or marine corps or reserve components thereof, 373
or the national guard, or received by the surviving spouse or 374
former spouse of such a taxpayer under the survivor benefit plan 375
on account of such a taxpayer's death. If the taxpayer receives 376
income on account of retirement paid under the federal civil 377
service retirement system or federal employees retirement system, 378
or under any successor retirement program enacted by the congress 379
of the United States that is established and maintained for 380
retired employees of the United States government, and such 381
retirement income is based, in whole or in part, on credit for the 382
taxpayer's military service, the deduction allowed under this 383
division shall include only that portion of such retirement income 384

that is attributable to the taxpayer's military service, to the extent that portion of such retirement income is otherwise included in federal adjusted gross income and is not otherwise deducted under this section. Any amount deducted under division (A)(26) of this section is not included in a taxpayer's adjusted gross income for the purposes of section 5747.055 of the Revised Code. No amount may be deducted under division (A)(26) of this section on the basis of which a credit was claimed under section 5747.055 of the Revised Code.

(27) 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 from the military injury relief fund created in section 5101.98 of the Revised Code.

(28) 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 as a veterans bonus during the taxable year from the Ohio department of veterans services as authorized by Section 2r of Article VIII, Ohio Constitution.

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

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

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

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

(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 447
domiciled in this state. The domicile tests of section 5747.24 of 448
the Revised Code are not controlling for purposes of division 449
(I)(2) of this section. 450

(3) A trust that, in whole or part, resides in this state. If 451
only part of a trust resides in this state, the trust is a 452
resident only with respect to that part. 453

For the purposes of division (I)(3) of this section: 454

(a) A trust resides in this state for the trust's current 455
taxable year to the extent, as described in division (I)(3)(d) of 456
this section, that the trust consists directly or indirectly, in 457
whole or in part, of assets, net of any related liabilities, that 458
were transferred, or caused to be transferred, directly or 459
indirectly, to the trust by any of the following: 460

(i) A person, a court, or a governmental entity or 461
instrumentality on account of the death of a decedent, but only if 462
the trust is described in division (I)(3)(e)(i) or (ii) of this 463
section; 464

(ii) A person who was domiciled in this state for the 465
purposes of this chapter when the person directly or indirectly 466
transferred assets to an irrevocable trust, but only if at least 467
one of the trust's qualifying beneficiaries is domiciled in this 468
state for the purposes of this chapter during all or some portion 469
of the trust's current taxable year; 470

(iii) A person who was domiciled in this state for the 471
purposes of this chapter when the trust document or instrument or 472
part of the trust document or instrument became irrevocable, but 473
only if at least one of the trust's qualifying beneficiaries is a 474
resident domiciled in this state for the purposes of this chapter 475
during all or some portion of the trust's current taxable year. If 476
a trust document or instrument became irrevocable upon the death 477

of a person who at the time of death was domiciled in this state 478
for purposes of this chapter, that person is a person described in 479
division (I)(3)(a)(iii) of this section. 480

(b) A trust is irrevocable to the extent that the transferor 481
is not considered to be the owner of the net assets of the trust 482
under sections 671 to 678 of the Internal Revenue Code. 483

(c) With respect to a trust other than a charitable lead 484
trust, "qualifying beneficiary" has the same meaning as "potential 485
current beneficiary" as defined in section 1361(e)(2) of the 486
Internal Revenue Code, and with respect to a charitable lead trust 487
"qualifying beneficiary" is any current, future, or contingent 488
beneficiary, but with respect to any trust "qualifying 489
beneficiary" excludes a person or a governmental entity or 490
instrumentality to any of which a contribution would qualify for 491
the charitable deduction under section 170 of the Internal Revenue 492
Code. 493

(d) For the purposes of division (I)(3)(a) of this section, 494
the extent to which a trust consists directly or indirectly, in 495
whole or in part, of assets, net of any related liabilities, that 496
were transferred directly or indirectly, in whole or part, to the 497
trust by any of the sources enumerated in that division shall be 498
ascertained by multiplying the fair market value of the trust's 499
assets, net of related liabilities, by the qualifying ratio, which 500
shall be computed as follows: 501

(i) The first time the trust receives assets, the numerator 502
of the qualifying ratio is the fair market value of those assets 503
at that time, net of any related liabilities, from sources 504
enumerated in division (I)(3)(a) of this section. The denominator 505
of the qualifying ratio is the fair market value of all the 506
trust's assets at that time, net of any related liabilities. 507

(ii) Each subsequent time the trust receives assets, a 508

revised qualifying ratio shall be computed. The numerator of the 509
revised qualifying ratio is the sum of (1) the fair market value 510
of the trust's assets immediately prior to the subsequent 511
transfer, net of any related liabilities, multiplied by the 512
qualifying ratio last computed without regard to the subsequent 513
transfer, and (2) the fair market value of the subsequently 514
transferred assets at the time transferred, net of any related 515
liabilities, from sources enumerated in division (I)(3)(a) of this 516
section. The denominator of the revised qualifying ratio is the 517
fair market value of all the trust's assets immediately after the 518
subsequent transfer, net of any related liabilities. 519

(iii) Whether a transfer to the trust is by or from any of 520
the sources enumerated in division (I)(3)(a) of this section shall 521
be ascertained without regard to the domicile of the trust's 522
beneficiaries. 523

(e) For the purposes of division (I)(3)(a)(i) of this 524
section: 525

(i) A trust is described in division (I)(3)(e)(i) of this 526
section if the trust is a testamentary trust and the testator of 527
that testamentary trust was domiciled in this state at the time of 528
the testator's death for purposes of the taxes levied under 529
Chapter 5731. of the Revised Code. 530

(ii) A trust is described in division (I)(3)(e)(ii) of this 531
section if the transfer is a qualifying transfer described in any 532
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 533
irrevocable inter vivos trust, and at least one of the trust's 534
qualifying beneficiaries is domiciled in this state for purposes 535
of this chapter during all or some portion of the trust's current 536
taxable year. 537

(f) For the purposes of division (I)(3)(e)(ii) of this 538
section, a "qualifying transfer" is a transfer of assets, net of 539

any related liabilities, directly or indirectly to a trust, if the 540
transfer is described in any of the following: 541

(i) The transfer is made to a trust, created by the decedent 542
before the decedent's death and while the decedent was domiciled 543
in this state for the purposes of this chapter, and, prior to the 544
death of the decedent, the trust became irrevocable while the 545
decedent was domiciled in this state for the purposes of this 546
chapter. 547

(ii) The transfer is made to a trust to which the decedent, 548
prior to the decedent's death, had directly or indirectly 549
transferred assets, net of any related liabilities, while the 550
decedent was domiciled in this state for the purposes of this 551
chapter, and prior to the death of the decedent the trust became 552
irrevocable while the decedent was domiciled in this state for the 553
purposes of this chapter. 554

(iii) The transfer is made on account of a contractual 555
relationship existing directly or indirectly between the 556
transferor and either the decedent or the estate of the decedent 557
at any time prior to the date of the decedent's death, and the 558
decedent was domiciled in this state at the time of death for 559
purposes of the taxes levied under Chapter 5731. of the Revised 560
Code. 561

(iv) The transfer is made to a trust on account of a 562
contractual relationship existing directly or indirectly between 563
the transferor and another person who at the time of the 564
decedent's death was domiciled in this state for purposes of this 565
chapter. 566

(v) The transfer is made to a trust on account of the will of 567
a testator who was domiciled in this state at the time of the 568
testator's death for purposes of the taxes levied under Chapter 569
5731. of the Revised Code. 570

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

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

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

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

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

(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.

(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.

(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.

(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.

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

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

(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.

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

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

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

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

(b) The net amount is attributable to the S portion of an

electing small business trust for the taxable year. 632

(2) Add interest or dividends, net of ordinary, necessary, 633
and reasonable expenses not deducted in computing federal taxable 634
income, on obligations of any authority, commission, 635
instrumentality, territory, or possession of the United States to 636
the extent that the interest or dividends are exempt from federal 637
income taxes but not from state income taxes, but only to the 638
extent that such net amount is not otherwise includible in Ohio 639
taxable income and is described in either division (S)(1)(a) or 640
(b) of this section; 641

(3) Add the amount of personal exemption allowed to the 642
estate pursuant to section 642(b) of the Internal Revenue Code; 643

(4) Deduct interest or dividends, net of related expenses 644
deducted in computing federal taxable income, on obligations of 645
the United States and its territories and possessions or of any 646
authority, commission, or instrumentality of the United States to 647
the extent that the interest or dividends are exempt from state 648
taxes under the laws of the United States, but only to the extent 649
that such amount is included in federal taxable income and is 650
described in either division (S)(1)(a) or (b) of this section; 651

(5) Deduct the amount of wages and salaries, if any, not 652
otherwise allowable as a deduction but that would have been 653
allowable as a deduction in computing federal taxable income for 654
the taxable year, had the targeted jobs credit allowed under 655
sections 38, 51, and 52 of the Internal Revenue Code not been in 656
effect, but only to the extent such amount relates either to 657
income included in federal taxable income for the taxable year or 658
to income of the S portion of an electing small business trust for 659
the taxable year; 660

(6) Deduct any interest or interest equivalent, net of 661
related expenses deducted in computing federal taxable income, on 662

public obligations and purchase obligations, but only to the 663
extent that such net amount relates either to income included in 664
federal taxable income for the taxable year or to income of the S 665
portion of an electing small business trust for the taxable year; 666

(7) Add any loss or deduct any gain resulting from sale, 667
exchange, or other disposition of public obligations to the extent 668
that such loss has been deducted or such gain has been included in 669
computing either federal taxable income or income of the S portion 670
of an electing small business trust for the taxable year; 671

(8) Except in the case of the final return of an estate, add 672
any amount deducted by the taxpayer on both its Ohio estate tax 673
return pursuant to section 5731.14 of the Revised Code, and on its 674
federal income tax return in determining federal taxable income; 675

(9)(a) Deduct any amount included in federal taxable income 676
solely because the amount represents a reimbursement or refund of 677
expenses that in a previous year the decedent had deducted as an 678
itemized deduction pursuant to section 63 of the Internal Revenue 679
Code and applicable treasury regulations. The deduction otherwise 680
allowed under division (S)(9)(a) of this section shall be reduced 681
to the extent the reimbursement is attributable to an amount the 682
taxpayer or decedent deducted under this section in any taxable 683
year. 684

(b) Add any amount not otherwise included in Ohio taxable 685
income for any taxable year to the extent that the amount is 686
attributable to the recovery during the taxable year of any amount 687
deducted or excluded in computing federal or Ohio taxable income 688
in any taxable year, but only to the extent such amount has not 689
been distributed to beneficiaries for the taxable year. 690

(10) Deduct any portion of the deduction described in section 691
1341(a)(2) of the Internal Revenue Code, for repaying previously 692
reported income received under a claim of right, that meets both 693

of the following requirements: 694

(a) It is allowable for repayment of an item that was 695
included in the taxpayer's taxable income or the decedent's 696
adjusted gross income for a prior taxable year and did not qualify 697
for a credit under division (A) or (B) of section 5747.05 of the 698
Revised Code for that year. 699

(b) It does not otherwise reduce the taxpayer's taxable 700
income or the decedent's adjusted gross income for the current or 701
any other taxable year. 702

(11) Add any amount claimed as a credit under section 703
5747.059 of the Revised Code to the extent that the amount 704
satisfies either of the following: 705

(a) The amount was deducted or excluded from the computation 706
of the taxpayer's federal taxable income as required to be 707
reported for the taxpayer's taxable year under the Internal 708
Revenue Code; 709

(b) The amount resulted in a reduction in the taxpayer's 710
federal taxable income as required to be reported for any of the 711
taxpayer's taxable years under the Internal Revenue Code. 712

(12) Deduct any amount, net of related expenses deducted in 713
computing federal taxable income, that a trust is required to 714
report as farm income on its federal income tax return, but only 715
if the assets of the trust include at least ten acres of land 716
satisfying the definition of "land devoted exclusively to 717
agricultural use" under section 5713.30 of the Revised Code, 718
regardless of whether the land is valued for tax purposes as such 719
land under sections 5713.30 to 5713.38 of the Revised Code. If the 720
trust is a pass-through entity investor, section 5747.231 of the 721
Revised Code applies in ascertaining if the trust is eligible to 722
claim the deduction provided by division (S)(12) of this section 723
in connection with the pass-through entity's farm income. 724

Except for farm income attributable to the S portion of an 725
electing small business trust, the deduction provided by division 726
(S)(12) of this section is allowed only to the extent that the 727
trust has not distributed such farm income. Division (S)(12) of 728
this section applies only to taxable years of a trust beginning in 729
2002 or thereafter. 730

(13) Add the net amount of income described in section 641(c) 731
of the Internal Revenue Code to the extent that amount is not 732
included in federal taxable income. 733

(14) Add or deduct the amount the taxpayer would be required 734
to add or deduct under division (A)(20) or (21) of this section if 735
the taxpayer's Ohio taxable income were computed in the same 736
manner as an individual's Ohio adjusted gross income is computed 737
under this section. In the case of a trust, division (S)(14) of 738
this section applies only to any of the trust's taxable years 739
beginning in 2002 or thereafter. 740

(T) "School district income" and "school district income tax" 741
have the same meanings as in section 5748.01 of the Revised Code. 742

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 743
of this section, "public obligations," "purchase obligations," and 744
"interest or interest equivalent" have the same meanings as in 745
section 5709.76 of the Revised Code. 746

(V) "Limited liability company" means any limited liability 747
company formed under Chapter 1705. of the Revised Code or under 748
the laws of any other state. 749

(W) "Pass-through entity investor" means any person who, 750
during any portion of a taxable year of a pass-through entity, is 751
a partner, member, shareholder, or equity investor in that 752
pass-through entity. 753

(X) "Banking day" has the same meaning as in section 1304.01 754
of the Revised Code. 755

(Y) "Month" means a calendar month.	756
(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.	757 758 759
(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.	760 761 762 763 764 765 766 767 768
(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:	769 770 771 772 773 774 775 776 777 778
(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;	779 780 781
(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;	782 783 784
(c) Tuition, fees, or other expenses paid or reimbursed through an employer, scholarship, grant in aid, or other	785 786

educational benefit program. 787

(BB)(1) "Modified business income" means the business income 788
included in a trust's Ohio taxable income after such taxable 789
income is first reduced by the qualifying trust amount, if any. 790

(2) "Qualifying trust amount" of a trust means capital gains 791
and losses from the sale, exchange, or other disposition of equity 792
or ownership interests in, or debt obligations of, a qualifying 793
investee to the extent included in the trust's Ohio taxable 794
income, but only if the following requirements are satisfied: 795

(a) The book value of the qualifying investee's physical 796
assets in this state and everywhere, as of the last day of the 797
qualifying investee's fiscal or calendar year ending immediately 798
prior to the date on which the trust recognizes the gain or loss, 799
is available to the trust. 800

(b) The requirements of section 5747.011 of the Revised Code 801
are satisfied for the trust's taxable year in which the trust 802
recognizes the gain or loss. 803

Any gain or loss that is not a qualifying trust amount is 804
modified business income, qualifying investment income, or 805
modified nonbusiness income, as the case may be. 806

(3) "Modified nonbusiness income" means a trust's Ohio 807
taxable income other than modified business income, other than the 808
qualifying trust amount, and other than qualifying investment 809
income, as defined in section 5747.012 of the Revised Code, to the 810
extent such qualifying investment income is not otherwise part of 811
modified business income. 812

(4) "Modified Ohio taxable income" applies only to trusts, 813
and means the sum of the amounts described in divisions (BB)(4)(a) 814
to (c) of this section: 815

(a) The fraction, calculated under section 5747.013, and 816

applying section 5747.231 of the Revised Code, multiplied by the 817
sum of the following amounts: 818

(i) The trust's modified business income; 819

(ii) The trust's qualifying investment income, as defined in 820
section 5747.012 of the Revised Code, but only to the extent the 821
qualifying investment income does not otherwise constitute 822
modified business income and does not otherwise constitute a 823
qualifying trust amount. 824

(b) The qualifying trust amount multiplied by a fraction, the 825
numerator of which is the sum of the book value of the qualifying 826
investee's physical assets in this state on the last day of the 827
qualifying investee's fiscal or calendar year ending immediately 828
prior to the day on which the trust recognizes the qualifying 829
trust amount, and the denominator of which is the sum of the book 830
value of the qualifying investee's total physical assets 831
everywhere on the last day of the qualifying investee's fiscal or 832
calendar year ending immediately prior to the day on which the 833
trust recognizes the qualifying trust amount. If, for a taxable 834
year, the trust recognizes a qualifying trust amount with respect 835
to more than one qualifying investee, the amount described in 836
division (BB)(4)(b) of this section shall equal the sum of the 837
products so computed for each such qualifying investee. 838

(c)(i) With respect to a trust or portion of a trust that is 839
a resident as ascertained in accordance with division (I)(3)(d) of 840
this section, its modified nonbusiness income. 841

(ii) With respect to a trust or portion of a trust that is 842
not a resident as ascertained in accordance with division 843
(I)(3)(d) of this section, the amount of its modified nonbusiness 844
income satisfying the descriptions in divisions (B)(2) to (5) of 845
section 5747.20 of the Revised Code, except as otherwise provided 846
in division (BB)(4)(c)(ii) of this section. With respect to a 847

trust or portion of a trust that is not a resident as ascertained 848
in accordance with division (I)(3)(d) of this section, the trust's 849
portion of modified nonbusiness income recognized from the sale, 850
exchange, or other disposition of a debt interest in or equity 851
interest in a section 5747.212 entity, as defined in section 852
5747.212 of the Revised Code, without regard to division (A) of 853
that section, shall not be allocated to this state in accordance 854
with section 5747.20 of the Revised Code but shall be apportioned 855
to this state in accordance with division (B) of section 5747.212 856
of the Revised Code without regard to division (A) of that 857
section. 858

If the allocation and apportionment of a trust's income under 859
divisions (BB)(4)(a) and (c) of this section do not fairly 860
represent the modified Ohio taxable income of the trust in this 861
state, the alternative methods described in division (C) of 862
section 5747.21 of the Revised Code may be applied in the manner 863
and to the same extent provided in that section. 864

(5)(a) Except as set forth in division (BB)(5)(b) of this 865
section, "qualifying investee" means a person in which a trust has 866
an equity or ownership interest, or a person or unit of government 867
the debt obligations of either of which are owned by a trust. For 868
the purposes of division (BB)(2)(a) of this section and for the 869
purpose of computing the fraction described in division (BB)(4)(b) 870
of this section, all of the following apply: 871

(i) If the qualifying investee is a member of a qualifying 872
controlled group on the last day of the qualifying investee's 873
fiscal or calendar year ending immediately prior to the date on 874
which the trust recognizes the gain or loss, then "qualifying 875
investee" includes all persons in the qualifying controlled group 876
on such last day. 877

(ii) If the qualifying investee, or if the qualifying 878
investee and any members of the qualifying controlled group of 879

which the qualifying investee is a member on the last day of the 880
qualifying investee's fiscal or calendar year ending immediately 881
prior to the date on which the trust recognizes the gain or loss, 882
separately or cumulatively own, directly or indirectly, on the 883
last day of the qualifying investee's fiscal or calendar year 884
ending immediately prior to the date on which the trust recognizes 885
the qualifying trust amount, more than fifty per cent of the 886
equity of a pass-through entity, then the qualifying investee and 887
the other members are deemed to own the proportionate share of the 888
pass-through entity's physical assets which the pass-through 889
entity directly or indirectly owns on the last day of the 890
pass-through entity's calendar or fiscal year ending within or 891
with the last day of the qualifying investee's fiscal or calendar 892
year ending immediately prior to the date on which the trust 893
recognizes the qualifying trust amount. 894

(iii) For the purposes of division (BB)(5)(a)(iii) of this 895
section, "upper level pass-through entity" means a pass-through 896
entity directly or indirectly owning any equity of another 897
pass-through entity, and "lower level pass-through entity" means 898
that other pass-through entity. 899

An upper level pass-through entity, whether or not it is also 900
a qualifying investee, is deemed to own, on the last day of the 901
upper level pass-through entity's calendar or fiscal year, the 902
proportionate share of the lower level pass-through entity's 903
physical assets that the lower level pass-through entity directly 904
or indirectly owns on the last day of the lower level pass-through 905
entity's calendar or fiscal year ending within or with the last 906
day of the upper level pass-through entity's fiscal or calendar 907
year. If the upper level pass-through entity directly and 908
indirectly owns less than fifty per cent of the equity of the 909
lower level pass-through entity on each day of the upper level 910
pass-through entity's calendar or fiscal year in which or with 911

which ends the calendar or fiscal year of the lower level 912
pass-through entity and if, based upon clear and convincing 913
evidence, complete information about the location and cost of the 914
physical assets of the lower pass-through entity is not available 915
to the upper level pass-through entity, then solely for purposes 916
of ascertaining if a gain or loss constitutes a qualifying trust 917
amount, the upper level pass-through entity shall be deemed as 918
owning no equity of the lower level pass-through entity for each 919
day during the upper level pass-through entity's calendar or 920
fiscal year in which or with which ends the lower level 921
pass-through entity's calendar or fiscal year. Nothing in division 922
(BB)(5)(a)(iii) of this section shall be construed to provide for 923
any deduction or exclusion in computing any trust's Ohio taxable 924
income. 925

(b) With respect to a trust that is not a resident for the 926
taxable year and with respect to a part of a trust that is not a 927
resident for the taxable year, "qualifying investee" for that 928
taxable year does not include a C corporation if both of the 929
following apply: 930

(i) During the taxable year the trust or part of the trust 931
recognizes a gain or loss from the sale, exchange, or other 932
disposition of equity or ownership interests in, or debt 933
obligations of, the C corporation. 934

(ii) Such gain or loss constitutes nonbusiness income. 935

(6) "Available" means information is such that a person is 936
able to learn of the information by the due date plus extensions, 937
if any, for filing the return for the taxable year in which the 938
trust recognizes the gain or loss. 939

(CC) "Qualifying controlled group" has the same meaning as in 940
section 5733.04 of the Revised Code. 941

(DD) "Related member" has the same meaning as in section 942

5733.042 of the Revised Code.	943
(EE)(1) For the purposes of division (EE) of this section:	944
(a) "Qualifying person" means any person other than a qualifying corporation.	945 946
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	947 948 949
(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;	950 951 952 953
(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.	954 955 956 957
(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.	958 959 960
(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:	961 962
(1) "Trust" does not include a qualified pre-income tax trust.	963 964
(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.	965 966 967
(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,	968 969 970 971 972

five per cent or more of the ownership or equity interests. The 973
trustee shall notify the tax commissioner in writing of the 974
election on or before April 15, 2006. The election, if timely 975
made, shall be effective on and after January 1, 2006, and shall 976
apply for all tax periods and tax years until revoked by the 977
trustee of the trust. 978

(4) A "pre-income tax trust" is a trust that satisfies all of 979
the following requirements: 980

(a) The document or instrument creating the trust was 981
executed by the grantor before January 1, 1972; 982

(b) The trust became irrevocable upon the creation of the 983
trust; and 984

(c) The grantor was domiciled in this state at the time the 985
trust was created. 986

Section 2. That existing section 5747.01 of the Revised Code 987
is hereby repealed. 988