

**As Introduced**

**129th General Assembly  
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**S. B. No. 45**

**Senator Kearney**

—

**A B I L L**

To amend section 5747.01 of the Revised Code to allow 1  
an income tax deduction for amounts spent by 2  
teachers for instructional materials. 3

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

**Section 1.** That section 5747.01 of the Revised Code be 4  
amended to read as follows: 5

**Sec. 5747.01.** Except as otherwise expressly provided or 6  
clearly appearing from the context, any term used in this chapter 7  
that is not otherwise defined in this section has the same meaning 8  
as when used in a comparable context in the laws of the United 9  
States relating to federal income taxes or if not used in a 10  
comparable context in those laws, has the same meaning as in 11  
section 5733.40 of the Revised Code. Any reference in this chapter 12  
to the Internal Revenue Code includes other laws of the United 13  
States relating to federal income taxes. 14

As used in this chapter: 15

(A) "Adjusted gross income" or "Ohio adjusted gross income" 16  
means federal adjusted gross income, as defined and used in the 17  
Internal Revenue Code, adjusted as provided in this section: 18

(1) Add interest or dividends on obligations or securities of 19

any state or of any political subdivision or authority of any 20  
state, other than this state and its subdivisions and authorities. 21

(2) Add interest or dividends on obligations of any 22  
authority, commission, instrumentality, territory, or possession 23  
of the United States to the extent that the interest or dividends 24  
are exempt from federal income taxes but not from state income 25  
taxes. 26

(3) Deduct interest or dividends on obligations of the United 27  
States and its territories and possessions or of any authority, 28  
commission, or instrumentality of the United States to the extent 29  
that the interest or dividends are included in federal adjusted 30  
gross income but exempt from state income taxes under the laws of 31  
the United States. 32

(4) Deduct disability and survivor's benefits to the extent 33  
included in federal adjusted gross income. 34

(5) Deduct benefits under Title II of the Social Security Act 35  
and tier 1 railroad retirement benefits to the extent included in 36  
federal adjusted gross income under section 86 of the Internal 37  
Revenue Code. 38

(6) In the case of a taxpayer who is a beneficiary of a trust 39  
that makes an accumulation distribution as defined in section 665 40  
of the Internal Revenue Code, add, for the beneficiary's taxable 41  
years beginning before 2002, the portion, if any, of such 42  
distribution that does not exceed the undistributed net income of 43  
the trust for the three taxable years preceding the taxable year 44  
in which the distribution is made to the extent that the portion 45  
was not included in the trust's taxable income for any of the 46  
trust's taxable years beginning in 2002 or thereafter. 47  
"Undistributed net income of a trust" means the taxable income of 48  
the trust increased by (a)(i) the additions to adjusted gross 49  
income required under division (A) of this section and (ii) the 50

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

(7) Deduct the amount of wages and salaries, if any, not 61  
otherwise allowable as a deduction but that would have been 62  
allowable as a deduction in computing federal adjusted gross 63  
income for the taxable year, had the targeted jobs credit allowed 64  
and determined under sections 38, 51, and 52 of the Internal 65  
Revenue Code not been in effect. 66

(8) Deduct any interest or interest equivalent on public 67  
obligations and purchase obligations to the extent that the 68  
interest or interest equivalent is included in federal adjusted 69  
gross income. 70

(9) Add any loss or deduct any gain resulting from the sale, 71  
exchange, or other disposition of public obligations to the extent 72  
that the loss has been deducted or the gain has been included in 73  
computing federal adjusted gross income. 74

(10) Deduct or add amounts, as provided under section 5747.70 75  
of the Revised Code, related to contributions to variable college 76  
savings program accounts made or tuition units purchased pursuant 77  
to Chapter 3334. of the Revised Code. 78

(11)(a) Deduct, to the extent not otherwise allowable as a 79  
deduction or exclusion in computing federal or Ohio adjusted gross 80  
income for the taxable year, the amount the taxpayer paid during 81

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

(b) Deduct, to the extent not otherwise deducted or excluded 98  
in computing federal or Ohio adjusted gross income during the 99  
taxable year, the amount the taxpayer paid during the taxable 100  
year, not compensated for by any insurance or otherwise, for 101  
medical care of the taxpayer, the taxpayer's spouse, and 102  
dependents, to the extent the expenses exceed seven and one-half 103  
per cent of the taxpayer's federal adjusted gross income. 104

(c) Deduct, to the extent not otherwise deducted or excluded 105  
in computing federal or Ohio adjusted gross income, any amount 106  
included in federal adjusted gross income under section 105 or not 107  
excluded under section 106 of the Internal Revenue Code solely 108  
because it relates to an accident and health plan for a person who 109  
otherwise would be a "qualifying relative" and thus a "dependent" 110  
under section 152 of the Internal Revenue Code but for the fact 111  
that the person fails to meet the income and support limitations 112  
under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 113

(d) For purposes of division (A)(11) of this section, 114  
"medical care" has the meaning given in section 213 of the 115  
Internal Revenue Code, subject to the special rules, limitations, 116  
and exclusions set forth therein, and "qualified long-term care" 117  
has the same meaning given in section 7702B(c) of the Internal 118  
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 119  
of this section, "dependent" includes a person who otherwise would 120  
be a "qualifying relative" and thus a "dependent" under section 121  
152 of the Internal Revenue Code but for the fact that the person 122  
fails to meet the income and support limitations under section 123  
152(d)(1)(B) and (C) of the Internal Revenue Code. 124

(12)(a) Deduct any amount included in federal adjusted gross 125  
income solely because the amount represents a reimbursement or 126  
refund of expenses that in any year the taxpayer had deducted as 127  
an itemized deduction pursuant to section 63 of the Internal 128  
Revenue Code and applicable United States department of the 129  
treasury regulations. The deduction otherwise allowed under 130  
division (A)(12)(a) of this section shall be reduced to the extent 131  
the reimbursement is attributable to an amount the taxpayer 132  
deducted under this section in any taxable year. 133

(b) Add any amount not otherwise included in Ohio adjusted 134  
gross income for any taxable year to the extent that the amount is 135  
attributable to the recovery during the taxable year of any amount 136  
deducted or excluded in computing federal or Ohio adjusted gross 137  
income in any taxable year. 138

(13) Deduct any portion of the deduction described in section 139  
1341(a)(2) of the Internal Revenue Code, for repaying previously 140  
reported income received under a claim of right, that meets both 141  
of the following requirements: 142

(a) It is allowable for repayment of an item that was 143  
included in the taxpayer's adjusted gross income for a prior 144  
taxable year and did not qualify for a credit under division (A) 145

or (B) of section 5747.05 of the Revised Code for that year;	146
(b) It does not otherwise reduce the taxpayer's adjusted gross income for the current or any other taxable year.	147 148
(14) Deduct an amount equal to the deposits made to, and net investment earnings of, a medical savings account during the taxable year, in accordance with section 3924.66 of the Revised Code. The deduction allowed by division (A)(14) of this section does not apply to medical savings account deposits and earnings otherwise deducted or excluded for the current or any other taxable year from the taxpayer's federal adjusted gross income.	149 150 151 152 153 154 155
(15)(a) Add an amount equal to the funds withdrawn from a medical savings account during the taxable year, and the net investment earnings on those funds, when the funds withdrawn were used for any purpose other than to reimburse an account holder for, or to pay, eligible medical expenses, in accordance with section 3924.66 of the Revised Code;	156 157 158 159 160 161
(b) Add the amounts distributed from a medical savings account under division (A)(2) of section 3924.68 of the Revised Code during the taxable year.	162 163 164
(16) Add any amount claimed as a credit under section 5747.059 of the Revised Code to the extent that such amount satisfies either of the following:	165 166 167
(a) The amount was deducted or excluded from the computation of the taxpayer's federal adjusted gross income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;	168 169 170 171
(b) The amount resulted in a reduction of the taxpayer's federal adjusted gross income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.	172 173 174
(17) Deduct the amount contributed by the taxpayer to an	175

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

(18) Beginning in taxable year 2001 but not for any taxable 183  
year beginning after December 31, 2005, if the taxpayer is married 184  
and files a joint return and the combined federal adjusted gross 185  
income of the taxpayer and the taxpayer's spouse for the taxable 186  
year does not exceed one hundred thousand dollars, or if the 187  
taxpayer is single and has a federal adjusted gross income for the 188  
taxable year not exceeding fifty thousand dollars, deduct amounts 189  
paid during the taxable year for qualified tuition and fees paid 190  
to an eligible institution for the taxpayer, the taxpayer's 191  
spouse, or any dependent of the taxpayer, who is a resident of 192  
this state and is enrolled in or attending a program that 193  
culminates in a degree or diploma at an eligible institution. The 194  
deduction may be claimed only to the extent that qualified tuition 195  
and fees are not otherwise deducted or excluded for any taxable 196  
year from federal or Ohio adjusted gross income. The deduction may 197  
not be claimed for educational expenses for which the taxpayer 198  
claims a credit under section 5747.27 of the Revised Code. 199

(19) Add any reimbursement received during the taxable year 200  
of any amount the taxpayer deducted under division (A)(18) of this 201  
section in any previous taxable year to the extent the amount is 202  
not otherwise included in Ohio adjusted gross income. 203

(20)(a)(i) Add five-sixths of the amount of depreciation 204  
expense allowed by subsection (k) of section 168 of the Internal 205  
Revenue Code, including the taxpayer's proportionate or 206  
distributive share of the amount of depreciation expense allowed 207

by that subsection to a pass-through entity in which the taxpayer 208  
has a direct or indirect ownership interest. 209

(ii) Add five-sixths of the amount of qualifying section 179 210  
depreciation expense, including a person's proportionate or 211  
distributive share of the amount of qualifying section 179 212  
depreciation expense allowed to any pass-through entity in which 213  
the person has a direct or indirect ownership. For the purposes of 214  
this division, "qualifying section 179 depreciation expense" means 215  
the difference between (I) the amount of depreciation expense 216  
directly or indirectly allowed to the taxpayer under section 179 217  
of the Internal Revenue Code, and (II) the amount of depreciation 218  
expense directly or indirectly allowed to the taxpayer under 219  
section 179 of the Internal Revenue Code as that section existed 220  
on December 31, 2002. 221

The tax commissioner, under procedures established by the 222  
commissioner, may waive the add-backs related to a pass-through 223  
entity if the taxpayer owns, directly or indirectly, less than 224  
five per cent of the pass-through entity. 225

(b) Nothing in division (A)(20) of this section shall be 226  
construed to adjust or modify the adjusted basis of any asset. 227

(c) To the extent the add-back required under division 228  
(A)(20)(a) of this section is attributable to property generating 229  
nonbusiness income or loss allocated under section 5747.20 of the 230  
Revised Code, the add-back shall be situated to the same location 231  
as the nonbusiness income or loss generated by the property for 232  
the purpose of determining the credit under division (A) of 233  
section 5747.05 of the Revised Code. Otherwise, the add-back shall 234  
be apportioned, subject to one or more of the four alternative 235  
methods of apportionment enumerated in section 5747.21 of the 236  
Revised Code. 237

(d) For the purposes of division (A) of this section, net 238



operating loss carryback and carryforward shall not include 239  
five-sixths of the allowance of any net operating loss deduction 240  
carryback or carryforward to the taxable year to the extent such 241  
loss resulted from depreciation allowed by section 168(k) of the 242  
Internal Revenue Code and by the qualifying section 179 243  
depreciation expense amount. 244

(21)(a) If the taxpayer was required to add an amount under 245  
division (A)(20)(a) of this section for a taxable year, deduct 246  
one-fifth of the amount so added for each of the five succeeding 247  
taxable years. 248

(b) If the amount deducted under division (A)(21)(a) of this 249  
section is attributable to an add-back allocated under division 250  
(A)(20)(c) of this section, the amount deducted shall be sitused 251  
to the same location. Otherwise, the add-back shall be apportioned 252  
using the apportionment factors for the taxable year in which the 253  
deduction is taken, subject to one or more of the four alternative 254  
methods of apportionment enumerated in section 5747.21 of the 255  
Revised Code. 256

(c) No deduction is available under division (A)(21)(a) of 257  
this section with regard to any depreciation allowed by section 258  
168(k) of the Internal Revenue Code and by the qualifying section 259  
179 depreciation expense amount to the extent that such 260  
depreciation resulted in or increased a federal net operating loss 261  
carryback or carryforward to a taxable year to which division 262  
(A)(20)(d) of this section does not apply. 263

(22) Deduct, to the extent not otherwise deducted or excluded 264  
in computing federal or Ohio adjusted gross income for the taxable 265  
year, the amount the taxpayer received during the taxable year as 266  
reimbursement for life insurance premiums under section 5919.31 of 267  
the Revised Code. 268

(23) Deduct, to the extent not otherwise deducted or excluded 269

in computing federal or Ohio adjusted gross income for the taxable 270  
year, the amount the taxpayer received during the taxable year as 271  
a death benefit paid by the adjutant general under section 5919.33 272  
of the Revised Code. 273

(24) Deduct, to the extent included in federal adjusted gross 274  
income and not otherwise allowable as a deduction or exclusion in 275  
computing federal or Ohio adjusted gross income for the taxable 276  
year, military pay and allowances received by the taxpayer during 277  
the taxable year for active duty service in the United States 278  
army, air force, navy, marine corps, or coast guard or reserve 279  
components thereof or the national guard. The deduction may not be 280  
claimed for military pay and allowances received by the taxpayer 281  
while the taxpayer is stationed in this state. 282

(25) Deduct, to the extent not otherwise allowable as a 283  
deduction or exclusion in computing federal or Ohio adjusted gross 284  
income for the taxable year and not otherwise compensated for by 285  
any other source, the amount of qualified organ donation expenses 286  
incurred by the taxpayer during the taxable year, not to exceed 287  
ten thousand dollars. A taxpayer may deduct qualified organ 288  
donation expenses only once for all taxable years beginning with 289  
taxable years beginning in 2007. 290

For the purposes of division (A)(25) of this section: 291

(a) "Human organ" means all or any portion of a human liver, 292  
pancreas, kidney, intestine, or lung, and any portion of human 293  
bone marrow. 294

(b) "Qualified organ donation expenses" means travel 295  
expenses, lodging expenses, and wages and salary forgone by a 296  
taxpayer in connection with the taxpayer's donation, while living, 297  
of one or more of the taxpayer's human organs to another human 298  
being. 299

(26) Deduct, to the extent not otherwise deducted or excluded 300

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

(27) Deduct, to the extent not otherwise deducted or excluded 325  
in computing federal or Ohio adjusted gross income for the taxable 326  
year, the amount the taxpayer received during the taxable year 327  
from the military injury relief fund created in section 5101.98 of 328  
the Revised Code. 329

(28) Deduct, to the extent not otherwise deducted or excluded 330  
in computing federal or Ohio adjusted gross income for the taxable 331  
year, the amount the taxpayer received as a veterans bonus during 332

the taxable year from the Ohio department of veterans services as 333  
authorized by Section 2r of Article VIII, Ohio Constitution. 334

(29) Deduct, to the extent not otherwise deducted or excluded 335  
in computing federal or Ohio adjusted gross income for the taxable 336  
year, any loss from wagering transactions that is allowed as an 337  
itemized deduction under section 165 of the Internal Revenue Code 338  
and that the taxpayer deducted in computing federal taxable 339  
income. 340

(30) Deduct, to the extent not otherwise deducted or excluded 341  
in computing federal or Ohio adjusted gross income for the taxable 342  
year, amounts spent by a teacher during the taxable year on items 343  
used by the teacher for classroom instruction, including items 344  
given to or used solely by individual students, not to exceed five 345  
hundred dollars. 346

On request of the tax commissioner, the teacher shall provide 347  
a receipt for each item used in calculating the deduction and a 348  
letter from the teacher's employer confirming that the items were 349  
used for classroom instruction. 350

For purposes of division (A)(30) of this section, "teacher" 351  
means a classroom teacher in grades kindergarten through twelve 352  
who holds an educator license under Chapter 3319. of the Revised 353  
Code. "Teacher" does not include a person who instructs a child 354  
exclusively at home. 355

(B) "Business income" means income, including gain or loss, 356  
arising from transactions, activities, and sources in the regular 357  
course of a trade or business and includes income, gain, or loss 358  
from real property, tangible property, and intangible property if 359  
the acquisition, rental, management, and disposition of the 360  
property constitute integral parts of the regular course of a 361  
trade or business operation. "Business income" includes income, 362  
including gain or loss, from a partial or complete liquidation of 363

a business, including, but not limited to, gain or loss from the 364  
sale or other disposition of goodwill. 365

(C) "Nonbusiness income" means all income other than business 366  
income and may include, but is not limited to, compensation, rents 367  
and royalties from real or tangible personal property, capital 368  
gains, interest, dividends and distributions, patent or copyright 369  
royalties, or lottery winnings, prizes, and awards. 370

(D) "Compensation" means any form of remuneration paid to an 371  
employee for personal services. 372

(E) "Fiduciary" means a guardian, trustee, executor, 373  
administrator, receiver, conservator, or any other person acting 374  
in any fiduciary capacity for any individual, trust, or estate. 375

(F) "Fiscal year" means an accounting period of twelve months 376  
ending on the last day of any month other than December. 377

(G) "Individual" means any natural person. 378

(H) "Internal Revenue Code" means the "Internal Revenue Code 379  
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 380

(I) "Resident" means any of the following, provided that 381  
division (I)(3) of this section applies only to taxable years of a 382  
trust beginning in 2002 or thereafter: 383

(1) An individual who is domiciled in this state, subject to 384  
section 5747.24 of the Revised Code; 385

(2) The estate of a decedent who at the time of death was 386  
domiciled in this state. The domicile tests of section 5747.24 of 387  
the Revised Code are not controlling for purposes of division 388  
(I)(2) of this section. 389

(3) A trust that, in whole or part, resides in this state. If 390  
only part of a trust resides in this state, the trust is a 391  
resident only with respect to that part. 392

For the purposes of division (I)(3) of this section: 393

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

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

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

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

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

(c) With respect to a trust other than a charitable lead trust, "qualifying beneficiary" has the same meaning as "potential

current beneficiary" as defined in section 1361(e)(2) of the 425  
Internal Revenue Code, and with respect to a charitable lead trust 426  
"qualifying beneficiary" is any current, future, or contingent 427  
beneficiary, but with respect to any trust "qualifying 428  
beneficiary" excludes a person or a governmental entity or 429  
instrumentality to any of which a contribution would qualify for 430  
the charitable deduction under section 170 of the Internal Revenue 431  
Code. 432

(d) For the purposes of division (I)(3)(a) of this section, 433  
the extent to which a trust consists directly or indirectly, in 434  
whole or in part, of assets, net of any related liabilities, that 435  
were transferred directly or indirectly, in whole or part, to the 436  
trust by any of the sources enumerated in that division shall be 437  
ascertained by multiplying the fair market value of the trust's 438  
assets, net of related liabilities, by the qualifying ratio, which 439  
shall be computed as follows: 440

(i) The first time the trust receives assets, the numerator 441  
of the qualifying ratio is the fair market value of those assets 442  
at that time, net of any related liabilities, from sources 443  
enumerated in division (I)(3)(a) of this section. The denominator 444  
of the qualifying ratio is the fair market value of all the 445  
trust's assets at that time, net of any related liabilities. 446

(ii) Each subsequent time the trust receives assets, a 447  
revised qualifying ratio shall be computed. The numerator of the 448  
revised qualifying ratio is the sum of (1) the fair market value 449  
of the trust's assets immediately prior to the subsequent 450  
transfer, net of any related liabilities, multiplied by the 451  
qualifying ratio last computed without regard to the subsequent 452  
transfer, and (2) the fair market value of the subsequently 453  
transferred assets at the time transferred, net of any related 454  
liabilities, from sources enumerated in division (I)(3)(a) of this 455  
section. The denominator of the revised qualifying ratio is the 456

fair market value of all the trust's assets immediately after the 457  
subsequent transfer, net of any related liabilities. 458

(iii) Whether a transfer to the trust is by or from any of 459  
the sources enumerated in division (I)(3)(a) of this section shall 460  
be ascertained without regard to the domicile of the trust's 461  
beneficiaries. 462

(e) For the purposes of division (I)(3)(a)(i) of this 463  
section: 464

(i) A trust is described in division (I)(3)(e)(i) of this 465  
section if the trust is a testamentary trust and the testator of 466  
that testamentary trust was domiciled in this state at the time of 467  
the testator's death for purposes of the taxes levied under 468  
Chapter 5731. of the Revised Code. 469

(ii) A trust is described in division (I)(3)(e)(ii) of this 470  
section if the transfer is a qualifying transfer described in any 471  
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 472  
irrevocable inter vivos trust, and at least one of the trust's 473  
qualifying beneficiaries is domiciled in this state for purposes 474  
of this chapter during all or some portion of the trust's current 475  
taxable year. 476

(f) For the purposes of division (I)(3)(e)(ii) of this 477  
section, a "qualifying transfer" is a transfer of assets, net of 478  
any related liabilities, directly or indirectly to a trust, if the 479  
transfer is described in any of the following: 480

(i) The transfer is made to a trust, created by the decedent 481  
before the decedent's death and while the decedent was domiciled 482  
in this state for the purposes of this chapter, and, prior to the 483  
death of the decedent, the trust became irrevocable while the 484  
decedent was domiciled in this state for the purposes of this 485  
chapter. 486

(ii) The transfer is made to a trust to which the decedent, 487



prior to the decedent's death, had directly or indirectly 488  
transferred assets, net of any related liabilities, while the 489  
decedent was domiciled in this state for the purposes of this 490  
chapter, and prior to the death of the decedent the trust became 491  
irrevocable while the decedent was domiciled in this state for the 492  
purposes of this chapter. 493

(iii) The transfer is made on account of a contractual 494  
relationship existing directly or indirectly between the 495  
transferor and either the decedent or the estate of the decedent 496  
at any time prior to the date of the decedent's death, and the 497  
decedent was domiciled in this state at the time of death for 498  
purposes of the taxes levied under Chapter 5731. of the Revised 499  
Code. 500

(iv) The transfer is made to a trust on account of a 501  
contractual relationship existing directly or indirectly between 502  
the transferor and another person who at the time of the 503  
decedent's death was domiciled in this state for purposes of this 504  
chapter. 505

(v) The transfer is made to a trust on account of the will of 506  
a testator who was domiciled in this state at the time of the 507  
testator's death for purposes of the taxes levied under Chapter 508  
5731. of the Revised Code. 509

(vi) The transfer is made to a trust created by or caused to 510  
be created by a court, and the trust was directly or indirectly 511  
created in connection with or as a result of the death of an 512  
individual who, for purposes of the taxes levied under Chapter 513  
5731. of the Revised Code, was domiciled in this state at the time 514  
of the individual's death. 515

(g) The tax commissioner may adopt rules to ascertain the 516  
part of a trust residing in this state. 517

(J) "Nonresident" means an individual or estate that is not a 518

resident. An individual who is a resident for only part of a 519  
taxable year is a nonresident for the remainder of that taxable 520  
year. 521

(K) "Pass-through entity" has the same meaning as in section 522  
5733.04 of the Revised Code. 523

(L) "Return" means the notifications and reports required to 524  
be filed pursuant to this chapter for the purpose of reporting the 525  
tax due and includes declarations of estimated tax when so 526  
required. 527

(M) "Taxable year" means the calendar year or the taxpayer's 528  
fiscal year ending during the calendar year, or fractional part 529  
thereof, upon which the adjusted gross income is calculated 530  
pursuant to this chapter. 531

(N) "Taxpayer" means any person subject to the tax imposed by 532  
section 5747.02 of the Revised Code or any pass-through entity 533  
that makes the election under division (D) of section 5747.08 of 534  
the Revised Code. 535

(O) "Dependents" means dependents as defined in the Internal 536  
Revenue Code and as claimed in the taxpayer's federal income tax 537  
return for the taxable year or which the taxpayer would have been 538  
permitted to claim had the taxpayer filed a federal income tax 539  
return. 540

(P) "Principal county of employment" means, in the case of a 541  
nonresident, the county within the state in which a taxpayer 542  
performs services for an employer or, if those services are 543  
performed in more than one county, the county in which the major 544  
portion of the services are performed. 545

(Q) As used in sections 5747.50 to 5747.55 of the Revised 546  
Code: 547

(1) "Subdivision" means any county, municipal corporation, 548

park district, or township. 549

(2) "Essential local government purposes" includes all 550  
functions that any subdivision is required by general law to 551  
exercise, including like functions that are exercised under a 552  
charter adopted pursuant to the Ohio Constitution. 553

(R) "Overpayment" means any amount already paid that exceeds 554  
the figure determined to be the correct amount of the tax. 555

(S) "Taxable income" or "Ohio taxable income" applies only to 556  
estates and trusts, and means federal taxable income, as defined 557  
and used in the Internal Revenue Code, adjusted as follows: 558

(1) Add interest or dividends, net of ordinary, necessary, 559  
and reasonable expenses not deducted in computing federal taxable 560  
income, on obligations or securities of any state or of any 561  
political subdivision or authority of any state, other than this 562  
state and its subdivisions and authorities, but only to the extent 563  
that such net amount is not otherwise includible in Ohio taxable 564  
income and is described in either division (S)(1)(a) or (b) of 565  
this section: 566

(a) The net amount is not attributable to the S portion of an 567  
electing small business trust and has not been distributed to 568  
beneficiaries for the taxable year; 569

(b) The net amount is attributable to the S portion of an 570  
electing small business trust for the taxable year. 571

(2) Add interest or dividends, net of ordinary, necessary, 572  
and reasonable expenses not deducted in computing federal taxable 573  
income, on obligations of any authority, commission, 574  
instrumentality, territory, or possession of the United States to 575  
the extent that the interest or dividends are exempt from federal 576  
income taxes but not from state income taxes, but only to the 577  
extent that such net amount is not otherwise includible in Ohio 578  
taxable income and is described in either division (S)(1)(a) or 579

(b) of this section;	580
(3) Add the amount of personal exemption allowed to the estate pursuant to section 642(b) of the Internal Revenue Code;	581 582
(4) Deduct interest or dividends, net of related expenses deducted in computing federal taxable income, 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 exempt from state taxes under the laws of the United States, but only to the extent that such amount is included in federal taxable income and is described in either division (S)(1)(a) or (b) of this section;	583 584 585 586 587 588 589 590
(5) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income for the taxable year, had the targeted jobs credit allowed under sections 38, 51, and 52 of the Internal Revenue Code not been in effect, but only to the extent such amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;	591 592 593 594 595 596 597 598 599
(6) Deduct any interest or interest equivalent, net of related expenses deducted in computing federal taxable income, on public obligations and purchase obligations, but only to the extent that such net amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;	600 601 602 603 604 605
(7) Add any loss or deduct any gain resulting from sale, exchange, or other disposition of public obligations to the extent that such loss has been deducted or such gain has been included in computing either federal taxable income or income of the S portion of an electing small business trust for the taxable year;	606 607 608 609 610

(8) Except in the case of the final return of an estate, add 611  
any amount deducted by the taxpayer on both its Ohio estate tax 612  
return pursuant to section 5731.14 of the Revised Code, and on its 613  
federal income tax return in determining federal taxable income; 614

(9)(a) Deduct any amount included in federal taxable income 615  
solely because the amount represents a reimbursement or refund of 616  
expenses that in a previous year the decedent had deducted as an 617  
itemized deduction pursuant to section 63 of the Internal Revenue 618  
Code and applicable treasury regulations. The deduction otherwise 619  
allowed under division (S)(9)(a) of this section shall be reduced 620  
to the extent the reimbursement is attributable to an amount the 621  
taxpayer or decedent deducted under this section in any taxable 622  
year. 623

(b) Add any amount not otherwise included in Ohio taxable 624  
income for any taxable year to the extent that the amount is 625  
attributable to the recovery during the taxable year of any amount 626  
deducted or excluded in computing federal or Ohio taxable income 627  
in any taxable year, but only to the extent such amount has not 628  
been distributed to beneficiaries for the taxable year. 629

(10) Deduct any portion of the deduction described in section 630  
1341(a)(2) of the Internal Revenue Code, for repaying previously 631  
reported income received under a claim of right, that meets both 632  
of the following requirements: 633

(a) It is allowable for repayment of an item that was 634  
included in the taxpayer's taxable income or the decedent's 635  
adjusted gross income for a prior taxable year and did not qualify 636  
for a credit under division (A) or (B) of section 5747.05 of the 637  
Revised Code for that year. 638

(b) It does not otherwise reduce the taxpayer's taxable 639  
income or the decedent's adjusted gross income for the current or 640  
any other taxable year. 641

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

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

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

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

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

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

(14) Add or deduct the amount the taxpayer would be required 673  
to add or deduct under division (A)(20) or (21) of this section if 674  
the taxpayer's Ohio taxable income were computed in the same 675  
manner as an individual's Ohio adjusted gross income is computed 676  
under this section. In the case of a trust, division (S)(14) of 677  
this section applies only to any of the trust's taxable years 678  
beginning in 2002 or thereafter. 679

(T) "School district income" and "school district income tax" 680  
have the same meanings as in section 5748.01 of the Revised Code. 681

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 682  
of this section, "public obligations," "purchase obligations," and 683  
"interest or interest equivalent" have the same meanings as in 684  
section 5709.76 of the Revised Code. 685

(V) "Limited liability company" means any limited liability 686  
company formed under Chapter 1705. of the Revised Code or under 687  
the laws of any other state. 688

(W) "Pass-through entity investor" means any person who, 689  
during any portion of a taxable year of a pass-through entity, is 690  
a partner, member, shareholder, or equity investor in that 691  
pass-through entity. 692

(X) "Banking day" has the same meaning as in section 1304.01 693  
of the Revised Code. 694

(Y) "Month" means a calendar month. 695

(Z) "Quarter" means the first three months, the second three 696  
months, the third three months, or the last three months of the 697  
taxpayer's taxable year. 698

(AA)(1) "Eligible institution" means a state university or 699  
state institution of higher education as defined in section 700  
3345.011 of the Revised Code, or a private, nonprofit college, 701  
university, or other post-secondary institution located in this 702

state that possesses a certificate of authorization issued by the 703  
Ohio board of regents pursuant to Chapter 1713. of the Revised 704  
Code or a certificate of registration issued by the state board of 705  
career colleges and schools under Chapter 3332. of the Revised 706  
Code. 707

(2) "Qualified tuition and fees" means tuition and fees 708  
imposed by an eligible institution as a condition of enrollment or 709  
attendance, not exceeding two thousand five hundred dollars in 710  
each of the individual's first two years of post-secondary 711  
education. If the individual is a part-time student, "qualified 712  
tuition and fees" includes tuition and fees paid for the academic 713  
equivalent of the first two years of post-secondary education 714  
during a maximum of five taxable years, not exceeding a total of 715  
five thousand dollars. "Qualified tuition and fees" does not 716  
include: 717

(a) Expenses for any course or activity involving sports, 718  
games, or hobbies unless the course or activity is part of the 719  
individual's degree or diploma program; 720

(b) The cost of books, room and board, student activity fees, 721  
athletic fees, insurance expenses, or other expenses unrelated to 722  
the individual's academic course of instruction; 723

(c) Tuition, fees, or other expenses paid or reimbursed 724  
through an employer, scholarship, grant in aid, or other 725  
educational benefit program. 726

(BB)(1) "Modified business income" means the business income 727  
included in a trust's Ohio taxable income after such taxable 728  
income is first reduced by the qualifying trust amount, if any. 729

(2) "Qualifying trust amount" of a trust means capital gains 730  
and losses from the sale, exchange, or other disposition of equity 731  
or ownership interests in, or debt obligations of, a qualifying 732  
investee to the extent included in the trust's Ohio taxable 733



income, but only if the following requirements are satisfied: 734

(a) The book value of the qualifying investee's physical 735  
assets in this state and everywhere, as of the last day of the 736  
qualifying investee's fiscal or calendar year ending immediately 737  
prior to the date on which the trust recognizes the gain or loss, 738  
is available to the trust. 739

(b) The requirements of section 5747.011 of the Revised Code 740  
are satisfied for the trust's taxable year in which the trust 741  
recognizes the gain or loss. 742

Any gain or loss that is not a qualifying trust amount is 743  
modified business income, qualifying investment income, or 744  
modified nonbusiness income, as the case may be. 745

(3) "Modified nonbusiness income" means a trust's Ohio 746  
taxable income other than modified business income, other than the 747  
qualifying trust amount, and other than qualifying investment 748  
income, as defined in section 5747.012 of the Revised Code, to the 749  
extent such qualifying investment income is not otherwise part of 750  
modified business income. 751

(4) "Modified Ohio taxable income" applies only to trusts, 752  
and means the sum of the amounts described in divisions (BB)(4)(a) 753  
to (c) of this section: 754

(a) The fraction, calculated under section 5747.013, and 755  
applying section 5747.231 of the Revised Code, multiplied by the 756  
sum of the following amounts: 757

(i) The trust's modified business income; 758

(ii) The trust's qualifying investment income, as defined in 759  
section 5747.012 of the Revised Code, but only to the extent the 760  
qualifying investment income does not otherwise constitute 761  
modified business income and does not otherwise constitute a 762  
qualifying trust amount. 763

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

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

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

of the Revised Code without regard to division (A) of that 796  
section. 797

If the allocation and apportionment of a trust's income under 798  
divisions (BB)(4)(a) and (c) of this section do not fairly 799  
represent the modified Ohio taxable income of the trust in this 800  
state, the alternative methods described in division (C) of 801  
section 5747.21 of the Revised Code may be applied in the manner 802  
and to the same extent provided in that section. 803

(5)(a) Except as set forth in division (BB)(5)(b) of this 804  
section, "qualifying investee" means a person in which a trust has 805  
an equity or ownership interest, or a person or unit of government 806  
the debt obligations of either of which are owned by a trust. For 807  
the purposes of division (BB)(2)(a) of this section and for the 808  
purpose of computing the fraction described in division (BB)(4)(b) 809  
of this section, all of the following apply: 810

(i) If the qualifying investee is a member of a qualifying 811  
controlled group on the last day of the qualifying investee's 812  
fiscal or calendar year ending immediately prior to the date on 813  
which the trust recognizes the gain or loss, then "qualifying 814  
investee" includes all persons in the qualifying controlled group 815  
on such last day. 816

(ii) If the qualifying investee, or if the qualifying 817  
investee and any members of the qualifying controlled group of 818  
which the qualifying investee is a member on the last day of the 819  
qualifying investee's fiscal or calendar year ending immediately 820  
prior to the date on which the trust recognizes the gain or loss, 821  
separately or cumulatively own, directly or indirectly, on the 822  
last day of the qualifying investee's fiscal or calendar year 823  
ending immediately prior to the date on which the trust recognizes 824  
the qualifying trust amount, more than fifty per cent of the 825  
equity of a pass-through entity, then the qualifying investee and 826  
the other members are deemed to own the proportionate share of the 827

pass-through entity's physical assets which the pass-through 828  
entity directly or indirectly owns on the last day of the 829  
pass-through entity's calendar or fiscal year ending within or 830  
with the last day of the qualifying investee's fiscal or calendar 831  
year ending immediately prior to the date on which the trust 832  
recognizes the qualifying trust amount. 833

(iii) For the purposes of division (BB)(5)(a)(iii) of this 834  
section, "upper level pass-through entity" means a pass-through 835  
entity directly or indirectly owning any equity of another 836  
pass-through entity, and "lower level pass-through entity" means 837  
that other pass-through entity. 838

An upper level pass-through entity, whether or not it is also 839  
a qualifying investee, is deemed to own, on the last day of the 840  
upper level pass-through entity's calendar or fiscal year, the 841  
proportionate share of the lower level pass-through entity's 842  
physical assets that the lower level pass-through entity directly 843  
or indirectly owns on the last day of the lower level pass-through 844  
entity's calendar or fiscal year ending within or with the last 845  
day of the upper level pass-through entity's fiscal or calendar 846  
year. If the upper level pass-through entity directly and 847  
indirectly owns less than fifty per cent of the equity of the 848  
lower level pass-through entity on each day of the upper level 849  
pass-through entity's calendar or fiscal year in which or with 850  
which ends the calendar or fiscal year of the lower level 851  
pass-through entity and if, based upon clear and convincing 852  
evidence, complete information about the location and cost of the 853  
physical assets of the lower pass-through entity is not available 854  
to the upper level pass-through entity, then solely for purposes 855  
of ascertaining if a gain or loss constitutes a qualifying trust 856  
amount, the upper level pass-through entity shall be deemed as 857  
owning no equity of the lower level pass-through entity for each 858  
day during the upper level pass-through entity's calendar or 859

fiscal year in which or with which ends the lower level 860  
pass-through entity's calendar or fiscal year. Nothing in division 861  
(BB)(5)(a)(iii) of this section shall be construed to provide for 862  
any deduction or exclusion in computing any trust's Ohio taxable 863  
income. 864

(b) With respect to a trust that is not a resident for the 865  
taxable year and with respect to a part of a trust that is not a 866  
resident for the taxable year, "qualifying investee" for that 867  
taxable year does not include a C corporation if both of the 868  
following apply: 869

(i) During the taxable year the trust or part of the trust 870  
recognizes a gain or loss from the sale, exchange, or other 871  
disposition of equity or ownership interests in, or debt 872  
obligations of, the C corporation. 873

(ii) Such gain or loss constitutes nonbusiness income. 874

(6) "Available" means information is such that a person is 875  
able to learn of the information by the due date plus extensions, 876  
if any, for filing the return for the taxable year in which the 877  
trust recognizes the gain or loss. 878

(CC) "Qualifying controlled group" has the same meaning as in 879  
section 5733.04 of the Revised Code. 880

(DD) "Related member" has the same meaning as in section 881  
5733.042 of the Revised Code. 882

(EE)(1) For the purposes of division (EE) of this section: 883

(a) "Qualifying person" means any person other than a 884  
qualifying corporation. 885

(b) "Qualifying corporation" means any person classified for 886  
federal income tax purposes as an association taxable as a 887  
corporation, except either of the following: 888

(i) A corporation that has made an election under subchapter 889

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;

(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.

(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.

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

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

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

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

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

(a) The document or instrument creating the trust was	920
executed by the grantor before January 1, 1972;	921
(b) The trust became irrevocable upon the creation of the	922
trust; and	923
(c) The grantor was domiciled in this state at the time the	924
trust was created.	925
<b>Section 2.</b> That existing section 5747.01 of the Revised Code	926
is hereby repealed.	927
<b>Section 3.</b> The amendment by this act of section 5747.01 of	928
the Revised Code applies to taxable years ending on or after the	929
effective date of this act.	930