

As Introduced

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H. B. No. 583

Representative Brenner

**Cosponsors: Representatives Bulp, Hottinger, Derickson, Thompson,
Lynch**

—

A BILL

To amend section 5747.01 of the Revised Code to 1
provide an income tax deduction for the value of 2
any prize or award won by a taxpayer in athletic 3
competition in the Olympic Games. 4

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

Section 1. That section 5747.01 of the Revised Code be 5
amended to read as follows: 6

Sec. 5747.01. Except as otherwise expressly provided or 7
clearly appearing from the context, any term used in this chapter 8
that is not otherwise defined in this section has the same meaning 9
as when used in a comparable context in the laws of the United 10
States relating to federal income taxes or if not used in a 11
comparable context in those laws, has the same meaning as in 12
section 5733.40 of the Revised Code. Any reference in this chapter 13
to the Internal Revenue Code includes other laws of the United 14
States relating to federal income taxes. 15

As used in this chapter: 16

(A) "Adjusted gross income" or "Ohio adjusted gross income" 17
means federal adjusted gross income, as defined and used in the 18

Internal Revenue Code, adjusted as provided in this section:	19
(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.	20 21 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 24 25 26 27
(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.	28 29 30 31 32 33
(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.	34 35
(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.	36 37 38 39
(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 was not included in the trust's taxable income for any of the trust's taxable years beginning in 2002 or thereafter.	40 41 42 43 44 45 46 47 48
"Undistributed net income of a trust" means the taxable income of	49

the trust increased by (a)(i) the additions to adjusted gross 50
income required under division (A) of this section and (ii) the 51
personal exemptions allowed to the trust pursuant to section 52
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 53
deductions to adjusted gross income required under division (A) of 54
this section, (ii) the amount of federal income taxes attributable 55
to such income, and (iii) the amount of taxable income that has 56
been included in the adjusted gross income of a beneficiary by 57
reason of a prior accumulation distribution. Any undistributed net 58
income included in the adjusted gross income of a beneficiary 59
shall reduce the undistributed net income of the trust commencing 60
with the earliest years of the accumulation period. 61

(7) Deduct the amount of wages and salaries, if any, not 62
otherwise allowable as a deduction but that would have been 63
allowable as a deduction in computing federal adjusted gross 64
income for the taxable year, had the targeted jobs credit allowed 65
and determined under sections 38, 51, and 52 of the Internal 66
Revenue Code not been in effect. 67

(8) Deduct any interest or interest equivalent on public 68
obligations and purchase obligations to the extent that the 69
interest or interest equivalent is included in federal adjusted 70
gross income. 71

(9) Add any loss or deduct any gain resulting from the sale, 72
exchange, or other disposition of public obligations to the extent 73
that the loss has been deducted or the gain has been included in 74
computing federal adjusted gross income. 75

(10) Deduct or add amounts, as provided under section 5747.70 76
of the Revised Code, related to contributions to variable college 77
savings program accounts made or tuition units purchased pursuant 78
to Chapter 3334. of the Revised Code. 79

(11)(a) Deduct, to the extent not otherwise allowable as a 80

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

(b) Deduct, to the extent not otherwise deducted or excluded 99
in computing federal or Ohio adjusted gross income during the 100
taxable year, the amount the taxpayer paid during the taxable 101
year, not compensated for by any insurance or otherwise, for 102
medical care of the taxpayer, the taxpayer's spouse, and 103
dependents, to the extent the expenses exceed seven and one-half 104
per cent of the taxpayer's federal adjusted gross income. 105

(c) Deduct, to the extent not otherwise deducted or excluded 106
in computing federal or Ohio adjusted gross income, any amount 107
included in federal adjusted gross income under section 105 or not 108
excluded under section 106 of the Internal Revenue Code solely 109
because it relates to an accident and health plan for a person who 110
otherwise would be a "qualifying relative" and thus a "dependent" 111
under section 152 of the Internal Revenue Code but for the fact 112

that the person fails to meet the income and support limitations 113
under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 114

(d) For purposes of division (A)(11) of this section, 115
"medical care" has the meaning given in section 213 of the 116
Internal Revenue Code, subject to the special rules, limitations, 117
and exclusions set forth therein, and "qualified long-term care" 118
has the same meaning given in section 7702B(c) of the Internal 119
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 120
of this section, "dependent" includes a person who otherwise would 121
be a "qualifying relative" and thus a "dependent" under section 122
152 of the Internal Revenue Code but for the fact that the person 123
fails to meet the income and support limitations under section 124
152(d)(1)(B) and (C) of the Internal Revenue Code. 125

(12)(a) Deduct any amount included in federal adjusted gross 126
income solely because the amount represents a reimbursement or 127
refund of expenses that in any year the taxpayer had deducted as 128
an itemized deduction pursuant to section 63 of the Internal 129
Revenue Code and applicable United States department of the 130
treasury regulations. The deduction otherwise allowed under 131
division (A)(12)(a) of this section shall be reduced to the extent 132
the reimbursement is attributable to an amount the taxpayer 133
deducted under this section in any taxable year. 134

(b) Add any amount not otherwise included in Ohio adjusted 135
gross income for any taxable year to the extent that the amount is 136
attributable to the recovery during the taxable year of any amount 137
deducted or excluded in computing federal or Ohio adjusted gross 138
income in any taxable year. 139

(13) Deduct any portion of the deduction described in section 140
1341(a)(2) of the Internal Revenue Code, for repaying previously 141
reported income received under a claim of right, that meets both 142
of the following requirements: 143

(a) It is allowable for repayment of an item that was 144
included in the taxpayer's adjusted gross income for a prior 145
taxable year and did not qualify for a credit under division (A) 146
or (B) of section 5747.05 of the Revised Code for that year; 147

(b) It does not otherwise reduce the taxpayer's adjusted 148
gross income for the current or any other taxable year. 149

(14) Deduct an amount equal to the deposits made to, and net 150
investment earnings of, a medical savings account during the 151
taxable year, in accordance with section 3924.66 of the Revised 152
Code. The deduction allowed by division (A)(14) of this section 153
does not apply to medical savings account deposits and earnings 154
otherwise deducted or excluded for the current or any other 155
taxable year from the taxpayer's federal adjusted gross income. 156

(15)(a) Add an amount equal to the funds withdrawn from a 157
medical savings account during the taxable year, and the net 158
investment earnings on those funds, when the funds withdrawn were 159
used for any purpose other than to reimburse an account holder 160
for, or to pay, eligible medical expenses, in accordance with 161
section 3924.66 of the Revised Code; 162

(b) Add the amounts distributed from a medical savings 163
account under division (A)(2) of section 3924.68 of the Revised 164
Code during the taxable year. 165

(16) Add any amount claimed as a credit under section 166
5747.059 of the Revised Code to the extent that such amount 167
satisfies either of the following: 168

(a) The amount was deducted or excluded from the computation 169
of the taxpayer's federal adjusted gross income as required to be 170
reported for the taxpayer's taxable year under the Internal 171
Revenue Code; 172

(b) The amount resulted in a reduction of the taxpayer's 173
federal adjusted gross income as required to be reported for any 174

of the taxpayer's taxable years under the Internal Revenue Code. 175

(17) Deduct the amount contributed by the taxpayer to an 176
individual development account program established by a county 177
department of job and family services pursuant to sections 329.11 178
to 329.14 of the Revised Code for the purpose of matching funds 179
deposited by program participants. On request of the tax 180
commissioner, the taxpayer shall provide any information that, in 181
the tax commissioner's opinion, is necessary to establish the 182
amount deducted under division (A)(17) of this section. 183

(18) Beginning in taxable year 2001 but not for any taxable 184
year beginning after December 31, 2005, if the taxpayer is married 185
and files a joint return and the combined federal adjusted gross 186
income of the taxpayer and the taxpayer's spouse for the taxable 187
year does not exceed one hundred thousand dollars, or if the 188
taxpayer is single and has a federal adjusted gross income for the 189
taxable year not exceeding fifty thousand dollars, deduct amounts 190
paid during the taxable year for qualified tuition and fees paid 191
to an eligible institution for the taxpayer, the taxpayer's 192
spouse, or any dependent of the taxpayer, who is a resident of 193
this state and is enrolled in or attending a program that 194
culminates in a degree or diploma at an eligible institution. The 195
deduction may be claimed only to the extent that qualified tuition 196
and fees are not otherwise deducted or excluded for any taxable 197
year from federal or Ohio adjusted gross income. The deduction may 198
not be claimed for educational expenses for which the taxpayer 199
claims a credit under section 5747.27 of the Revised Code. 200

(19) Add any reimbursement received during the taxable year 201
of any amount the taxpayer deducted under division (A)(18) of this 202
section in any previous taxable year to the extent the amount is 203
not otherwise included in Ohio adjusted gross income. 204

(20)(a)(i) Add five-sixths of the amount of depreciation 205
expense allowed by subsection (k) of section 168 of the Internal 206

Revenue Code, including the taxpayer's proportionate or 207
distributive share of the amount of depreciation expense allowed 208
by that subsection to a pass-through entity in which the taxpayer 209
has a direct or indirect ownership interest. 210

(ii) Add five-sixths of the amount of qualifying section 179 211
depreciation expense, including a person's proportionate or 212
distributive share of the amount of qualifying section 179 213
depreciation expense allowed to any pass-through entity in which 214
the person has a direct or indirect ownership. For the purposes of 215
this division, "qualifying section 179 depreciation expense" means 216
the difference between (I) the amount of depreciation expense 217
directly or indirectly allowed to the taxpayer under section 179 218
of the Internal Revenue Code, and (II) the amount of depreciation 219
expense directly or indirectly allowed to the taxpayer under 220
section 179 of the Internal Revenue Code as that section existed 221
on December 31, 2002. 222

The tax commissioner, under procedures established by the 223
commissioner, may waive the add-backs related to a pass-through 224
entity if the taxpayer owns, directly or indirectly, less than 225
five per cent of the pass-through entity. 226

(b) Nothing in division (A)(20) of this section shall be 227
construed to adjust or modify the adjusted basis of any asset. 228

(c) To the extent the add-back required under division 229
(A)(20)(a) of this section is attributable to property generating 230
nonbusiness income or loss allocated under section 5747.20 of the 231
Revised Code, the add-back shall be situated to the same location 232
as the nonbusiness income or loss generated by the property for 233
the purpose of determining the credit under division (A) of 234
section 5747.05 of the Revised Code. Otherwise, the add-back shall 235
be apportioned, subject to one or more of the four alternative 236
methods of apportionment enumerated in section 5747.21 of the 237
Revised Code. 238

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

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

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

(c) No deduction is available under division (A)(21)(a) of this section with regard to any depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount to the extent that such depreciation resulted in or increased a federal net operating loss carryback or carryforward to a taxable year to which division (A)(20)(d) of this section does not apply.

(22) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year as reimbursement for life insurance premiums under section 5919.31 of the Revised Code.

(23) Deduct, to the extent not otherwise deducted or excluded 270
in computing federal or Ohio adjusted gross income for the taxable 271
year, the amount the taxpayer received during the taxable year as 272
a death benefit paid by the adjutant general under section 5919.33 273
of the Revised Code. 274

(24) Deduct, to the extent included in federal adjusted gross 275
income and not otherwise allowable as a deduction or exclusion in 276
computing federal or Ohio adjusted gross income for the taxable 277
year, military pay and allowances received by the taxpayer during 278
the taxable year for active duty service in the United States 279
army, air force, navy, marine corps, or coast guard or reserve 280
components thereof or the national guard. The deduction may not be 281
claimed for military pay and allowances received by the taxpayer 282
while the taxpayer is stationed in this state. 283

(25) Deduct, to the extent not otherwise allowable as a 284
deduction or exclusion in computing federal or Ohio adjusted gross 285
income for the taxable year and not otherwise compensated for by 286
any other source, the amount of qualified organ donation expenses 287
incurred by the taxpayer during the taxable year, not to exceed 288
ten thousand dollars. A taxpayer may deduct qualified organ 289
donation expenses only once for all taxable years beginning with 290
taxable years beginning in 2007. 291

For the purposes of division (A)(25) of this section: 292

(a) "Human organ" means all or any portion of a human liver, 293
pancreas, kidney, intestine, or lung, and any portion of human 294
bone marrow. 295

(b) "Qualified organ donation expenses" means travel 296
expenses, lodging expenses, and wages and salary forgone by a 297
taxpayer in connection with the taxpayer's donation, while living, 298
of one or more of the taxpayer's human organs to another human 299
being. 300

(26) Deduct, to the extent not otherwise deducted or excluded 301
in computing federal or Ohio adjusted gross income for the taxable 302
year, amounts received by the taxpayer as retired military 303
personnel pay for service in the United States army, navy, air 304
force, coast guard, or marine corps or reserve components thereof, 305
or the national guard, or received by the surviving spouse or 306
former spouse of such a taxpayer under the survivor benefit plan 307
on account of such a taxpayer's death. If the taxpayer receives 308
income on account of retirement paid under the federal civil 309
service retirement system or federal employees retirement system, 310
or under any successor retirement program enacted by the congress 311
of the United States that is established and maintained for 312
retired employees of the United States government, and such 313
retirement income is based, in whole or in part, on credit for the 314
taxpayer's military service, the deduction allowed under this 315
division shall include only that portion of such retirement income 316
that is attributable to the taxpayer's military service, to the 317
extent that portion of such retirement income is otherwise 318
included in federal adjusted gross income and is not otherwise 319
deducted under this section. Any amount deducted under division 320
(A)(26) of this section is not included in a taxpayer's adjusted 321
gross income for the purposes of section 5747.055 of the Revised 322
Code. No amount may be deducted under division (A)(26) of this 323
section on the basis of which a credit was claimed under section 324
5747.055 of the Revised Code. 325

(27) Deduct, to the extent not otherwise deducted or excluded 326
in computing federal or Ohio adjusted gross income for the taxable 327
year, the amount the taxpayer received during the taxable year 328
from the military injury relief fund created in section 5101.98 of 329
the Revised Code. 330

(28) Deduct, to the extent not otherwise deducted or excluded 331
in computing federal or Ohio adjusted gross income for the taxable 332

year, the amount the taxpayer received as a veterans bonus during 333
the taxable year from the Ohio department of veterans services as 334
authorized by Section 2r of Article VIII, Ohio Constitution. 335

(29) Deduct, to the extent not otherwise deducted or excluded 336
in computing federal or Ohio adjusted gross income for the taxable 337
year, any loss from wagering transactions that is allowed as an 338
itemized deduction under section 165 of the Internal Revenue Code 339
and that the taxpayer deducted in computing federal taxable 340
income. 341

(30) Deduct, to the extent not otherwise deducted or excluded 342
in computing federal or Ohio adjusted gross income for the taxable 343
year, any income derived from providing public services under a 344
contract through a project owned by the state, as described in 345
section 126.604 of the Revised Code or derived from a transfer 346
agreement or from the enterprise transferred under that agreement 347
under section 4313.02 of the Revised Code. 348

(31) Deduct, to the extent not otherwise deducted or excluded 349
in computing federal or Ohio adjusted gross income for the taxable 350
year, Ohio college opportunity or federal Pell grant amounts 351
received by the taxpayer or the taxpayer's spouse or dependent 352
pursuant to section 3333.122 of the Revised Code or 20 U.S.C. 353
1070a, et seq., and used to pay room or board furnished by the 354
educational institution for which the grant was awarded at the 355
institution's facilities, including meal plans administered by the 356
institution. For the purposes of this division, receipt of a grant 357
includes the distribution of a grant directly to an educational 358
institution and the crediting of the grant to the enrollee's 359
account with the institution. 360

(32) Deduct, to the extent not otherwise deducted or excluded 361
in computing federal or Ohio adjusted gross income for the taxable 362
year, the value of any prize or award won by the taxpayer in 363
athletic competition in the olympic games. 364

(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 395
domiciled in this state. The domicile tests of section 5747.24 of 396
the Revised Code are not controlling for purposes of division 397
(I)(2) of this section. 398

(3) A trust that, in whole or part, resides in this state. If 399
only part of a trust resides in this state, the trust is a 400
resident only with respect to that part. 401

For the purposes of division (I)(3) of this section: 402

(a) A trust resides in this state for the trust's current 403
taxable year to the extent, as described in division (I)(3)(d) of 404
this section, that the trust consists directly or indirectly, in 405
whole or in part, of assets, net of any related liabilities, that 406
were transferred, or caused to be transferred, directly or 407
indirectly, to the trust by any of the following: 408

(i) A person, a court, or a governmental entity or 409
instrumentality on account of the death of a decedent, but only if 410
the trust is described in division (I)(3)(e)(i) or (ii) of this 411
section; 412

(ii) A person who was domiciled in this state for the 413
purposes of this chapter when the person directly or indirectly 414
transferred assets to an irrevocable trust, but only if at least 415
one of the trust's qualifying beneficiaries is domiciled in this 416
state for the purposes of this chapter during all or some portion 417
of the trust's current taxable year; 418

(iii) A person who was domiciled in this state for the 419
purposes of this chapter when the trust document or instrument or 420
part of the trust document or instrument became irrevocable, but 421
only if at least one of the trust's qualifying beneficiaries is a 422
resident domiciled in this state for the purposes of this chapter 423
during all or some portion of the trust's current taxable year. If 424
a trust document or instrument became irrevocable upon the death 425

of a person who at the time of death was domiciled in this state 426
for purposes of this chapter, that person is a person described in 427
division (I)(3)(a)(iii) of this section. 428

(b) A trust is irrevocable to the extent that the transferor 429
is not considered to be the owner of the net assets of the trust 430
under sections 671 to 678 of the Internal Revenue Code. 431

(c) With respect to a trust other than a charitable lead 432
trust, "qualifying beneficiary" has the same meaning as "potential 433
current beneficiary" as defined in section 1361(e)(2) of the 434
Internal Revenue Code, and with respect to a charitable lead trust 435
"qualifying beneficiary" is any current, future, or contingent 436
beneficiary, but with respect to any trust "qualifying 437
beneficiary" excludes a person or a governmental entity or 438
instrumentality to any of which a contribution would qualify for 439
the charitable deduction under section 170 of the Internal Revenue 440
Code. 441

(d) For the purposes of division (I)(3)(a) of this section, 442
the extent to which a trust consists directly or indirectly, in 443
whole or in part, of assets, net of any related liabilities, that 444
were transferred directly or indirectly, in whole or part, to the 445
trust by any of the sources enumerated in that division shall be 446
ascertained by multiplying the fair market value of the trust's 447
assets, net of related liabilities, by the qualifying ratio, which 448
shall be computed as follows: 449

(i) The first time the trust receives assets, the numerator 450
of the qualifying ratio is the fair market value of those assets 451
at that time, net of any related liabilities, from sources 452
enumerated in division (I)(3)(a) of this section. The denominator 453
of the qualifying ratio is the fair market value of all the 454
trust's assets at that time, net of any related liabilities. 455

(ii) Each subsequent time the trust receives assets, a 456

revised qualifying ratio shall be computed. The numerator of the 457
revised qualifying ratio is the sum of (1) the fair market value 458
of the trust's assets immediately prior to the subsequent 459
transfer, net of any related liabilities, multiplied by the 460
qualifying ratio last computed without regard to the subsequent 461
transfer, and (2) the fair market value of the subsequently 462
transferred assets at the time transferred, net of any related 463
liabilities, from sources enumerated in division (I)(3)(a) of this 464
section. The denominator of the revised qualifying ratio is the 465
fair market value of all the trust's assets immediately after the 466
subsequent transfer, net of any related liabilities. 467

(iii) Whether a transfer to the trust is by or from any of 468
the sources enumerated in division (I)(3)(a) of this section shall 469
be ascertained without regard to the domicile of the trust's 470
beneficiaries. 471

(e) For the purposes of division (I)(3)(a)(i) of this 472
section: 473

(i) A trust is described in division (I)(3)(e)(i) of this 474
section if the trust is a testamentary trust and the testator of 475
that testamentary trust was domiciled in this state at the time of 476
the testator's death for purposes of the taxes levied under 477
Chapter 5731. of the Revised Code. 478

(ii) A trust is described in division (I)(3)(e)(ii) of this 479
section if the transfer is a qualifying transfer described in any 480
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 481
irrevocable inter vivos trust, and at least one of the trust's 482
qualifying beneficiaries is domiciled in this state for purposes 483
of this chapter during all or some portion of the trust's current 484
taxable year. 485

(f) For the purposes of division (I)(3)(e)(ii) of this 486
section, a "qualifying transfer" is a transfer of assets, net of 487

any related liabilities, directly or indirectly to a trust, if the 488
transfer is described in any of the following: 489

(i) The transfer is made to a trust, created by the decedent 490
before the decedent's death and while the decedent was domiciled 491
in this state for the purposes of this chapter, and, prior to the 492
death of the decedent, the trust became irrevocable while the 493
decedent was domiciled in this state for the purposes of this 494
chapter. 495

(ii) The transfer is made to a trust to which the decedent, 496
prior to the decedent's death, had directly or indirectly 497
transferred assets, net of any related liabilities, while the 498
decedent was domiciled in this state for the purposes of this 499
chapter, and prior to the death of the decedent the trust became 500
irrevocable while the decedent was domiciled in this state for the 501
purposes of this chapter. 502

(iii) The transfer is made on account of a contractual 503
relationship existing directly or indirectly between the 504
transferor and either the decedent or the estate of the decedent 505
at any time prior to the date of the decedent's death, and the 506
decedent was domiciled in this state at the time of death for 507
purposes of the taxes levied under Chapter 5731. of the Revised 508
Code. 509

(iv) The transfer is made to a trust on account of a 510
contractual relationship existing directly or indirectly between 511
the transferor and another person who at the time of the 512
decedent's death was domiciled in this state for purposes of this 513
chapter. 514

(v) The transfer is made to a trust on account of the will of 515
a testator who was domiciled in this state at the time of the 516
testator's death for purposes of the taxes levied under Chapter 517
5731. of the Revised Code. 518

(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. 580

(2) Add interest or dividends, net of ordinary, necessary, 581
and reasonable expenses not deducted in computing federal taxable 582
income, on obligations of any authority, commission, 583
instrumentality, territory, or possession of the United States to 584
the extent that the interest or dividends are exempt from federal 585
income taxes but not from state income taxes, but only to the 586
extent that such net amount is not otherwise includible in Ohio 587
taxable income and is described in either division (S)(1)(a) or 588
(b) of this section; 589

(3) Add the amount of personal exemption allowed to the 590
estate pursuant to section 642(b) of the Internal Revenue Code; 591

(4) Deduct interest or dividends, net of related expenses 592
deducted in computing federal taxable income, on obligations of 593
the United States and its territories and possessions or of any 594
authority, commission, or instrumentality of the United States to 595
the extent that the interest or dividends are exempt from state 596
taxes under the laws of the United States, but only to the extent 597
that such amount is included in federal taxable income and is 598
described in either division (S)(1)(a) or (b) of this section; 599

(5) Deduct the amount of wages and salaries, if any, not 600
otherwise allowable as a deduction but that would have been 601
allowable as a deduction in computing federal taxable income for 602
the taxable year, had the targeted jobs credit allowed under 603
sections 38, 51, and 52 of the Internal Revenue Code not been in 604
effect, but only to the extent such amount relates either to 605
income included in federal taxable income for the taxable year or 606
to income of the S portion of an electing small business trust for 607
the taxable year; 608

(6) Deduct any interest or interest equivalent, net of 609
related expenses deducted in computing federal taxable income, on 610

public obligations and purchase obligations, but only to the 611
extent that such net amount relates either to income included in 612
federal taxable income for the taxable year or to income of the S 613
portion of an electing small business trust for the taxable year; 614

(7) Add any loss or deduct any gain resulting from sale, 615
exchange, or other disposition of public obligations to the extent 616
that such loss has been deducted or such gain has been included in 617
computing either federal taxable income or income of the S portion 618
of an electing small business trust for the taxable year; 619

(8) Except in the case of the final return of an estate, add 620
any amount deducted by the taxpayer on both its Ohio estate tax 621
return pursuant to section 5731.14 of the Revised Code, and on its 622
federal income tax return in determining federal taxable income; 623

(9)(a) Deduct any amount included in federal taxable income 624
solely because the amount represents a reimbursement or refund of 625
expenses that in a previous year the decedent had deducted as an 626
itemized deduction pursuant to section 63 of the Internal Revenue 627
Code and applicable treasury regulations. The deduction otherwise 628
allowed under division (S)(9)(a) of this section shall be reduced 629
to the extent the reimbursement is attributable to an amount the 630
taxpayer or decedent deducted under this section in any taxable 631
year. 632

(b) Add any amount not otherwise included in Ohio taxable 633
income for any taxable year to the extent that the amount is 634
attributable to the recovery during the taxable year of any amount 635
deducted or excluded in computing federal or Ohio taxable income 636
in any taxable year, but only to the extent such amount has not 637
been distributed to beneficiaries for the taxable year. 638

(10) Deduct any portion of the deduction described in section 639
1341(a)(2) of the Internal Revenue Code, for repaying previously 640
reported income received under a claim of right, that meets both 641

of the following requirements: 642

(a) It is allowable for repayment of an item that was 643
included in the taxpayer's taxable income or the decedent's 644
adjusted gross income for a prior taxable year and did not qualify 645
for a credit under division (A) or (B) of section 5747.05 of the 646
Revised Code for that year. 647

(b) It does not otherwise reduce the taxpayer's taxable 648
income or the decedent's adjusted gross income for the current or 649
any other taxable year. 650

(11) Add any amount claimed as a credit under section 651
5747.059 of the Revised Code to the extent that the amount 652
satisfies either of the following: 653

(a) The amount was deducted or excluded from the computation 654
of the taxpayer's federal taxable income as required to be 655
reported for the taxpayer's taxable year under the Internal 656
Revenue Code; 657

(b) The amount resulted in a reduction in the taxpayer's 658
federal taxable income as required to be reported for any of the 659
taxpayer's taxable years under the Internal Revenue Code. 660

(12) Deduct any amount, net of related expenses deducted in 661
computing federal taxable income, that a trust is required to 662
report as farm income on its federal income tax return, but only 663
if the assets of the trust include at least ten acres of land 664
satisfying the definition of "land devoted exclusively to 665
agricultural use" under section 5713.30 of the Revised Code, 666
regardless of whether the land is valued for tax purposes as such 667
land under sections 5713.30 to 5713.38 of the Revised Code. If the 668
trust is a pass-through entity investor, section 5747.231 of the 669
Revised Code applies in ascertaining if the trust is eligible to 670
claim the deduction provided by division (S)(12) of this section 671
in connection with the pass-through entity's farm income. 672

Except for farm income attributable to the S portion of an 673
electing small business trust, the deduction provided by division 674
(S)(12) of this section is allowed only to the extent that the 675
trust has not distributed such farm income. Division (S)(12) of 676
this section applies only to taxable years of a trust beginning in 677
2002 or thereafter. 678

(13) Add the net amount of income described in section 641(c) 679
of the Internal Revenue Code to the extent that amount is not 680
included in federal taxable income. 681

(14) Add or deduct the amount the taxpayer would be required 682
to add or deduct under division (A)(20) or (21) of this section if 683
the taxpayer's Ohio taxable income were computed in the same 684
manner as an individual's Ohio adjusted gross income is computed 685
under this section. In the case of a trust, division (S)(14) of 686
this section applies only to any of the trust's taxable years 687
beginning in 2002 or thereafter. 688

(T) "School district income" and "school district income tax" 689
have the same meanings as in section 5748.01 of the Revised Code. 690

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 691
of this section, "public obligations," "purchase obligations," and 692
"interest or interest equivalent" have the same meanings as in 693
section 5709.76 of the Revised Code. 694

(V) "Limited liability company" means any limited liability 695
company formed under Chapter 1705. of the Revised Code or under 696
the laws of any other state. 697

(W) "Pass-through entity investor" means any person who, 698
during any portion of a taxable year of a pass-through entity, is 699
a partner, member, shareholder, or equity investor in that 700
pass-through entity. 701

(X) "Banking day" has the same meaning as in section 1304.01 702
of the Revised Code. 703

(Y) "Month" means a calendar month.	704
(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.	705 706 707
(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.	708 709 710 711 712 713 714 715 716
(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:	717 718 719 720 721 722 723 724 725 726
(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;	727 728 729
(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;	730 731 732
(c) Tuition, fees, or other expenses paid or reimbursed through an employer, scholarship, grant in aid, or other	733 734

educational benefit program. 735

(BB)(1) "Modified business income" means the business income 736
included in a trust's Ohio taxable income after such taxable 737
income is first reduced by the qualifying trust amount, if any. 738

(2) "Qualifying trust amount" of a trust means capital gains 739
and losses from the sale, exchange, or other disposition of equity 740
or ownership interests in, or debt obligations of, a qualifying 741
investee to the extent included in the trust's Ohio taxable 742
income, but only if the following requirements are satisfied: 743

(a) The book value of the qualifying investee's physical 744
assets in this state and everywhere, as of the last day of the 745
qualifying investee's fiscal or calendar year ending immediately 746
prior to the date on which the trust recognizes the gain or loss, 747
is available to the trust. 748

(b) The requirements of section 5747.011 of the Revised Code 749
are satisfied for the trust's taxable year in which the trust 750
recognizes the gain or loss. 751

Any gain or loss that is not a qualifying trust amount is 752
modified business income, qualifying investment income, or 753
modified nonbusiness income, as the case may be. 754

(3) "Modified nonbusiness income" means a trust's Ohio 755
taxable income other than modified business income, other than the 756
qualifying trust amount, and other than qualifying investment 757
income, as defined in section 5747.012 of the Revised Code, to the 758
extent such qualifying investment income is not otherwise part of 759
modified business income. 760

(4) "Modified Ohio taxable income" applies only to trusts, 761
and means the sum of the amounts described in divisions (BB)(4)(a) 762
to (c) of this section: 763

(a) The fraction, calculated under section 5747.013, and 764

applying section 5747.231 of the Revised Code, multiplied by the 765
sum of the following amounts: 766

(i) The trust's modified business income; 767

(ii) The trust's qualifying investment income, as defined in 768
section 5747.012 of the Revised Code, but only to the extent the 769
qualifying investment income does not otherwise constitute 770
modified business income and does not otherwise constitute a 771
qualifying trust amount. 772

(b) The qualifying trust amount multiplied by a fraction, the 773
numerator of which is the sum of the book value of the qualifying 774
investee's physical assets in this state on the last day of the 775
qualifying investee's fiscal or calendar year ending immediately 776
prior to the day on which the trust recognizes the qualifying 777
trust amount, and the denominator of which is the sum of the book 778
value of the qualifying investee's total physical assets 779
everywhere on the last day of the qualifying investee's fiscal or 780
calendar year ending immediately prior to the day on which the 781
trust recognizes the qualifying trust amount. If, for a taxable 782
year, the trust recognizes a qualifying trust amount with respect 783
to more than one qualifying investee, the amount described in 784
division (BB)(4)(b) of this section shall equal the sum of the 785
products so computed for each such qualifying investee. 786

(c)(i) With respect to a trust or portion of a trust that is 787
a resident as ascertained in accordance with division (I)(3)(d) of 788
this section, its modified nonbusiness income. 789

(ii) With respect to a trust or portion of a trust that is 790
not a resident as ascertained in accordance with division 791
(I)(3)(d) of this section, the amount of its modified nonbusiness 792
income satisfying the descriptions in divisions (B)(2) to (5) of 793
section 5747.20 of the Revised Code, except as otherwise provided 794
in division (BB)(4)(c)(ii) of this section. With respect to a 795

trust or portion of a trust that is not a resident as ascertained 796
in accordance with division (I)(3)(d) of this section, the trust's 797
portion of modified nonbusiness income recognized from the sale, 798
exchange, or other disposition of a debt interest in or equity 799
interest in a section 5747.212 entity, as defined in section 800
5747.212 of the Revised Code, without regard to division (A) of 801
that section, shall not be allocated to this state in accordance 802
with section 5747.20 of the Revised Code but shall be apportioned 803
to this state in accordance with division (B) of section 5747.212 804
of the Revised Code without regard to division (A) of that 805
section. 806

If the allocation and apportionment of a trust's income under 807
divisions (BB)(4)(a) and (c) of this section do not fairly 808
represent the modified Ohio taxable income of the trust in this 809
state, the alternative methods described in division (C) of 810
section 5747.21 of the Revised Code may be applied in the manner 811
and to the same extent provided in that section. 812

(5)(a) Except as set forth in division (BB)(5)(b) of this 813
section, "qualifying investee" means a person in which a trust has 814
an equity or ownership interest, or a person or unit of government 815
the debt obligations of either of which are owned by a trust. For 816
the purposes of division (BB)(2)(a) of this section and for the 817
purpose of computing the fraction described in division (BB)(4)(b) 818
of this section, all of the following apply: 819

(i) If the qualifying investee is a member of a qualifying 820
controlled group on the last day of the qualifying investee's 821
fiscal or calendar year ending immediately prior to the date on 822
which the trust recognizes the gain or loss, then "qualifying 823
investee" includes all persons in the qualifying controlled group 824
on such last day. 825

(ii) If the qualifying investee, or if the qualifying 826
investee and any members of the qualifying controlled group of 827

which the qualifying investee is a member on the last day of the 828
qualifying investee's fiscal or calendar year ending immediately 829
prior to the date on which the trust recognizes the gain or loss, 830
separately or cumulatively own, directly or indirectly, on the 831
last day of the qualifying investee's fiscal or calendar year 832
ending immediately prior to the date on which the trust recognizes 833
the qualifying trust amount, more than fifty per cent of the 834
equity of a pass-through entity, then the qualifying investee and 835
the other members are deemed to own the proportionate share of the 836
pass-through entity's physical assets which the pass-through 837
entity directly or indirectly owns on the last day of the 838
pass-through entity's calendar or fiscal year ending within or 839
with the last day of the qualifying investee's fiscal or calendar 840
year ending immediately prior to the date on which the trust 841
recognizes the qualifying trust amount. 842

(iii) For the purposes of division (BB)(5)(a)(iii) of this 843
section, "upper level pass-through entity" means a pass-through 844
entity directly or indirectly owning any equity of another 845
pass-through entity, and "lower level pass-through entity" means 846
that other pass-through entity. 847

An upper level pass-through entity, whether or not it is also 848
a qualifying investee, is deemed to own, on the last day of the 849
upper level pass-through entity's calendar or fiscal year, the 850
proportionate share of the lower level pass-through entity's 851
physical assets that the lower level pass-through entity directly 852
or indirectly owns on the last day of the lower level pass-through 853
entity's calendar or fiscal year ending within or with the last 854
day of the upper level pass-through entity's fiscal or calendar 855
year. If the upper level pass-through entity directly and 856
indirectly owns less than fifty per cent of the equity of the 857
lower level pass-through entity on each day of the upper level 858
pass-through entity's calendar or fiscal year in which or with 859

which ends the calendar or fiscal year of the lower level 860
pass-through entity and if, based upon clear and convincing 861
evidence, complete information about the location and cost of the 862
physical assets of the lower pass-through entity is not available 863
to the upper level pass-through entity, then solely for purposes 864
of ascertaining if a gain or loss constitutes a qualifying trust 865
amount, the upper level pass-through entity shall be deemed as 866
owning no equity of the lower level pass-through entity for each 867
day during the upper level pass-through entity's calendar or 868
fiscal year in which or with which ends the lower level 869
pass-through entity's calendar or fiscal year. Nothing in division 870
(BB)(5)(a)(iii) of this section shall be construed to provide for 871
any deduction or exclusion in computing any trust's Ohio taxable 872
income. 873

(b) With respect to a trust that is not a resident for the 874
taxable year and with respect to a part of a trust that is not a 875
resident for the taxable year, "qualifying investee" for that 876
taxable year does not include a C corporation if both of the 877
following apply: 878

(i) During the taxable year the trust or part of the trust 879
recognizes a gain or loss from the sale, exchange, or other 880
disposition of equity or ownership interests in, or debt 881
obligations of, the C corporation. 882

(ii) Such gain or loss constitutes nonbusiness income. 883

(6) "Available" means information is such that a person is 884
able to learn of the information by the due date plus extensions, 885
if any, for filing the return for the taxable year in which the 886
trust recognizes the gain or loss. 887

(CC) "Qualifying controlled group" has the same meaning as in 888
section 5733.04 of the Revised Code. 889

(DD) "Related member" has the same meaning as in section 890

5733.042 of the Revised Code.	891
(EE)(1) For the purposes of division (EE) of this section:	892
(a) "Qualifying person" means any person other than a qualifying corporation.	893 894
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	895 896 897
(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;	898 899 900 901
(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.	902 903 904 905
(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.	906 907 908
(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:	909 910
(1) "Trust" does not include a qualified pre-income tax trust.	911 912
(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.	913 914 915
(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,	916 917 918 919 920

five per cent or more of the ownership or equity interests. The 921
trustee shall notify the tax commissioner in writing of the 922
election on or before April 15, 2006. The election, if timely 923
made, shall be effective on and after January 1, 2006, and shall 924
apply for all tax periods and tax years until revoked by the 925
trustee of the trust. 926

(4) A "pre-income tax trust" is a trust that satisfies all of 927
the following requirements: 928

(a) The document or instrument creating the trust was 929
executed by the grantor before January 1, 1972; 930

(b) The trust became irrevocable upon the creation of the 931
trust; and 932

(c) The grantor was domiciled in this state at the time the 933
trust was created. 934

Section 2. That existing section 5747.01 of the Revised Code 935
is hereby repealed. 936

Section 3. The amendment by this act of section 5747.01 of 937
the Revised Code applies to taxable years ending on or after the 938
effective date of this act. 939

Section 4. Section 5747.01 of the Revised Code is presented 940
in this act as a composite of the section as amended by both Am. 941
Sub. H.B. 153 and Am. H.B. 167 of the 129th General Assembly. The 942
General Assembly, applying the principle stated in division (B) of 943
section 1.52 of the Revised Code that amendments are to be 944
harmonized if reasonably capable of simultaneous operation, finds 945
that the composite is the resulting version of the section in 946
effect prior to the effective date of the section as presented in 947
this act. 948