

**As Reported by the House Ways and Means Committee**

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**Sub. H. B. No. 365**

**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 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" means federal adjusted gross income, as defined and used in the Internal Revenue Code, adjusted as provided in this section:	21
(1) Add interest or dividends on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities.	22
(2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes.	23
(3) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.	24
(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.	25
(5) Deduct benefits under Title II of the Social Security Act and tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code.	26
(6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which the distribution is made to the extent that the portion	27
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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	167
account under division (A)(2) of section 3924.68 of the Revised	168
Code during the taxable year.	169
(16) Add any amount claimed as a credit under section	170
5747.059 of the Revised Code to the extent that such amount	171
satisfies either of the following:	172
(a) The amount was deducted or excluded from the computation	173
of the taxpayer's federal adjusted gross income as required to be	174
reported for the taxpayer's taxable year under the Internal	175
Revenue Code;	176

(b) The amount resulted in a reduction of the taxpayer's 177  
federal adjusted gross income as required to be reported for any 178  
of the taxpayer's taxable years under the Internal Revenue Code. 179

(17) Deduct the amount contributed by the taxpayer to an 180  
individual development account program established by a county 181  
department of job and family services pursuant to sections 329.11 182  
to 329.14 of the Revised Code for the purpose of matching funds 183  
deposited by program participants. On request of the tax 184  
commissioner, the taxpayer shall provide any information that, in 185  
the tax commissioner's opinion, is necessary to establish the 186  
amount deducted under division (A)(17) of this section. 187

(18) Beginning in taxable year 2001 but not for any taxable 188  
year beginning after December 31, 2005, if the taxpayer is married 189  
and files a joint return and the combined federal adjusted gross 190  
income of the taxpayer and the taxpayer's spouse for the taxable 191  
year does not exceed one hundred thousand dollars, or if the 192  
taxpayer is single and has a federal adjusted gross income for the 193  
taxable year not exceeding fifty thousand dollars, deduct amounts 194  
paid during the taxable year for qualified tuition and fees paid 195  
to an eligible institution for the taxpayer, the taxpayer's 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 succeeding taxable years if the amount so added was two-thirds of such depreciation expense; 303  
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(iii) One-sixth of the amount so added for each of the six succeeding taxable years if the entire amount of such depreciation expense was so added. 306  
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(b) If the amount deducted under division (A)(21)(a) of this section is attributable to an add-back allocated under division (A)(20)(c) of this section, the amount deducted shall be situated to the same location. Otherwise, the add-back shall be apportioned using the apportionment factors for the taxable year in which the deduction is taken, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code. 309  
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(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~~ results in or ~~increased~~ increases a federal net operating loss carryback or carryforward ~~to a taxable year to which division (A)(20)(d) of this section does not apply.~~ If no such deduction is available for a taxable year, the taxpayer may carry forward the amount not deducted in such taxable year to the next taxable year and add that amount to any deduction otherwise available under division (A)(21)(a) of this section for that next taxable year. The carryforward of amounts not so deducted shall continue until the entire addition required by division (A)(20)(a) of this section has been deducted. 317  
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(d) No refund shall be allowed as a result of adjustments made by division (A)(21) of this section. 331  
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(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 385  
extent that portion of such retirement income is otherwise 386  
included in federal adjusted gross income and is not otherwise 387  
deducted under this section. Any amount deducted under division 388  
(A)(26) of this section is not included in a taxpayer's adjusted 389  
gross income for the purposes of section 5747.055 of the Revised 390  
Code. No amount may be deducted under division (A)(26) of this 391  
section on the basis of which a credit was claimed under section 392  
5747.055 of the Revised Code. 393

(27) Deduct, to the extent not otherwise deducted or excluded 394  
in computing federal or Ohio adjusted gross income for the taxable 395  
year, the amount the taxpayer received during the taxable year 396

from the military injury relief fund created in section 5101.98 of 397  
the Revised Code. 398

(28) Deduct, to the extent not otherwise deducted or excluded 399  
in computing federal or Ohio adjusted gross income for the taxable 400  
year, the amount the taxpayer received as a veterans bonus during 401  
the taxable year from the Ohio department of veterans services as 402  
authorized by Section 2r of Article VIII, Ohio Constitution. 403

(29) Deduct, to the extent not otherwise deducted or excluded 404  
in computing federal or Ohio adjusted gross income for the taxable 405  
year, any loss from wagering transactions that is allowed as an 406  
itemized deduction under section 165 of the Internal Revenue Code 407  
and that the taxpayer deducted in computing federal taxable 408  
income. 409

(30) Deduct, to the extent not otherwise deducted or excluded 410  
in computing federal or Ohio adjusted gross income for the taxable 411  
year, any income derived from providing public services under a 412  
contract through a project owned by the state, as described in 413  
section 126.604 of the Revised Code or derived from a transfer 414  
agreement or from the enterprise transferred under that agreement 415  
under section 4313.02 of the Revised Code. 416

(B) "Business income" means income, including gain or loss, 417  
arising from transactions, activities, and sources in the regular 418  
course of a trade or business and includes income, gain, or loss 419  
from real property, tangible property, and intangible property if 420  
the acquisition, rental, management, and disposition of the 421  
property constitute integral parts of the regular course of a 422  
trade or business operation. "Business income" includes income, 423  
including gain or loss, from a partial or complete liquidation of 424  
a business, including, but not limited to, gain or loss from the 425  
sale or other disposition of goodwill. 426

(C) "Nonbusiness income" means all income other than business 427

income and may include, but is not limited to, compensation, rents 428  
and royalties from real or tangible personal property, capital 429  
gains, interest, dividends and distributions, patent or copyright 430  
royalties, or lottery winnings, prizes, and awards. 431

(D) "Compensation" means any form of remuneration paid to an 432  
employee for personal services. 433

(E) "Fiduciary" means a guardian, trustee, executor, 434  
administrator, receiver, conservator, or any other person acting 435  
in any fiduciary capacity for any individual, trust, or estate. 436

(F) "Fiscal year" means an accounting period of twelve months 437  
ending on the last day of any month other than December. 438

(G) "Individual" means any natural person. 439

(H) "Internal Revenue Code" means the "Internal Revenue Code 440  
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 441

(I) "Resident" means any of the following, provided that 442  
division (I)(3) of this section applies only to taxable years of a 443  
trust beginning in 2002 or thereafter: 444

(1) An individual who is domiciled in this state, subject to 445  
section 5747.24 of the Revised Code; 446

(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 571  
be created by a court, and the trust was directly or indirectly 572  
created in connection with or as a result of the death of an 573  
individual who, for purposes of the taxes levied under Chapter 574  
5731. of the Revised Code, was domiciled in this state at the time 575  
of the individual's death. 576

(g) The tax commissioner may adopt rules to ascertain the 577  
part of a trust residing in this state. 578

(J) "Nonresident" means an individual or estate that is not a 579  
resident. An individual who is a resident for only part of a 580  
taxable year is a nonresident for the remainder of that taxable 581  
year. 582

(K) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code. 583  
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(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. 585  
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(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. 589  
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(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. 593  
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(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. 597  
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(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. 602  
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(Q) As used in sections 5747.50 to 5747.55 of the Revised Code: 607  
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(1) "Subdivision" means any county, municipal corporation, park district, or township. 609  
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(2) "Essential local government purposes" includes all functions that any subdivision is required by general law to 611  
612

exercise, including like functions that are exercised under a 613  
charter adopted pursuant to the Ohio Constitution. 614

(R) "Overpayment" means any amount already paid that exceeds 615  
the figure determined to be the correct amount of the tax. 616

(S) "Taxable income" or "Ohio taxable income" applies only to 617  
estates and trusts, and means federal taxable income, as defined 618  
and used in the Internal Revenue Code, adjusted as follows: 619

(1) Add interest or dividends, net of ordinary, necessary, 620  
and reasonable expenses not deducted in computing federal taxable 621  
income, on obligations or securities of any state or of any 622  
political subdivision or authority of any state, other than this 623  
state and its subdivisions and authorities, but only to the extent 624  
that such net amount is not otherwise includible in Ohio taxable 625  
income and is described in either division (S)(1)(a) or (b) of 626  
this section: 627

(a) The net amount is not attributable to the S portion of an 628  
electing small business trust and has not been distributed to 629  
beneficiaries for the taxable year; 630

(b) The net amount is attributable to the S portion of an 631  
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 757  
months, the third three months, or the last three months of the 758  
taxpayer's taxable year. 759

(AA)(1) "Eligible institution" means a state university or 760  
state institution of higher education as defined in section 761  
3345.011 of the Revised Code, or a private, nonprofit college, 762  
university, or other post-secondary institution located in this 763  
state that possesses a certificate of authorization issued by the 764  
Ohio board of regents pursuant to Chapter 1713. of the Revised 765  
Code or a certificate of registration issued by the state board of 766  
career colleges and schools under Chapter 3332. of the Revised 767

Code.	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 educational benefit program.	785 786 787
(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.	788 789 790
(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:	791 792 793 794 795
(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	796 797 798

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 taxable year and with respect to a part of a trust that is not a resident for the taxable year, "qualifying investee" for that taxable year does not include a C corporation if both of the following apply:	926 927 928 929 930
(i) During the taxable year the trust or part of the trust recognizes a gain or loss from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, the C corporation.	931 932 933 934
(ii) Such gain or loss constitutes nonbusiness income.	935
(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.	936 937 938 939
(CC) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code.	940 941
(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code.	942 943
(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	954

that has made an election under subchapter S, chapter one, 955  
subtitle A of the Internal Revenue Code for its taxable year 956  
ending within, or on the last day of, the investor's taxable year. 957

(2) For the purposes of this chapter, unless expressly stated 958  
otherwise, no qualifying person indirectly owns any asset directly 959  
or indirectly owned by any qualifying corporation. 960

(FF) For purposes of this chapter and Chapter 5751. of the 961  
Revised Code: 962

(1) "Trust" does not include a qualified pre-income tax 963  
trust. 964

(2) A "qualified pre-income tax trust" is any pre-income tax 965  
trust that makes a qualifying pre-income tax trust election as 966  
described in division (FF)(3) of this section. 967

(3) A "qualifying pre-income tax trust election" is an 968  
election by a pre-income tax trust to subject to the tax imposed 969  
by section 5751.02 of the Revised Code the pre-income tax trust 970  
and all pass-through entities of which the trust owns or controls, 971  
directly, indirectly, or constructively through related interests, 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 trust was created. 985  
986

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