

As Introduced

**130th General Assembly
Regular Session
2013-2014**

H. B. No. 669

Representative Stinziano

Cosponsors: Representatives Barborak, Duffey, Rogers, Sheehy

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A B I L L

To amend sections 150.03, 322.02, 5739.02, 5739.03, 1
5747.01, and 5751.01 and to enact sections 195.01 2
to 195.14 and 5709.071 of the Revised Code to 3
establish the Startup Ohio initiative in which 4
universities and partnering business may 5
collaborate in tax-free areas near campuses in 6
this state to create jobs, attract entrepreneurs, 7
and spur academic enrichment and to direct the 8
Director of Budget and Management to transfer \$100 9
million to the Ohio Venture Capital Program Fund. 10

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

Section 1. That sections 150.03, 322.02, 5739.02, 5739.03, 11
5747.01, and 5751.01 be amended and sections 195.01, 195.02, 12
195.03, 195.04, 195.05, 195.06, 195.07, 195.08, 195.09, 195.10, 13
195.11, 195.12, 195.13, 195.14, and 5709.071 of the Revised Code 14
be enacted to read as follows: 15

Sec. 150.03. Within ninety days after April 9, 2003, the 16
authority shall establish, and subsequently may modify as it 17
considers necessary, a written investment policy governing the 18
investment of money from the program fund, which is hereby 19

created. The program fund shall consist of the proceeds of loans 20
acquired by a program administrator and money transferred or 21
appropriated to it by the general assembly. The authority is 22
subject to Chapter 119. of the Revised Code with respect to the 23
establishment or modification of the policy. The policy shall meet 24
all the following requirements: 25

(A) It is consistent with the purpose of the program stated 26
in section 150.01 of the Revised Code. 27

(B) Subject to divisions (C), (D), and (E) of this section, 28
it permits the investment of money from the program fund in 29
private, for-profit venture capital funds, including funds of 30
funds, that invest in enterprises in the seed or early stage of 31
business development or established business enterprises 32
developing new methods or technologies, and that demonstrate 33
potential to generate high levels of successful investment 34
performance. 35

(C) It specifies that a program administrator or fund manager 36
employed by the program administrator shall invest not less than 37
seventy-five per cent of program fund money under its investment 38
authority in Ohio-based venture capital funds. 39

(D) It specifies both of the following: 40

(1) That not less than an amount equal to fifty per cent of 41
program fund money invested in any venture capital fund be 42
invested by the venture capital fund in Ohio-based business 43
enterprises; 44

(2) That, commencing with the first program fund commitment 45
to each venture capital fund, the aggregate amount funded into 46
Ohio-based business enterprises by all venture capital funds to 47
which the program fund has committed be not less than the 48
aggregate amount of all program fund money funded into those 49

venture capital funds. 50

(E) It specifies that a program administrator or fund manager 51
employed by the program administrator shall not invest money from 52
the program fund in a venture capital fund to the extent that the 53
total amount of program fund money invested in the venture capital 54
fund, when combined with any program fund money invested in a 55
venture capital fund under the same management as that venture 56
capital fund, exceeds the lesser of the following: 57

(1) Ten million dollars; 58

(2)(a) In the case of an Ohio-based venture capital fund, 59
fifty per cent of the total amount of capital committed to the 60
fund from all sources, after accounting for capital committed from 61
the program fund; 62

(b) In the case of any other venture capital fund, twenty per 63
cent of the total amount of capital committed to the fund from all 64
sources, after accounting for capital committed from the program 65
fund. 66

(F) It specifies that a program administrator or fund manager 67
employed by the program administrator shall not commit capital 68
from the program fund to a venture capital fund until the venture 69
capital fund receives commitment of at least the same amount from 70
other investors in the fund. 71

(G) It specifies the general conditions a private, for-profit 72
investment fund must meet to be selected as a program 73
administrator under section 150.05 of the Revised Code, including, 74
as a significant selection standard, direct experience managing 75
external or nonproprietary capital in private equity fund of funds 76
formats. 77

(H) It specifies the criteria the authority must consider 78
when making a determination under division (B)(1) of section 79
150.04 of the Revised Code. 80

(I) It includes investment standards and general limitations 81
on allowable investments that the authority considers reasonable 82
and necessary to achieve the purposes of this chapter as stated in 83
division (B) of section 150.01 of the Revised Code, minimize the 84
need for the authority to grant tax credits under section 150.07 85
of the Revised Code, ensure compliance of the program 86
administrators with all applicable laws of this state and the 87
United States, and ensure the safety and soundness of investments 88
of money from the program fund. 89

(J) It prohibits the investment of money from the program 90
fund directly in persons other than venture capital funds, except 91
for temporary investment in investment grade debt securities or 92
temporary deposit in interest-bearing accounts or funds pending 93
permanent investment in venture capital funds. 94

Sec. 195.01. As used in this chapter: 95

(A) "University" means a state university as defined in 96
section 3345.011 of the Revised Code, a community college as 97
defined in section 3354.01 of the Revised Code, or a private 98
college or university. 99

(B) "Private college or university" has the same meaning as 100
in section 1713.50 of the Revised Code. 101

(C) "Campus" means land, buildings, or other real property 102
owned or leased by a university. 103

(D) "Business" means a sole proprietorship, a corporation for 104
profit, or a pass-through entity as defined in section 5733.04 of 105
the Revised Code. 106

(E) "Partnering business" means a business that is a party to 107
a partnership contract approved by the startup Ohio board under 108
section 195.08 of the Revised Code. A business is no longer a 109
partnering business when the partnership contract expires. 110

(F) "Partnership contract" means a contract negotiated and 111
agreed to by a university and a partnering business under section 112
195.07 of the Revised Code. 113

(G) "Owner" means a partner of a partnership, a member of a 114
limited liability company, a majority shareholder of an S 115
corporation, a person with a majority ownership interest in a 116
pass-through entity, the sole proprietor of a sole proprietorship, 117
or any officer, employee, or agent with authority to make 118
decisions legally binding upon a business. 119

(H) "Startup space" means vacant land or building space that 120
satisfies the criteria described under section 195.05 of the 121
Revised Code. 122

(I) "New job" means a position filled by one full-time 123
employee performing a particular set of tasks and duties. The 124
position must be new to this state and, except as provided in 125
division (A)(3) of section 195.07 of the Revised Code, the 126
individual filling the position must not have been transferred 127
from a related business or any other business located in this 128
state by means of acquisition, merger, consolidation, or 129
reorganization of a business. 130

(J) "Full-time employee" means an individual who is employed 131
for consideration by a partnering business for at least 132
thirty-five hours a week, or who renders any other standard of 133
service generally accepted by custom or specified by contract as 134
full-time employment. 135

(K) "Startup Ohio board" or "board" means the board appointed 136
under section 195.04 of the Revised Code. 137

(L) "Vacant" means land or building space not occupied by any 138
person or business or used for some other productive purpose. For 139
the purposes of this division, "occupied" means actual, 140
continuous, and exclusive use and possession of land or building 141

space by a person having lawful right to such use and possession. 142

(M) "Appointing authority" means the governor, the president
of the senate, or the speaker of the house of representatives. 143
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(N) "Startup zone certificate" means a certificate issued to
a partnering business by the startup Ohio board under section
195.08 of the Revised Code. 145
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(O) "Related businesses" are businesses the majority of the
ownership interests of which are held directly or indirectly by
the same person. 148
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(P) "New employee certificate" means a certificate awarded by
a partnering business to a full-time employee hired to fill a new
job under section 195.09 of the Revised Code. 151
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Sec. 195.02. (A) The startup Ohio initiative is hereby
established to facilitate job creation, attract private economic
investment, encourage entrepreneurial activity, and create
educational enrichment opportunities in this state. The initiative
shall be administered by the startup Ohio board in collaboration
with universities and partnering businesses in this state. 154
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(B) The president or chief executive officer of a university
in this state may seek to create a startup zone by identifying
startup space and writing a strategic plan to attract one or more
businesses to operate in the startup space under a partnership
contract with the university. The strategic plan shall include the
following: 160
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(1) A detailed description of the startup space. The
description shall delineate the boundaries of the space and the
county treasurer's permanent parcel number associated with each
parcel wholly or partially located within the space. 166
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(2) An explanation of the university's rationale in choosing
the startup space. The university shall consider the following in 170
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identifying startup space: 172

(a) The need for economic development in the startup space 173
and the surrounding community. The university shall give 174
preference to underutilized land or buildings, blighted areas, and 175
other neighborhoods that are ready for development but lacking 176
resources to improve infrastructure. 177

(b) The expected effects of developing the startup space on 178
the economic and social welfare of the surrounding community. The 179
university shall endeavor to propose startup space in communities 180
where the positive economic and social impact will be the 181
greatest. The university shall avoid startup space in communities 182
where further development would lead to competition with existing 183
businesses, excessive demand for available public infrastructure, 184
or poorer conditions for individuals living or working nearby. 185

(c) The conduciveness of the startup space to fostering 186
academic enrichment opportunities for students of the university. 187
For the purposes of this division, close proximity of the startup 188
space to academic buildings, recreational areas, housing 189
facilities, and other areas of campus frequented by students; ease 190
of access to the space by public or university transportation; and 191
flexibility of the startup space for accommodating commercial and 192
academic environments contribute positively to the conduciveness 193
of a startup space to fostering academic enrichment. 194

(3) The methodology the university intends to use for the 195
purposes of identifying one or more businesses to operate in the 196
startup space and entering partnership contracts with such 197
businesses. The methodology shall describe the following: 198

(a) The type of business or businesses the university seeks 199
to operate in the startup space. The university shall seek 200
businesses that are unique to the community surrounding the 201
startup space and that cannot reasonably be expected to compete 202

with or otherwise hamper the success of existing businesses in the 203
community. 204

(b) The proposed measures to ensure that partnership 205
contracts with businesses in the startup space align with or 206
further the academic mission of the university; 207

(c) The proposed methods by which the university will consult 208
with affected counties, municipal corporations, townships, 209
economic development agencies, citizens, and university governance 210
in developing and choosing businesses for the startup space. Such 211
methods may include public hearings, focus groups, meetings, phone 212
calls, and other forms of communication. 213

(4) A conflicts of interest policy that, at a minimum, 214
complies with section 195.14 of the Revised Code; 215

(5) Any other information or supporting documents deemed 216
necessary or desirable by the university or the startup Ohio board 217
to fully explain the strategic plan and the proposed startup 218
space. 219

(C) Subject to the limitations prescribed by divisions (B) 220
and (C) of section 195.03 of the Revised Code, the president or 221
chief executive officer of a university may submit or amend a 222
strategic plan for a startup zone under division (B) of this 223
section at any time. A university may submit a strategic plan for 224
more than one startup zone or multiple strategic plans for 225
multiple startup zones simultaneously. 226

Sec. 195.03. (A) The startup Ohio board shall review and 227
consider strategic plans submitted by universities under section 228
195.02 of the Revised Code based on merit and not on the time of 229
submission. The board may approve a strategic plan only by 230
affirmative vote of at least two board members. The board shall 231
consider the following in determining to approve or reject a 232

<u>strategic plan under this section:</u>	233
<u>(1) Compliance of the startup space and the strategic plan with the requirements of this chapter;</u>	234
<u>(2) Reasonableness of the economic and fiscal assumptions contained in the strategic plan and any supporting documents;</u>	236
<u>(3) Likelihood that the proposed startup zone would lead to the creation of new jobs, attract entrepreneurs, and enrich the education of the university's students;</u>	237
<u>(4) Congruence of the strategic plan with the mission and activities of the university;</u>	238
<u>(5) Desirability of the startup space according to the factors described in divisions (B)(2)(a), (b), and (c) of section 195.02 of the Revised Code;</u>	239
<u>(6) Practicality and desirability of the university's methodology for identifying and entering partnerships with businesses to operate in the startup space according to the factors described in divisions (B)(3)(a), (b), and (c) of section 195.02 of the Revised Code;</u>	240
<u>(7) Geographic balance of the startup space with other startup zones in the state;</u>	241
<u>(8) Variance of urban, rural, and suburban startup zones throughout the state;</u>	242
<u>(9) Participation of a diverse range of universities in the state;</u>	243
<u>(10) Support or opposition of counties, municipal corporations, townships, economic development agencies, citizens, and the governing body of the university.</u>	244
<u>(B) The aggregate area of all startup zones sponsored by a single university and located off campus shall not exceed two</u>	245

hundred thousand square feet. 262

(C) The aggregate area of all startup zones sponsored by 263
private colleges and universities shall not exceed three million 264
square feet. 265

(D) Acceptance of a strategic plan by the startup Ohio board 266
immediately designates the startup space described in the plan as 267
a startup zone. The board shall send written notice of its 268
approval to the university within fourteen days of accepting the 269
plan. 270

(E) If the startup Ohio board rejects the strategic plan, the 271
board shall send written notice to the university that submitted 272
the plan within fourteen days of such determination. The notice 273
shall include the reasons for the board's determination and 274
suggestions for how the strategic plan could be modified to meet 275
the board's approval. 276

Sec. 195.04. (A) There is hereby created the startup Ohio 277
board consisting of three members with significant expertise and 278
experience in academic-based economic development projects. The 279
governor, the president of the senate, and the speaker of the 280
house of representatives each shall appoint one individual to 281
serve as a member of the board. The board shall do all of the 282
following: 283

(1) Review strategic plans for startup zones submitted by 284
universities under section 195.02 of the Revised Code and 285
determine to accept or to reject the plans; 286

(2) Review and make determinations with respect to 287
partnership contracts between universities and partnering 288
businesses under section 195.08 of the Revised Code; 289

(3) Assist and oversee universities in carrying out strategic 290
plans accepted by the board; 291

(4) Monitor the compliance of universities and partnering businesses with respect to the strategic plan and partnership contract; 292
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(5) Evaluate the effectiveness of the startup Ohio initiative in terms of jobs created, private economic investment attracted, and educational enrichment opportunities provided in an annual report submitted to the governor, the president of the senate, and the speaker of the house of representatives. 295
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(B) The governor, the president of the senate, and the speaker of the house of representatives shall make initial appointments to the startup Ohio board within ninety days of the effective date of ...B... of the 130th General Assembly. The initial appointees shall serve the following terms of office: 300
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(1) The board member appointed by the governor shall serve a term of four years; 305
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(2) The board member appointed by the president of the senate shall serve a term of three years; 307
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(3) The board member appointed by the speaker of the house of representatives shall serve a term of two years. 309
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(C) All board members appointed after the expiration of the initial appointee's term shall serve terms of four years. The terms of office for initial appointees to the startup Ohio board begin on the ninetieth day following the effective date of ...B... of the 130th General Assembly. Subsequent terms of office begin the day that the appointee's predecessor's term expires. If an appointing authority does not appoint a new board member or reappoint the current board member before the expiration of the current board member's term, the current board member shall continue in office until the appointing authority appoints a successor. A board member may serve an unlimited number of consecutive terms if the board member is reappointed by an 311
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appointing authority. 323

(D) Startup Ohio board members serve at the pleasure of their 324
appointing authority. Board members may be removed from the 325
position at any time by the member's appointing authority for 326
malfeasance, misfeasance, or nonfeasance in office. A vacancy in 327
an unexpired term on the startup Ohio board shall be filled in the 328
same manner as the initial appointment. A board member appointed 329
to fill a vacancy on the startup Ohio board shall hold office for 330
the remainder of the member's predecessor's term. The presence of 331
two board members constitutes a quorum to conduct the board's 332
business under this chapter. A vacancy on the board does not 333
impair the board from carrying out its business if at least two 334
board members are present. 335

(E) The startup Ohio board is a public body for the purposes 336
of section 121.22 of the Revised Code, and it is a public office 337
for the purposes of section 149.43 of the Revised Code. Board 338
members shall not be considered to be holding a direct or indirect 339
interest in a contract or expenditure of money by a university or 340
a partnering business because of their affiliation with the board. 341
Board members shall not be paid for their service, but may be 342
reimbursed by the director of budget and management from the 343
general revenue fund for reasonable expenses incurred in carrying 344
out their duties under this section. 345

Sec. 195.05. (A) Startup space shall be located on land or in 346
building space that is vacant at the time the university submits 347
the strategic plan to the startup Ohio board under section 195.02 348
of the Revised Code. The university shall not relocate or 349
eliminate academic programs, administrative programs, offices, 350
housing facilities, dining facilities, athletic facilities, or any 351
other facility, space, or program that actively serves students, 352
faculty, or staff in order to create vacant land or building space 353

for the purposes of this chapter. 354

(B) Except as provided in division (C) of this section, 355
startup space shall be located within one mile of the university's 356
campus. If the startup space is located in a building outside of 357
the university's campus, its area shall not exceed two hundred 358
square feet. 359

(C) A university may apply to the startup Ohio board for 360
special consideration of land or building space that does not meet 361
the criteria described in division (B) of this section. The board 362
may approve such land or building space as startup space if the 363
board determines that such approval is consistent with the 364
purposes of the startup Ohio initiative and that the land or 365
building space otherwise meets the requirements of this section. 366

Sec. 195.06. (A) After the startup Ohio board designates a 367
startup zone under section 195.03 of the Revised Code, the 368
university shall follow the methodology described in its strategic 369
plan to identify and enter a partnership contract with one or more 370
businesses to operate within the startup zone. The business shall 371
meet all of the following criteria: 372

(1) The mission and activities of the business align with or 373
further the academic mission of the university; 374

(2) The business is not a direct or indirect competitor of an 375
existing business located near the startup zone; 376

(3) The business has the capacity to meet the performance 377
benchmarks in the partnership contract; 378

(4) Except as provided in divisions (C) and (D) of this 379
section, the business was not operating in this state at the time 380
of entering the partnership contract or in any of the preceding 381
five years; 382

<u>(5) Except as provided in divisions (C) and (D) of this</u>	383
<u>section, the business is not substantially similar, in terms of</u>	384
<u>ownership and operation, to a business operating in this state at</u>	385
<u>the time of entering the partnership contract or in any of the</u>	386
<u>preceding five years;</u>	387
<u>(6) The business is in compliance with all worker protection</u>	388
<u>and environmental laws and regulations;</u>	389
<u>(7) The business does not owe past due federal, state, or</u>	390
<u>local taxes;</u>	391
<u>(8) The business is not engaged in any of the following</u>	392
<u>commercial activities:</u>	393
<u>(a) Retail;</u>	394
<u>(b) Wholesale;</u>	395
<u>(c) Real estate brokerage or management;</u>	396
<u>(d) Law practice;</u>	397
<u>(e) Medical or dental practice;</u>	398
<u>(f) Hospitality;</u>	399
<u>(g) Finance or financial services;</u>	400
<u>(h) Personal services;</u>	401
<u>(i) Administrative support services;</u>	402
<u>(j) Accountant services;</u>	403
<u>(k) Utility services;</u>	404
<u>(l) Electricity generation or distribution;</u>	405
<u>(m) Natural gas generation or distribution;</u>	406
<u>(n) Insurance.</u>	407
<u>(B) If, after reasonable efforts, the university determines</u>	408
<u>it is not practical to identify and enter a partnership contract</u>	409

with a business using the methodology described in the strategic 410
plan, the university may seek to amend the methodology by 411
submitting a proposed amendment to the startup Ohio board. The 412
board may approve or reject the amendment by a majority vote. The 413
board shall send notice of its determination with respect to the 414
amendment to the university within fourteen days of its 415
determination under this division. 416

(C) Notwithstanding divisions (A)(4) and (5) of this section, 417
a university may enter a partnership contract with a returning 418
business if the contract includes a provision whereby the business 419
agrees to substantially restore all jobs previously moved by the 420
business out of this state. For the purposes of this division, 421
"returning business" means a business that moved jobs out of this 422
state on or before the effective date of ...B... of the 130th 423
General Assembly. 424

(D) Notwithstanding divisions (A)(4) and (5) of this section, 425
a university may enter a partnership contract with an expanding 426
business if the contract contains a provision whereby the business 427
agrees to create new jobs in the startup zone without eliminating 428
or relocating jobs from elsewhere in the state. For the purposes 429
of this division, "expanding business" means a business currently 430
operating in this state that intends to increase its Ohio 431
operations and create new jobs. 432

Sec. 195.07. After the university has identified a business 433
that meets the criteria prescribed by division (A) of section 434
195.06 of the Revised Code, the university may negotiate the terms 435
of a partnership contract with the business concerning the 436
business's operation in the startup zone. 437

(A) The partnership contract shall include the following 438
terms for the partnering business: 439

(1) An agreement to create new jobs in the startup zone 440

during its first year of operation under the contract and to 441
retain those jobs for the duration of the contract; 442

(2) An agreement not to move existing jobs from another area 443
of the state to the startup zone; 444

(3) An agreement not to cause individuals to transfer 445
employment from a related business located in this state to 446
similar employment with the partnering business in the startup 447
zone. This agreement does not apply if the partnering business 448
demonstrates that the related business did not eliminate the 449
transferring employee's position in this state after the transfer. 450

(4) Specific performance benchmarks, including: 451

(a) The number of new jobs the partnering business agrees to 452
create; 453

(b) A schedule for when the new jobs will be created; 454

(c) The job titles and expected salaries associated with the 455
new jobs. 456

(5) An agreement to share tax returns, employment 457
information, and other documents that the university and the 458
startup Ohio board deem necessary to monitor the partnering 459
business's compliance with the partnership contract; 460

(6) An agreement to collaborate with the university in 461
creating and administering academic enrichment opportunities for 462
the university's students. 463

(B) The partnership contract shall specify the date on which 464
the contract expires. Such date shall be not later than ten years 465
from the date the contract is submitted to the startup Ohio board 466
for approval under section 195.08 of the Revised Code. 467

(C) The partnership contract may include terms additional to 468
but not in derogation of those described in this section. The 469
university or partnering business may seek to include any 470

provisions deemed necessary or desirable to govern the mechanics 471
of their collaboration in the startup zone for business and 472
educational purposes. 473

Sec. 195.08. (A) After the president or chief executive 474
officer of the university and the owner of the partnering business 475
have agreed to the terms of the partnership contract, the 476
university shall submit a copy of the contract to the startup Ohio 477
board. The board shall review the contract and determine if its 478
terms are consistent with the strategic plan submitted by the 479
university under section 195.02 of the Revised Code and the goals 480
of the startup Ohio initiative. The board may approve or reject 481
the contract by affirmative vote of at least two board members. 482
The board shall send notice of its determination on the contract 483
to the university and the partnering business within fourteen days 484
of voting. 485

(B)(1) If the board votes to approve the contract, the notice 486
shall take the form of a startup zone certificate. The startup 487
zone certificate shall include the following: 488

(a) The name, address, and telephone number of the 489
university; 490

(b) The name, address, telephone number, and social security 491
number or federal tax identification number of the partnering 492
business; 493

(c) The location of the startup zone and the parcel numbers, 494
if any, assigned to parcels in the zone or other legal description 495
of such parcels; 496

(d) The date the partnership contract takes effect and the 497
date it expires. 498

(2) The startup zone certificate shall serve as documentation 499
that the partnership contract has been approved for the purposes 500

of the tax incentives described in section 322.02, section 501
5709.071, division (B)(54) of section 5739.02, division (A)(32) of 502
section 5747.01, and division (F)(2)(jj) of section 5751.01 of the 503
Revised Code. 504

(3) The startup zone certificate expires on the same date the 505
partnership contract expires or is terminated. 506

(4) The board shall transmit a copy of the startup zone 507
certificate to the tax commissioner. 508

(5) Along with the startup zone certificate, the startup Ohio 509
board shall give notice to the partnering business of the number 510
of new employee certificates that the partnering business is 511
authorized to award. Except as provided in division (D) of this 512
section, the number of new employee certificates shall equal the 513
number of new jobs the partnering business agreed to create in the 514
partnership contract. 515

(C) If the board rejects the partnership contract, the notice 516
shall include the reasons for the board's determination and 517
suggestions for ways in which the contract may be revised to meet 518
the approval of the board. The university and the partnering 519
business may amend and resubmit a previously rejected partnership 520
contract to the board at any time. 521

(D) The startup Ohio board shall monitor the issuance and use 522
of new employee certificates under this section and section 195.09 523
of the Revised Code to ensure that not more than ten thousand 524
full-time employees use new employee certificates to claim 525
deductions under division (A)(33) of section 5747.01 of the 526
Revised Code in any taxable year. To comply with this division, 527
the board may reduce the number of new employee certificates a 528
partnering business is authorized to award. 529

(E) A partnering business shall not assign or transfer a 530
startup zone certificate issued under this section to any other 531

person. 532

Sec. 195.09. (A) A partnering business may award a new 533
employee certificate to any full-time employee hired to fill a new 534
job described in the partnership contract. The new employee 535
certificate shall be in a form prescribed by the startup Ohio 536
board and shall include the name, address, and social security 537
number or federal tax identification number of the employee and 538
the partnering business. 539

(B) Each time a partnering business awards a new employee 540
certificate, it shall transmit a copy of the completed new 541
employee certificate to the startup Ohio board and the tax 542
commissioner. 543

(C) If the partnering business or the full-time employee ends 544
the employment relationship before the expiration of the 545
partnership contract or if the full-time employee is transferred 546
outside the startup zone, the partnering business shall revoke the 547
new employee certificate and transmit notice of such revocation to 548
the board and the commissioner. 549

(D) A partnering business shall not revoke a new employee 550
certificate awarded to any full-time employee for reasons other 551
than those described in division (C) of this section. 552

(E) A full-time employee awarded a new employee certificate 553
under this section may claim an income tax deduction under 554
division (A)(33) of section 5747.01 of the Revised Code. The 555
deduction is based on the income earned by the full-time employee 556
from the partnering business for work performed in the startup 557
zone. The full-time employee may claim the deduction for taxable 558
years ending after the date the new employee certificate is 559
awarded and beginning before the expiration of the partnership 560
contract. 561

(F) A partnering business may apply to the startup Ohio board for authorization to award more new employee certificates than initially authorized under division (B)(5) of section 195.08 of the Revised Code. The board, in its discretion and subject to the limitation prescribed by division (D) of section 195.08 of the Revised Code, may authorize the partnering business to award additional new employee certificates under this section.

Sec. 195.10. (A) If a university determines that a partnering business is not complying with a provision of the partnership contract, the university shall notify the startup Ohio board. The board shall conduct a hearing on the alleged noncompliance and allow opportunities for the university and the partnering business to present testimony at the hearing. At the conclusion of the hearing the board, by affirmative vote of at least two of its members, may do any of the following:

(1) Suspend the partnering business's startup zone certificate until the partnering business complies with the terms of the partnership contract;

(2) Terminate the partnership contract;

(3) Terminate the partnership contract and require the partnering business to refund to the state all or a portion of the amounts realized by the partnering business through the tax incentives described in division (A)(32) of section 5747.01 and division (F)(2)(jj) of section 5751.01 of the Revised Code.

(B) In reaching a determination under division (A) of this section, the startup Ohio board shall consider the effect of market conditions on the partnering business's performance under the partnership contract and whether the partnering business continues to maintain other operations in this state.

(C) After making a determination under division (A) of this

section, the board shall certify the amount to be refunded to the 592
tax commissioner. The commissioner shall make an assessment for 593
that amount against the partnering business under Chapters 5747. 594
and 5751. of the Revised Code. 595

(D) Full-time employees awarded new employee certificates by 596
a partnering business under section 195.09 of the Revised Code 597
shall not be subject to assessment under this section. If the 598
partnering business's partnership contract is terminated under 599
this section, the employee may claim the deduction described in 600
division (A)(33) of section 5747.01 of the Revised Code only for 601
income received before the date the contract is terminated. 602

Sec. 195.11. (A) The startup Ohio board shall file an annual 603
report to the governor, the president of the senate, and the 604
speaker of the house of representatives on the effectiveness of 605
the startup Ohio initiative. The report shall include the 606
following: 607

(1) A list of the universities that have submitted strategic 608
plans under section 195.02 of the Revised Code; 609

(2) A list of the startup zones approved by the board under 610
section 195.03 of the Revised Code and the location of each; 611

(3) A list of the partnering businesses operating in startup 612
zones and the number of new jobs created by each partnering 613
business; 614

(4) The types of industries represented by partnering 615
businesses operating in startup zones; 616

(5) A list of the noncompliance issues raised by universities 617
under section 195.10 of the Revised Code in the preceding year. 618

(B) The report required under division (A) of this section 619
shall be completed by the first day of each April occurring at 620
least six months after the effective date of ...B... of the 130th 621

General Assembly. 622

(C) The startup Ohio board may request, and universities and 623
partnering businesses shall provide, any information or documents 624
needed by the board to complete the report required by this 625
section. 626

Sec. 195.12. No university may contract with a partnering 627
business to perform services or work that is similar in nature or 628
in scope to services or work that was performed by employees of 629
the university at any time during the five years preceding the 630
date the partnership contract is submitted to the startup Ohio 631
board under section 195.08 of the Revised Code. 632

Sec. 195.13. Financial statements and other information 633
submitted by a university or a partnering business to the startup 634
Ohio board, and any information taken by the board for the 635
purposes described in this chapter, are not public records subject 636
to section 149.43 of the Revised Code. However, the startup Ohio 637
board may make use of such information for purposes of issuing 638
public reports or in connection with court proceedings concerning 639
partnership contracts under this chapter. 640

Upon the request of the tax commissioner, the startup Ohio 641
board and the university shall provide the commissioner any 642
statement or other information submitted by or obtained from a 643
partnering business. The commissioner shall preserve the 644
confidentiality of the statement or information. 645

Sec. 195.14. (A) For the purposes of this section, 646
"interested individual" means a person who is the president or 647
chief executive officer of the university or who is an employee, 648
alumnus, or donor of the university with the ability to influence 649
or make decisions on a partnership contract, and who has, directly 650
or indirectly, through business, investment, or family, any of the 651

following: 652

(1) An ownership or investment interest in a partnering business; 653
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(2) A compensation agreement with a partnering business; 655

(3) A potential ownership or investment interest in, or compensation arrangement with, any person with which the university is negotiating a partnership contract. Compensation includes direct and indirect remuneration as well as material gifts or favors. 656
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(B) A university participating in the startup Ohio initiative shall adopt a conflicts of interest policy with respect to its activities under this chapter. The conflicts of interest policy shall protect the university's interest when it is considering a partnership contract that might benefit the private interest of an interested individual. The conflicts of interest policy shall include the following: 661
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(1) The procedure for interested individuals to disclose a financial interest in a partnering business; 668
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(2) The procedure for screening such interested individuals from negotiations on the partnership contract; 670
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(3) The procedure for reporting conflicts of interest to the startup Ohio board. 672
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(C) If the university determines that an interested individual failed to report a financial interest in a partnering business before the approval of the partnership contract under section 195.08 of the Revised Code, the university shall report such failure to the startup Ohio board. The board shall hold a hearing on the potential conflict of interest and, if the board determines that the partnership contract is not in the university's best interest, may terminate the partnership contract 674
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and revoke the partnering business's startup zone certificate. 682

Sec. 322.02. (A) For the purpose of paying the costs of 683
enforcing and administering the tax and providing additional 684
general revenue for the county, any county may levy and collect a 685
tax to be known as the real property transfer tax on each deed 686
conveying real property or any interest in real property located 687
wholly or partially within the boundaries of the county at a rate 688
not to exceed thirty cents per hundred dollars for each one 689
hundred dollars or fraction thereof of the value of the real 690
property or interest in real property located within the 691
boundaries of the county granted, assigned, transferred, or 692
otherwise conveyed by the deed. The tax shall be levied pursuant 693
to a resolution adopted by the board of county commissioners of 694
the county and, except as provided in division (C) of this section 695
and division (A) of section 322.07 of the Revised Code, shall be 696
levied at a uniform rate upon all deeds as defined in division (D) 697
of section 322.01 of the Revised Code. Prior to the adoption of 698
any such resolution, the board of county commissioners shall 699
conduct two public hearings thereon, the second hearing to be not 700
less than three nor more than ten days after the first. Notice of 701
the date, time, and place of the hearings shall be given by 702
publication in a newspaper of general circulation in the county 703
once a week on the same day of the week for two consecutive weeks 704
or as provided in section 7.16 of the Revised Code. The second 705
publication shall be not less than ten nor more than thirty days 706
prior to the first hearing. The tax shall be levied upon the 707
grantor named in the deed and shall be paid by the grantor for the 708
use of the county to the county auditor at the time of the 709
delivery of the deed as provided in section 319.202 of the Revised 710
Code and prior to the presentation of the deed to the recorder of 711
the county for recording. 712

(B) No resolution levying a real property transfer tax 713

pursuant to this section or a manufactured home transfer tax 714
pursuant to section 322.06 of the Revised Code shall be effective 715
sooner than thirty days following its adoption. Such a resolution 716
is subject to a referendum as provided in sections 305.31 to 717
305.41 of the Revised Code, unless the resolution is adopted as an 718
emergency measure necessary for the immediate preservation of the 719
public peace, health, or safety, in which case it shall go into 720
immediate effect. An emergency measure must receive an affirmative 721
vote of all of the members of the board of commissioners, and 722
shall state the reasons for the necessity. A resolution may direct 723
the board of elections to submit the question of levying the tax 724
to the electors of the county at the next primary or general 725
election in the county occurring not less than ninety days after 726
the resolution is certified to the board. No such resolution shall 727
go into effect unless approved by a majority of those voting upon 728
it. 729

(C) No real property transfer tax levied pursuant to this 730
section shall apply to any deed conveying real property or any 731
interest in real property located within a startup zone to a 732
partnering business holding a valid startup zone certificate. The 733
exemption under this division applies only to conveyances 734
occurring on or after the date the startup zone certificate takes 735
effect and before the certificate expires. As used in this 736
division, "startup zone," "partnering business," and "startup zone 737
certificate" have the same meanings as in section 195.01 of the 738
Revised Code. 739

Sec. 5709.071. Real property constituting or situated on a 740
parcel designated as a startup zone by the startup Ohio board and 741
used exclusively for that purpose by a university and one or more 742
partnering businesses shall be exempt from taxation for the term 743
of the partnership contract between the university and the 744
partnering business beginning with the tax year that includes the 745

effective date of the contract. This exemption does not apply to 746
any portion of the real property not designated and used 747
exclusively as a startup zone. The exemption does not apply to any 748
tax year ending after the expiration of the partnership contract. 749
For the purposes of this section, "startup zone," "startup Ohio 750
board," "university," "partnership contract," and "partnering 751
business" have the same meanings as in section 195.01 of the 752
Revised Code. 753

Sec. 5739.02. For the purpose of providing revenue with which 754
to meet the needs of the state, for the use of the general revenue 755
fund of the state, for the purpose of securing a thorough and 756
efficient system of common schools throughout the state, for the 757
purpose of affording revenues, in addition to those from general 758
property taxes, permitted under constitutional limitations, and 759
from other sources, for the support of local governmental 760
functions, and for the purpose of reimbursing the state for the 761
expense of administering this chapter, an excise tax is hereby 762
levied on each retail sale made in this state. 763

(A)(1) The tax shall be collected as provided in section 764
5739.025 of the Revised Code. The rate of the tax shall be five 765
and three-fourths per cent. The tax applies and is collectible 766
when the sale is made, regardless of the time when the price is 767
paid or delivered. 768

(2) In the case of the lease or rental, with a fixed term of 769
more than thirty days or an indefinite term with a minimum period 770
of more than thirty days, of any motor vehicles designed by the 771
manufacturer to carry a load of not more than one ton, watercraft, 772
outboard motor, or aircraft, or of any tangible personal property, 773
other than motor vehicles designed by the manufacturer to carry a 774
load of more than one ton, to be used by the lessee or renter 775
primarily for business purposes, the tax shall be collected by the 776

vendor at the time the lease or rental is consummated and shall be 777
calculated by the vendor on the basis of the total amount to be 778
paid by the lessee or renter under the lease agreement. If the 779
total amount of the consideration for the lease or rental includes 780
amounts that are not calculated at the time the lease or rental is 781
executed, the tax shall be calculated and collected by the vendor 782
at the time such amounts are billed to the lessee or renter. In 783
the case of an open-end lease or rental, the tax shall be 784
calculated by the vendor on the basis of the total amount to be 785
paid during the initial fixed term of the lease or rental, and for 786
each subsequent renewal period as it comes due. As used in this 787
division, "motor vehicle" has the same meaning as in section 788
4501.01 of the Revised Code, and "watercraft" includes an outdrive 789
unit attached to the watercraft. 790

A lease with a renewal clause and a termination penalty or 791
similar provision that applies if the renewal clause is not 792
exercised is presumed to be a sham transaction. In such a case, 793
the tax shall be calculated and paid on the basis of the entire 794
length of the lease period, including any renewal periods, until 795
the termination penalty or similar provision no longer applies. 796
The taxpayer shall bear the burden, by a preponderance of the 797
evidence, that the transaction or series of transactions is not a 798
sham transaction. 799

(3) Except as provided in division (A)(2) of this section, in 800
the case of a sale, the price of which consists in whole or in 801
part of the lease or rental of tangible personal property, the tax 802
shall be measured by the installments of that lease or rental. 803

(4) In the case of a sale of a physical fitness facility 804
service or recreation and sports club service, the price of which 805
consists in whole or in part of a membership for the receipt of 806
the benefit of the service, the tax applicable to the sale shall 807
be measured by the installments thereof. 808

(B) The tax does not apply to the following:	809
(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;	810 811 812 813
(2) Sales of food for human consumption off the premises where sold;	814 815
(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;	816 817 818
(4) Sales of newspapers and sales or transfers of magazines distributed as controlled circulation publications;	819 820
(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;	821 822 823 824
(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under division (A) of section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to division (A) of section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;	825 826 827 828 829 830 831 832 833 834
(7) Sales of natural gas by a natural gas company, of water by a water-works company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through pipes or conduits, and all sales of communications services by a telegraph company, all terms as defined in section 5727.01 of the	835 836 837 838 839

Revised Code, and sales of electricity delivered through wires; 840

(8) Casual sales by a person, or auctioneer employed directly 841
by the person to conduct such sales, except as to such sales of 842
motor vehicles, watercraft or outboard motors required to be 843
titled under section 1548.06 of the Revised Code, watercraft 844
documented with the United States coast guard, snowmobiles, and 845
all-purpose vehicles as defined in section 4519.01 of the Revised 846
Code; 847

(9)(a) Sales of services or tangible personal property, other 848
than motor vehicles, mobile homes, and manufactured homes, by 849
churches, organizations exempt from taxation under section 850
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 851
organizations operated exclusively for charitable purposes as 852
defined in division (B)(12) of this section, provided that the 853
number of days on which such tangible personal property or 854
services, other than items never subject to the tax, are sold does 855
not exceed six in any calendar year, except as otherwise provided 856
in division (B)(9)(b) of this section. If the number of days on 857
which such sales are made exceeds six in any calendar year, the 858
church or organization shall be considered to be engaged in 859
business and all subsequent sales by it shall be subject to the 860
tax. In counting the number of days, all sales by groups within a 861
church or within an organization shall be considered to be sales 862
of that church or organization. 863

(b) The limitation on the number of days on which tax-exempt 864
sales may be made by a church or organization under division 865
(B)(9)(a) of this section does not apply to sales made by student 866
clubs and other groups of students of a primary or secondary 867
school, or a parent-teacher association, booster group, or similar 868
organization that raises money to support or fund curricular or 869
extracurricular activities of a primary or secondary school. 870

(c) Divisions (B)(9)(a) and (b) of this section do not apply 871

to sales by a noncommercial educational radio or television 872
broadcasting station. 873

(10) Sales not within the taxing power of this state under 874
the Constitution or laws of the United States or the Constitution 875
of this state; 876

(11) Except for transactions that are sales under division 877
(B)(3)(r) of section 5739.01 of the Revised Code, the 878
transportation of persons or property, unless the transportation 879
is by a private investigation and security service; 880

(12) Sales of tangible personal property or services to 881
churches, to organizations exempt from taxation under section 882
501(c)(3) of the Internal Revenue Code of 1986, and to any other 883
nonprofit organizations operated exclusively for charitable 884
purposes in this state, no part of the net income of which inures 885
to the benefit of any private shareholder or individual, and no 886
substantial part of the activities of which consists of carrying 887
on propaganda or otherwise attempting to influence legislation; 888
sales to offices administering one or more homes for the aged or 889
one or more hospital facilities exempt under section 140.08 of the 890
Revised Code; and sales to organizations described in division (D) 891
of section 5709.12 of the Revised Code. 892

"Charitable purposes" means the relief of poverty; the 893
improvement of health through the alleviation of illness, disease, 894
or injury; the operation of an organization exclusively for the 895
provision of professional, laundry, printing, and purchasing 896
services to hospitals or charitable institutions; the operation of 897
a home for the aged, as defined in section 5701.13 of the Revised 898
Code; the operation of a radio or television broadcasting station 899
that is licensed by the federal communications commission as a 900
noncommercial educational radio or television station; the 901
operation of a nonprofit animal adoption service or a county 902
humane society; the promotion of education by an institution of 903

learning that maintains a faculty of qualified instructors, 904
teaches regular continuous courses of study, and confers a 905
recognized diploma upon completion of a specific curriculum; the 906
operation of a parent-teacher association, booster group, or 907
similar organization primarily engaged in the promotion and 908
support of the curricular or extracurricular activities of a 909
primary or secondary school; the operation of a community or area 910
center in which presentations in music, dramatics, the arts, and 911
related fields are made in order to foster public interest and 912
education therein; the production of performances in music, 913
dramatics, and the arts; or the promotion of education by an 914
organization engaged in carrying on research in, or the 915
dissemination of, scientific and technological knowledge and 916
information primarily for the public. 917

Nothing in this division shall be deemed to exempt sales to 918
any organization for use in the operation or carrying on of a 919
trade or business, or sales to a home for the aged for use in the 920
operation of independent living facilities as defined in division 921
(A) of section 5709.12 of the Revised Code. 922

(13) Building and construction materials and services sold to 923
construction contractors for incorporation into a structure or 924
improvement to real property under a construction contract with 925
this state or a political subdivision of this state, or with the 926
United States government or any of its agencies; building and 927
construction materials and services sold to construction 928
contractors for incorporation into a structure or improvement to 929
real property that are accepted for ownership by this state or any 930
of its political subdivisions, or by the United States government 931
or any of its agencies at the time of completion of the structures 932
or improvements; building and construction materials sold to 933
construction contractors for incorporation into a horticulture 934
structure or livestock structure for a person engaged in the 935

business of horticulture or producing livestock; building	936
materials and services sold to a construction contractor for	937
incorporation into a house of public worship or religious	938
education, or a building used exclusively for charitable purposes	939
under a construction contract with an organization whose purpose	940
is as described in division (B)(12) of this section; building	941
materials and services sold to a construction contractor for	942
incorporation into a building under a construction contract with	943
an organization exempt from taxation under section 501(c)(3) of	944
the Internal Revenue Code of 1986 when the building is to be used	945
exclusively for the organization's exempt purposes; building and	946
construction materials sold for incorporation into the original	947
construction of a sports facility under section 307.696 of the	948
Revised Code; building and construction materials and services	949
sold to a construction contractor for incorporation into real	950
property outside this state if such materials and services, when	951
sold to a construction contractor in the state in which the real	952
property is located for incorporation into real property in that	953
state, would be exempt from a tax on sales levied by that state;	954
building and construction materials for incorporation into a	955
transportation facility pursuant to a public-private agreement	956
entered into under sections 5501.70 to 5501.83 of the Revised	957
Code; and, until one calendar year after the construction of a	958
convention center that qualifies for property tax exemption under	959
section 5709.084 of the Revised Code is completed, building and	960
construction materials and services sold to a construction	961
contractor for incorporation into the real property comprising	962
that convention center;	963
(14) Sales of ships or vessels or rail rolling stock used or	964
to be used principally in interstate or foreign commerce, and	965
repairs, alterations, fuel, and lubricants for such ships or	966
vessels or rail rolling stock;	967

(15) Sales to persons primarily engaged in any of the 968
activities mentioned in division (B)(42)(a), (g), or (h) of this 969
section, to persons engaged in making retail sales, or to persons 970
who purchase for sale from a manufacturer tangible personal 971
property that was produced by the manufacturer in accordance with 972
specific designs provided by the purchaser, of packages, including 973
material, labels, and parts for packages, and of machinery, 974
equipment, and material for use primarily in packaging tangible 975
personal property produced for sale, including any machinery, 976
equipment, and supplies used to make labels or packages, to 977
prepare packages or products for labeling, or to label packages or 978
products, by or on the order of the person doing the packaging, or 979
sold at retail. "Packages" includes bags, baskets, cartons, 980
crates, boxes, cans, bottles, bindings, wrappings, and other 981
similar devices and containers, but does not include motor 982
vehicles or bulk tanks, trailers, or similar devices attached to 983
motor vehicles. "Packaging" means placing in a package. Division 984
(B)(15) of this section does not apply to persons engaged in 985
highway transportation for hire. 986

(16) Sales of food to persons using supplemental nutrition 987
assistance program benefits to purchase the food. As used in this 988
division, "food" has the same meaning as in 7 U.S.C. 2012 and 989
federal regulations adopted pursuant to the Food and Nutrition Act 990
of 2008. 991

(17) Sales to persons engaged in farming, agriculture, 992
horticulture, or floriculture, of tangible personal property for 993
use or consumption primarily in the production by farming, 994
agriculture, horticulture, or floriculture of other tangible 995
personal property for use or consumption primarily in the 996
production of tangible personal property for sale by farming, 997
agriculture, horticulture, or floriculture; or material and parts 998
for incorporation into any such tangible personal property for use 999

or consumption in production; and of tangible personal property 1000
for such use or consumption in the conditioning or holding of 1001
products produced by and for such use, consumption, or sale by 1002
persons engaged in farming, agriculture, horticulture, or 1003
floriculture, except where such property is incorporated into real 1004
property; 1005

(18) Sales of drugs for a human being that may be dispensed 1006
only pursuant to a prescription; insulin as recognized in the 1007
official United States pharmacopoeia; urine and blood testing 1008
materials when used by diabetics or persons with hypoglycemia to 1009
test for glucose or acetone; hypodermic syringes and needles when 1010
used by diabetics for insulin injections; epoetin alfa when 1011
purchased for use in the treatment of persons with medical 1012
disease; hospital beds when purchased by hospitals, nursing homes, 1013
or other medical facilities; and medical oxygen and medical 1014
oxygen-dispensing equipment when purchased by hospitals, nursing 1015
homes, or other medical facilities; 1016

(19) Sales of prosthetic devices, durable medical equipment 1017
for home use, or mobility enhancing equipment, when made pursuant 1018
to a prescription and when such devices or equipment are for use 1019
by a human being. 1020

(20) Sales of emergency and fire protection vehicles and 1021
equipment to nonprofit organizations for use solely in providing 1022
fire protection and emergency services, including trauma care and 1023
emergency medical services, for political subdivisions of the 1024
state; 1025

(21) Sales of tangible personal property manufactured in this 1026
state, if sold by the manufacturer in this state to a retailer for 1027
use in the retail business of the retailer outside of this state 1028
and if possession is taken from the manufacturer by the purchaser 1029
within this state for the sole purpose of immediately removing the 1030
same from this state in a vehicle owned by the purchaser; 1031

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of section 5739.029 of the Revised Code;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

(25)(a) Sales of water to a consumer for residential use;

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;

(27) Sales to persons licensed to conduct a food service

operation pursuant to section 3717.43 of the Revised Code, of	1063
tangible personal property primarily used directly for the	1064
following:	1065
(a) To prepare food for human consumption for sale;	1066
(b) To preserve food that has been or will be prepared for	1067
human consumption for sale by the food service operator, not	1068
including tangible personal property used to display food for	1069
selection by the consumer;	1070
(c) To clean tangible personal property used to prepare or	1071
serve food for human consumption for sale.	1072
(28) Sales of animals by nonprofit animal adoption services	1073
or county humane societies;	1074
(29) Sales of services to a corporation described in division	1075
(A) of section 5709.72 of the Revised Code, and sales of tangible	1076
personal property that qualifies for exemption from taxation under	1077
section 5709.72 of the Revised Code;	1078
(30) Sales and installation of agricultural land tile, as	1079
defined in division (B)(5)(a) of section 5739.01 of the Revised	1080
Code;	1081
(31) Sales and erection or installation of portable grain	1082
bins, as defined in division (B)(5)(b) of section 5739.01 of the	1083
Revised Code;	1084
(32) The sale, lease, repair, and maintenance of, parts for,	1085
or items attached to or incorporated in, motor vehicles that are	1086
primarily used for transporting tangible personal property	1087
belonging to others by a person engaged in highway transportation	1088
for hire, except for packages and packaging used for the	1089
transportation of tangible personal property;	1090
(33) Sales to the state headquarters of any veterans'	1091
organization in this state that is either incorporated and issued	1092

a charter by the congress of the United States or is recognized by 1093
the United States veterans administration, for use by the 1094
headquarters; 1095

(34) Sales to a telecommunications service vendor, mobile 1096
telecommunications service vendor, or satellite broadcasting 1097
service vendor of tangible personal property and services used 1098
directly and primarily in transmitting, receiving, switching, or 1099
recording any interactive, one- or two-way electromagnetic 1100
communications, including voice, image, data, and information, 1101
through the use of any medium, including, but not limited to, 1102
poles, wires, cables, switching equipment, computers, and record 1103
storage devices and media, and component parts for the tangible 1104
personal property. The exemption provided in this division shall 1105
be in lieu of all other exemptions under division (B)(42)(a) or 1106
(n) of this section to which the vendor may otherwise be entitled, 1107
based upon the use of the thing purchased in providing the 1108
telecommunications, mobile telecommunications, or satellite 1109
broadcasting service. 1110

(35)(a) Sales where the purpose of the consumer is to use or 1111
consume the things transferred in making retail sales and 1112
consisting of newspaper inserts, catalogues, coupons, flyers, gift 1113
certificates, or other advertising material that prices and 1114
describes tangible personal property offered for retail sale. 1115

(b) Sales to direct marketing vendors of preliminary 1116
materials such as photographs, artwork, and typesetting that will 1117
be used in printing advertising material; and of printed matter 1118
that offers free merchandise or chances to win sweepstake prizes 1119
and that is mailed to potential customers with advertising 1120
material described in division (B)(35)(a) of this section; 1121

(c) Sales of equipment such as telephones, computers, 1122
facsimile machines, and similar tangible personal property 1123
primarily used to accept orders for direct marketing retail sales. 1124

(d) Sales of automatic food vending machines that preserve 1125
food with a shelf life of forty-five days or less by refrigeration 1126
and dispense it to the consumer. 1127

For purposes of division (B)(35) of this section, "direct 1128
marketing" means the method of selling where consumers order 1129
tangible personal property by United States mail, delivery 1130
service, or telecommunication and the vendor delivers or ships the 1131
tangible personal property sold to the consumer from a warehouse, 1132
catalogue distribution center, or similar fulfillment facility by 1133
means of the United States mail, delivery service, or common 1134
carrier. 1135

(36) Sales to a person engaged in the business of 1136
horticulture or producing livestock of materials to be 1137
incorporated into a horticulture structure or livestock structure; 1138

(37) Sales of personal computers, computer monitors, computer 1139
keyboards, modems, and other peripheral computer equipment to an 1140
individual who is licensed or certified to teach in an elementary 1141
or a secondary school in this state for use by that individual in 1142
preparation for teaching elementary or secondary school students; 1143

(38) Sales to a professional racing team of any of the 1144
following: 1145

(a) Motor racing vehicles; 1146

(b) Repair services for motor racing vehicles; 1147

(c) Items of property that are attached to or incorporated in 1148
motor racing vehicles, including engines, chassis, and all other 1149
components of the vehicles, and all spare, replacement, and 1150
rebuilt parts or components of the vehicles; except not including 1151
tires, consumable fluids, paint, and accessories consisting of 1152
instrumentation sensors and related items added to the vehicle to 1153
collect and transmit data by means of telemetry and other forms of 1154
communication. 1155

(39) Sales of used manufactured homes and used mobile homes, 1156
as defined in section 5739.0210 of the Revised Code, made on or 1157
after January 1, 2000; 1158

(40) Sales of tangible personal property and services to a 1159
provider of electricity used or consumed directly and primarily in 1160
generating, transmitting, or distributing electricity for use by 1161
others, including property that is or is to be incorporated into 1162
and will become a part of the consumer's production, transmission, 1163
or distribution system and that retains its classification as 1164
tangible personal property after incorporation; fuel or power used 1165
in the production, transmission, or distribution of electricity; 1166
energy conversion equipment as defined in section 5727.01 of the 1167
Revised Code; and tangible personal property and services used in 1168
the repair and maintenance of the production, transmission, or 1169
distribution system, including only those motor vehicles as are 1170
specially designed and equipped for such use. The exemption 1171
provided in this division shall be in lieu of all other exemptions 1172
in division (B)(42)(a) or (n) of this section to which a provider 1173
of electricity may otherwise be entitled based on the use of the 1174
tangible personal property or service purchased in generating, 1175
transmitting, or distributing electricity. 1176

(41) Sales to a person providing services under division 1177
(B)(3)(r) of section 5739.01 of the Revised Code of tangible 1178
personal property and services used directly and primarily in 1179
providing taxable services under that section. 1180

(42) Sales where the purpose of the purchaser is to do any of 1181
the following: 1182

(a) To incorporate the thing transferred as a material or a 1183
part into tangible personal property to be produced for sale by 1184
manufacturing, assembling, processing, or refining; or to use or 1185
consume the thing transferred directly in producing tangible 1186
personal property for sale by mining, including, without 1187

limitation, the extraction from the earth of all substances that 1188
are classed geologically as minerals, production of crude oil and 1189
natural gas, or directly in the rendition of a public utility 1190
service, except that the sales tax levied by this section shall be 1191
collected upon all meals, drinks, and food for human consumption 1192
sold when transporting persons. Persons engaged in rendering 1193
services in the exploration for, and production of, crude oil and 1194
natural gas for others are deemed engaged directly in the 1195
exploration for, and production of, crude oil and natural gas. 1196
This paragraph does not exempt from "retail sale" or "sales at 1197
retail" the sale of tangible personal property that is to be 1198
incorporated into a structure or improvement to real property. 1199

(b) To hold the thing transferred as security for the 1200
performance of an obligation of the vendor; 1201

(c) To resell, hold, use, or consume the thing transferred as 1202
evidence of a contract of insurance; 1203

(d) To use or consume the thing directly in commercial 1204
fishing; 1205

(e) To incorporate the thing transferred as a material or a 1206
part into, or to use or consume the thing transferred directly in 1207
the production of, magazines distributed as controlled circulation 1208
publications; 1209

(f) To use or consume the thing transferred in the production 1210
and preparation in suitable condition for market and sale of 1211
printed, imprinted, overprinted, lithographic, multilithic, 1212
blueprinted, photostatic, or other productions or reproductions of 1213
written or graphic matter; 1214

(g) To use the thing transferred, as described in section 1215
5739.011 of the Revised Code, primarily in a manufacturing 1216
operation to produce tangible personal property for sale; 1217

(h) To use the benefit of a warranty, maintenance or service 1218

contract, or similar agreement, as described in division (B)(7) of 1219
section 5739.01 of the Revised Code, to repair or maintain 1220
tangible personal property, if all of the property that is the 1221
subject of the warranty, contract, or agreement would not be 1222
subject to the tax imposed by this section; 1223

(i) To use the thing transferred as qualified research and 1224
development equipment; 1225

(j) To use or consume the thing transferred primarily in 1226
storing, transporting, mailing, or otherwise handling purchased 1227
sales inventory in a warehouse, distribution center, or similar 1228
facility when the inventory is primarily distributed outside this 1229
state to retail stores of the person who owns or controls the 1230
warehouse, distribution center, or similar facility, to retail 1231
stores of an affiliated group of which that person is a member, or 1232
by means of direct marketing. This division does not apply to 1233
motor vehicles registered for operation on the public highways. As 1234
used in this division, "affiliated group" has the same meaning as 1235
in division (B)(3)(e) of section 5739.01 of the Revised Code and 1236
"direct marketing" has the same meaning as in division (B)(35) of 1237
this section. 1238

(k) To use or consume the thing transferred to fulfill a 1239
contractual obligation incurred by a warrantor pursuant to a 1240
warranty provided as a part of the price of the tangible personal 1241
property sold or by a vendor of a warranty, maintenance or service 1242
contract, or similar agreement the provision of which is defined 1243
as a sale under division (B)(7) of section 5739.01 of the Revised 1244
Code; 1245

(l) To use or consume the thing transferred in the production 1246
of a newspaper for distribution to the public; 1247

(m) To use tangible personal property to perform a service 1248
listed in division (B)(3) of section 5739.01 of the Revised Code, 1249

if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service;

(n) To use or consume the thing transferred primarily in producing tangible personal property for sale by farming, agriculture, horticulture, or floriculture. Persons engaged in rendering farming, agriculture, horticulture, or floriculture services for others are deemed engaged primarily in farming, agriculture, horticulture, or floriculture. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(o) To use or consume the thing transferred in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing.

As used in division (B)(42) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of section 5739.01 of the Revised Code.

(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction.

(44) Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of such aircraft, and machinery, equipment, and supplies primarily used to provide those services.

(45) Sales of telecommunications service that is used	1281
directly and primarily to perform the functions of a call center.	1282
As used in this division, "call center" means any physical	1283
location where telephone calls are placed or received in high	1284
volume for the purpose of making sales, marketing, customer	1285
service, technical support, or other specialized business	1286
activity, and that employs at least fifty individuals that engage	1287
in call center activities on a full-time basis, or sufficient	1288
individuals to fill fifty full-time equivalent positions.	1289
(46) Sales by a telecommunications service vendor of 900	1290
service to a subscriber. This division does not apply to	1291
information services, as defined in division (FF) of section	1292
5739.01 of the Revised Code.	1293
(47) Sales of value-added non-voice data service. This	1294
division does not apply to any similar service that is not	1295
otherwise a telecommunications service.	1296
(48)(a) Sales of machinery, equipment, and software to a	1297
qualified direct selling entity for use in a warehouse or	1298
distribution center primarily for storing, transporting, or	1299
otherwise handling inventory that is held for sale to independent	1300
salespersons who operate as direct sellers and that is held	1301
primarily for distribution outside this state;	1302
(b) As used in division (B)(48)(a) of this section:	1303
(i) "Direct seller" means a person selling consumer products	1304
to individuals for personal or household use and not from a fixed	1305
retail location, including selling such product at in-home product	1306
demonstrations, parties, and other one-on-one selling.	1307
(ii) "Qualified direct selling entity" means an entity	1308
selling to direct sellers at the time the entity enters into a tax	1309
credit agreement with the tax credit authority pursuant to section	1310
122.17 of the Revised Code, provided that the agreement was	1311

entered into on or after January 1, 2007. Neither contingencies 1312
relevant to the granting of, nor later developments with respect 1313
to, the tax credit shall impair the status of the qualified direct 1314
selling entity under division (B)(48) of this section after 1315
execution of the tax credit agreement by the tax credit authority. 1316

(c) Division (B)(48) of this section is limited to machinery, 1317
equipment, and software first stored, used, or consumed in this 1318
state within the period commencing June 24, 2008, and ending on 1319
the date that is five years after that date. 1320

(49) Sales of materials, parts, equipment, or engines used in 1321
the repair or maintenance of aircraft or avionics systems of such 1322
aircraft, and sales of repair, remodeling, replacement, or 1323
maintenance services in this state performed on aircraft or on an 1324
aircraft's avionics, engine, or component materials or parts. As 1325
used in division (B)(49) of this section, "aircraft" means 1326
aircraft of more than six thousand pounds maximum certified 1327
takeoff weight or used exclusively in general aviation. 1328

(50) Sales of full flight simulators that are used for pilot 1329
or flight-crew training, sales of repair or replacement parts or 1330
components, and sales of repair or maintenance services for such 1331
full flight simulators. "Full flight simulator" means a replica of 1332
a specific type, or make, model, and series of aircraft cockpit. 1333
It includes the assemblage of equipment and computer programs 1334
necessary to represent aircraft operations in ground and flight 1335
conditions, a visual system providing an out-of-the-cockpit view, 1336
and a system that provides cues at least equivalent to those of a 1337
three-degree-of-freedom motion system, and has the full range of 1338
capabilities of the systems installed in the device as described 1339
in appendices A and B of part 60 of chapter 1 of title 14 of the 1340
Code of Federal Regulations. 1341

(51) Any transfer or lease of tangible personal property 1342
between the state and JobsOhio in accordance with section 4313.02 1343

of the Revised Code. 1344

(52)(a) Sales to a qualifying corporation. 1345

(b) As used in division (B)(52) of this section: 1346

(i) "Qualifying corporation" means a nonprofit corporation 1347
organized in this state that leases from an eligible county land, 1348
buildings, structures, fixtures, and improvements to the land that 1349
are part of or used in a public recreational facility used by a 1350
major league professional athletic team or a class A to class AAA 1351
minor league affiliate of a major league professional athletic 1352
team for a significant portion of the team's home schedule, 1353
provided the following apply: 1354

(I) The facility is leased from the eligible county pursuant 1355
to a lease that requires substantially all of the revenue from the 1356
operation of the business or activity conducted by the nonprofit 1357
corporation at the facility in excess of operating costs, capital 1358
expenditures, and reserves to be paid to the eligible county at 1359
least once per calendar year. 1360

(II) Upon dissolution and liquidation of the nonprofit 1361
corporation, all of its net assets are distributable to the board 1362
of commissioners of the eligible county from which the corporation 1363
leases the facility. 1364

(ii) "Eligible county" has the same meaning as in section 1365
307.695 of the Revised Code. 1366

(53) Sales to or by a cable service provider, video service 1367
provider, or radio or television broadcast station regulated by 1368
the federal government of cable service or programming, video 1369
service or programming, audio service or programming, or 1370
electronically transferred digital audiovisual or audio work. As 1371
used in division (B)(53) of this section, "cable service" and 1372
"cable service provider" have the same meanings as in section 1373
1332.01 of the Revised Code, and "video service," "video service 1374

provider," and "video programming" have the same meanings as in 1375
section 1332.21 of the Revised Code. 1376

(54) Sales to a partnering business holding a valid startup 1377
zone certificate of tangible personal property or services used or 1378
consumed for business operations in a startup zone. The exemption 1379
under division (B)(54) of this section applies only to sales 1380
occurring on or after the date the consumer's startup zone 1381
certificate takes effect and before the certificate expires. As 1382
used in this division, "startup zone certificate," "partnering 1383
business," and "startup zone" have the same meanings as in section 1384
195.01 of the Revised Code. 1385

(C) For the purpose of the proper administration of this 1386
chapter, and to prevent the evasion of the tax, it is presumed 1387
that all sales made in this state are subject to the tax until the 1388
contrary is established. 1389

(D) The levy of this tax on retail sales of recreation and 1390
sports club service shall not prevent a municipal corporation from 1391
levying any tax on recreation and sports club dues or on any 1392
income generated by recreation and sports club dues. 1393

(E) The tax collected by the vendor from the consumer under 1394
this chapter is not part of the price, but is a tax collection for 1395
the benefit of the state, and of counties levying an additional 1396
sales tax pursuant to section 5739.021 or 5739.026 of the Revised 1397
Code and of transit authorities levying an additional sales tax 1398
pursuant to section 5739.023 of the Revised Code. Except for the 1399
discount authorized under section 5739.12 of the Revised Code and 1400
the effects of any rounding pursuant to section 5703.055 of the 1401
Revised Code, no person other than the state or such a county or 1402
transit authority shall derive any benefit from the collection or 1403
payment of the tax levied by this section or section 5739.021, 1404
5739.023, or 5739.026 of the Revised Code. 1405

Sec. 5739.03. (A) Except as provided in section 5739.05 or 1406
section 5739.051 of the Revised Code, the tax imposed by or 1407
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 1408
the Revised Code shall be paid by the consumer to the vendor, and 1409
each vendor shall collect from the consumer, as a trustee for the 1410
state of Ohio, the full and exact amount of the tax payable on 1411
each taxable sale, in the manner and at the times provided as 1412
follows: 1413

(1) If the price is, at or prior to the provision of the 1414
service or the delivery of possession of the thing sold to the 1415
consumer, paid in currency passed from hand to hand by the 1416
consumer or the consumer's agent to the vendor or the vendor's 1417
agent, the vendor or the vendor's agent shall collect the tax with 1418
and at the same time as the price; 1419

(2) If the price is otherwise paid or to be paid, the vendor 1420
or the vendor's agent shall, at or prior to the provision of the 1421
service or the delivery of possession of the thing sold to the 1422
consumer, charge the tax imposed by or pursuant to section 1423
5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to 1424
the account of the consumer, which amount shall be collected by 1425
the vendor from the consumer in addition to the price. Such sale 1426
shall be reported on and the amount of the tax applicable thereto 1427
shall be remitted with the return for the period in which the sale 1428
is made, and the amount of the tax shall become a legal charge in 1429
favor of the vendor and against the consumer. 1430

(B)(1)(a) If any sale is claimed to be exempt under division 1431
(E) of section 5739.01 of the Revised Code or under section 1432
5739.02 of the Revised Code, with the exception of divisions 1433
(B)(1) to (11) or (28) of section 5739.02 of the Revised Code, the 1434
consumer must provide to the vendor, and the vendor must obtain 1435
from the consumer, a certificate specifying the reason that the 1436

sale is not legally subject to the tax. The certificate shall be 1437
in such form, and shall be provided either in a hard copy form or 1438
electronic form, as the tax commissioner prescribes. If the sale 1439
is claimed to be exempt under division (B)(54) of section 5739.02 1440
of the Revised Code, a copy of the startup zone certificate, as 1441
defined in section 195.01 of the Revised Code, shall function as 1442
the exemption certificate required under this division. 1443

(b) A vendor that obtains a fully completed exemption 1444
certificate from a consumer is relieved of liability for 1445
collecting and remitting tax on any sale covered by that 1446
certificate. If it is determined the exemption was improperly 1447
claimed, the consumer shall be liable for any tax due on that sale 1448
under section 5739.02, 5739.021, 5739.023, or 5739.026 or Chapter 1449
5741. of the Revised Code. Relief under this division from 1450
liability does not apply to any of the following: 1451

(i) A vendor that fraudulently fails to collect tax; 1452

(ii) A vendor that solicits consumers to participate in the 1453
unlawful claim of an exemption; 1454

(iii) A vendor that accepts an exemption certificate from a 1455
consumer that claims an exemption based on who purchases or who 1456
sells property or a service, when the subject of the transaction 1457
sought to be covered by the exemption certificate is actually 1458
received by the consumer at a location operated by the vendor in 1459
this state, and this state has posted to its web site an exemption 1460
certificate form that clearly and affirmatively indicates that the 1461
claimed exemption is not available in this state; 1462

(iv) A vendor that accepts an exemption certificate from a 1463
consumer who claims a multiple points of use exemption under 1464
division (D) of section 5739.033 of the Revised Code, if the item 1465
purchased is tangible personal property, other than prewritten 1466
computer software. 1467

(2) The vendor shall maintain records, including exemption certificates, of all sales on which a consumer has claimed an exemption, and provide them to the tax commissioner on request.

(3) The tax commissioner may establish an identification system whereby the commissioner issues an identification number to a consumer that is exempt from payment of the tax. The consumer must present the number to the vendor, if any sale is claimed to be exempt as provided in this section.

(4) If no certificate is provided or obtained within ninety days after the date on which such sale is consummated, it shall be presumed that the tax applies. Failure to have so provided or obtained a certificate shall not preclude a vendor, within one hundred twenty days after the tax commissioner gives written notice of intent to levy an assessment, from either establishing that the sale is not subject to the tax, or obtaining, in good faith, a fully completed exemption certificate.

(5) Certificates need not be obtained nor provided where the identity of the consumer is such that the transaction is never subject to the tax imposed or where the item of tangible personal property sold or the service provided is never subject to the tax imposed, regardless of use, or when the sale is in interstate commerce.

(6) If a transaction is claimed to be exempt under division (B)(13) of section 5739.02 of the Revised Code, the contractor shall obtain certification of the claimed exemption from the contractee. This certification shall be in addition to an exemption certificate provided by the contractor to the vendor. A contractee that provides a certification under this division shall be deemed to be the consumer of all items purchased by the contractor under the claim of exemption, if it is subsequently determined that the exemption is not properly claimed. The certification shall be in such form as the tax commissioner

prescribes. 1500

(C) As used in this division, "contractee" means a person who 1501
seeks to enter or enters into a contract or agreement with a 1502
contractor or vendor for the construction of real property or for 1503
the sale and installation onto real property of tangible personal 1504
property. 1505

Any contractor or vendor may request from any contractee a 1506
certification of what portion of the property to be transferred 1507
under such contract or agreement is to be incorporated into the 1508
realty and what portion will retain its status as tangible 1509
personal property after installation is completed. The contractor 1510
or vendor shall request the certification by certified mail 1511
delivered to the contractee, return receipt requested. Upon 1512
receipt of such request and prior to entering into the contract or 1513
agreement, the contractee shall provide to the contractor or 1514
vendor a certification sufficiently detailed to enable the 1515
contractor or vendor to ascertain the resulting classification of 1516
all materials purchased or fabricated by the contractor or vendor 1517
and transferred to the contractee. This requirement applies to a 1518
contractee regardless of whether the contractee holds a direct 1519
payment permit under section 5739.031 of the Revised Code or 1520
provides to the contractor or vendor an exemption certificate as 1521
provided under this section. 1522

For the purposes of the taxes levied by this chapter and 1523
Chapter 5741. of the Revised Code, the contractor or vendor may in 1524
good faith rely on the contractee's certification. Notwithstanding 1525
division (B) of section 5739.01 of the Revised Code, if the tax 1526
commissioner determines that certain property certified by the 1527
contractee as tangible personal property pursuant to this division 1528
is, in fact, real property, the contractee shall be considered to 1529
be the consumer of all materials so incorporated into that real 1530
property and shall be liable for the applicable tax, and the 1531

contractor or vendor shall be excused from any liability on those materials. 1532
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If a contractee fails to provide such certification upon the request of the contractor or vendor, the contractor or vendor shall comply with the provisions of this chapter and Chapter 5741. of the Revised Code without the certification. If the tax commissioner determines that such compliance has been performed in good faith and that certain property treated as tangible personal property by the contractor or vendor is, in fact, real property, the contractee shall be considered to be the consumer of all materials so incorporated into that real property and shall be liable for the applicable tax, and the construction contractor or vendor shall be excused from any liability on those materials. 1534
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This division does not apply to any contract or agreement where the tax commissioner determines as a fact that a certification under this division was made solely on the decision or advice of the contractor or vendor. 1545
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(D) Notwithstanding division (B) of section 5739.01 of the Revised Code, whenever the total rate of tax imposed under this chapter is increased after the date after a construction contract is entered into, the contractee shall reimburse the construction contractor for any additional tax paid on tangible property consumed or services received pursuant to the contract. 1549
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(E) A vendor who files a petition for reassessment contesting the assessment of tax on sales for which the vendor obtained no valid exemption certificates and for which the vendor failed to establish that the sales were properly not subject to the tax during the one-hundred-twenty-day period allowed under division (B) of this section, may present to the tax commissioner additional evidence to prove that the sales were properly subject to a claim of exception or exemption. The vendor shall file such evidence within ninety days of the receipt by the vendor of the 1555
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notice of assessment, except that, upon application and for 1564
reasonable cause, the period for submitting such evidence shall be 1565
extended thirty days. 1566

The commissioner shall consider such additional evidence in 1567
reaching the final determination on the assessment and petition 1568
for reassessment. 1569

(F) Whenever a vendor refunds the price, minus any separately 1570
stated delivery charge, of an item of tangible personal property 1571
on which the tax imposed under this chapter has been paid, the 1572
vendor shall also refund the amount of tax paid, minus the amount 1573
of tax attributable to the delivery charge. 1574

Sec. 5747.01. Except as otherwise expressly provided or 1575
clearly appearing from the context, any term used in this chapter 1576
that is not otherwise defined in this section has the same meaning 1577
as when used in a comparable context in the laws of the United 1578
States relating to federal income taxes or if not used in a 1579
comparable context in those laws, has the same meaning as in 1580
section 5733.40 of the Revised Code. Any reference in this chapter 1581
to the Internal Revenue Code includes other laws of the United 1582
States relating to federal income taxes. 1583

As used in this chapter: 1584

(A) "Adjusted gross income" or "Ohio adjusted gross income" 1585
means federal adjusted gross income, as defined and used in the 1586
Internal Revenue Code, adjusted as provided in this section: 1587

(1) Add interest or dividends on obligations or securities of 1588
any state or of any political subdivision or authority of any 1589
state, other than this state and its subdivisions and authorities. 1590

(2) Add interest or dividends on obligations of any 1591
authority, commission, instrumentality, territory, or possession 1592
of the United States to the extent that the interest or dividends 1593

are exempt from federal income taxes but not from state income taxes. 1594
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(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. 1596
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(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income. 1602
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(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. 1604
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(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. 1608
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"Undistributed net income of a trust" means the taxable income of the trust increased by (a)(i) the additions to adjusted gross income required under division (A) of this section and (ii) the personal exemptions allowed to the trust pursuant to section 642(b) of the Internal Revenue Code, and decreased by (b)(i) the deductions to adjusted gross income required under division (A) of this section, (ii) the amount of federal income taxes attributable to such income, and (iii) the amount of taxable income that has been included in the adjusted gross income of a beneficiary by 1617
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reason of a prior accumulation distribution. Any undistributed net 1626
income included in the adjusted gross income of a beneficiary 1627
shall reduce the undistributed net income of the trust commencing 1628
with the earliest years of the accumulation period. 1629

(7) Deduct the amount of wages and salaries, if any, not 1630
otherwise allowable as a deduction but that would have been 1631
allowable as a deduction in computing federal adjusted gross 1632
income for the taxable year, had the targeted jobs credit allowed 1633
and determined under sections 38, 51, and 52 of the Internal 1634
Revenue Code not been in effect. 1635

(8) Deduct any interest or interest equivalent on public 1636
obligations and purchase obligations to the extent that the 1637
interest or interest equivalent is included in federal adjusted 1638
gross income. 1639

(9) Add any loss or deduct any gain resulting from the sale, 1640
exchange, or other disposition of public obligations to the extent 1641
that the loss has been deducted or the gain has been included in 1642
computing federal adjusted gross income. 1643

(10) Deduct or add amounts, as provided under section 5747.70 1644
of the Revised Code, related to contributions to variable college 1645
savings program accounts made or tuition units purchased pursuant 1646
to Chapter 3334. of the Revised Code. 1647

(11)(a) Deduct, to the extent not otherwise allowable as a 1648
deduction or exclusion in computing federal or Ohio adjusted gross 1649
income for the taxable year, the amount the taxpayer paid during 1650
the taxable year for medical care insurance and qualified 1651
long-term care insurance for the taxpayer, the taxpayer's spouse, 1652
and dependents. No deduction for medical care insurance under 1653
division (A)(11) of this section shall be allowed either to any 1654
taxpayer who is eligible to participate in any subsidized health 1655
plan maintained by any employer of the taxpayer or of the 1656

taxpayer's spouse, or to any taxpayer who is entitled to, or on 1657
application would be entitled to, benefits under part A of Title 1658
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 1659
301, as amended. For the purposes of division (A)(11)(a) of this 1660
section, "subsidized health plan" means a health plan for which 1661
the employer pays any portion of the plan's cost. The deduction 1662
allowed under division (A)(11)(a) of this section shall be the net 1663
of any related premium refunds, related premium reimbursements, or 1664
related insurance premium dividends received during the taxable 1665
year. 1666

(b) Deduct, to the extent not otherwise deducted or excluded 1667
in computing federal or Ohio adjusted gross income during the 1668
taxable year, the amount the taxpayer paid during the taxable 1669
year, not compensated for by any insurance or otherwise, for 1670
medical care of the taxpayer, the taxpayer's spouse, and 1671
dependents, to the extent the expenses exceed seven and one-half 1672
per cent of the taxpayer's federal adjusted gross income. 1673

(c) Deduct, to the extent not otherwise deducted or excluded 1674
in computing federal or Ohio adjusted gross income, any amount 1675
included in federal adjusted gross income under section 105 or not 1676
excluded under section 106 of the Internal Revenue Code solely 1677
because it relates to an accident and health plan for a person who 1678
otherwise would be a "qualifying relative" and thus a "dependent" 1679
under section 152 of the Internal Revenue Code but for the fact 1680
that the person fails to meet the income and support limitations 1681
under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 1682

(d) For purposes of division (A)(11) of this section, 1683
"medical care" has the meaning given in section 213 of the 1684
Internal Revenue Code, subject to the special rules, limitations, 1685
and exclusions set forth therein, and "qualified long-term care" 1686
has the same meaning given in section 7702B(c) of the Internal 1687
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 1688

of this section, "dependent" includes a person who otherwise would 1689
be a "qualifying relative" and thus a "dependent" under section 1690
152 of the Internal Revenue Code but for the fact that the person 1691
fails to meet the income and support limitations under section 1692
152(d)(1)(B) and (C) of the Internal Revenue Code. 1693

(12)(a) Deduct any amount included in federal adjusted gross 1694
income solely because the amount represents a reimbursement or 1695
refund of expenses that in any year the taxpayer had deducted as 1696
an itemized deduction pursuant to section 63 of the Internal 1697
Revenue Code and applicable United States department of the 1698
treasury regulations. The deduction otherwise allowed under 1699
division (A)(12)(a) of this section shall be reduced to the extent 1700
the reimbursement is attributable to an amount the taxpayer 1701
deducted under this section in any taxable year. 1702

(b) Add any amount not otherwise included in Ohio adjusted 1703
gross income for any taxable year to the extent that the amount is 1704
attributable to the recovery during the taxable year of any amount 1705
deducted or excluded in computing federal or Ohio adjusted gross 1706
income in any taxable year. 1707

(13) Deduct any portion of the deduction described in section 1708
1341(a)(2) of the Internal Revenue Code, for repaying previously 1709
reported income received under a claim of right, that meets both 1710
of the following requirements: 1711

(a) It is allowable for repayment of an item that was 1712
included in the taxpayer's adjusted gross income for a prior 1713
taxable year and did not qualify for a credit under division (A) 1714
or (B) of section 5747.05 of the Revised Code for that year; 1715

(b) It does not otherwise reduce the taxpayer's adjusted 1716
gross income for the current or any other taxable year. 1717

(14) Deduct an amount equal to the deposits made to, and net 1718
investment earnings of, a medical savings account during the 1719

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.

(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;

(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.

(16) Add any amount claimed as a credit under section 5747.059 or 5747.65 of the Revised Code to the extent that such amount satisfies either of the following:

(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;

(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.

(17) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of job and family services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax commissioner, the taxpayer shall provide any information that, in the tax commissioner's opinion, is necessary to establish the

amount deducted under division (A)(17) of this section. 1751

(18) Beginning in taxable year 2001 but not for any taxable 1752
year beginning after December 31, 2005, if the taxpayer is married 1753
and files a joint return and the combined federal adjusted gross 1754
income of the taxpayer and the taxpayer's spouse for the taxable 1755
year does not exceed one hundred thousand dollars, or if the 1756
taxpayer is single and has a federal adjusted gross income for the 1757
taxable year not exceeding fifty thousand dollars, deduct amounts 1758
paid during the taxable year for qualified tuition and fees paid 1759
to an eligible institution for the taxpayer, the taxpayer's 1760
spouse, or any dependent of the taxpayer, who is a resident of 1761
this state and is enrolled in or attending a program that 1762
culminates in a degree or diploma at an eligible institution. The 1763
deduction may be claimed only to the extent that qualified tuition 1764
and fees are not otherwise deducted or excluded for any taxable 1765
year from federal or Ohio adjusted gross income. The deduction may 1766
not be claimed for educational expenses for which the taxpayer 1767
claims a credit under section 5747.27 of the Revised Code. 1768

(19) Add any reimbursement received during the taxable year 1769
of any amount the taxpayer deducted under division (A)(18) of this 1770
section in any previous taxable year to the extent the amount is 1771
not otherwise included in Ohio adjusted gross income. 1772

(20)(a)(i) Subject to divisions (A)(20)(a)(iii), (iv), and 1773
(v) of this section, add five-sixths of the amount of depreciation 1774
expense allowed by subsection (k) of section 168 of the Internal 1775
Revenue Code, including the taxpayer's proportionate or 1776
distributive share of the amount of depreciation expense allowed 1777
by that subsection to a pass-through entity in which the taxpayer 1778
has a direct or indirect ownership interest. 1779

(ii) Subject to divisions (A)(20)(a)(iii), (iv), and (v) of 1780
this section, add five-sixths of the amount of qualifying section 1781
179 depreciation expense, including the taxpayer's proportionate 1782

or distributive share of the amount of qualifying section 179 1783
depreciation expense allowed to any pass-through entity in which 1784
the taxpayer has a direct or indirect ownership interest. 1785

(iii) Subject to division (A)(20)(a)(v) of this section, for 1786
taxable years beginning in 2012 or thereafter, if the increase in 1787
income taxes withheld by the taxpayer is equal to or greater than 1788
ten per cent of income taxes withheld by the taxpayer during the 1789
taxpayer's immediately preceding taxable year, "two-thirds" shall 1790
be substituted for "five-sixths" for the purpose of divisions 1791
(A)(20)(a)(i) and (ii) of this section. 1792

(iv) Subject to division (A)(20)(a)(v) of this section, for 1793
taxable years beginning in 2012 or thereafter, a taxpayer is not 1794
required to add an amount under division (A)(20) of this section 1795
if the increase in income taxes withheld by the taxpayer and by 1796
any pass-through entity in which the taxpayer has a direct or 1797
indirect ownership interest is equal to or greater than the sum of 1798
(I) the amount of qualifying section 179 depreciation expense and 1799
(II) the amount of depreciation expense allowed to the taxpayer by 1800
subsection (k) of section 168 of the Internal Revenue Code, and 1801
including the taxpayer's proportionate or distributive shares of 1802
such amounts allowed to any such pass-through entities. 1803

(v) If a taxpayer directly or indirectly incurs a net 1804
operating loss for the taxable year for federal income tax 1805
purposes, to the extent such loss resulted from depreciation 1806
expense allowed by subsection (k) of section 168 of the Internal 1807
Revenue Code and by qualifying section 179 depreciation expense, 1808
"the entire" shall be substituted for "five-sixths of the" for the 1809
purpose of divisions (A)(20)(a)(i) and (ii) of this section. 1810

The tax commissioner, under procedures established by the 1811
commissioner, may waive the add-backs related to a pass-through 1812
entity if the taxpayer owns, directly or indirectly, less than 1813
five per cent of the pass-through entity. 1814

(b) Nothing in division (A)(20) of this section shall be 1815
construed to adjust or modify the adjusted basis of any asset. 1816

(c) To the extent the add-back required under division 1817
(A)(20)(a) of this section is attributable to property generating 1818
nonbusiness income or loss allocated under section 5747.20 of the 1819
Revised Code, the add-back shall be situated to the same location 1820
as the nonbusiness income or loss generated by the property for 1821
the purpose of determining the credit under division (A) of 1822
section 5747.05 of the Revised Code. Otherwise, the add-back shall 1823
be apportioned, subject to one or more of the four alternative 1824
methods of apportionment enumerated in section 5747.21 of the 1825
Revised Code. 1826

(d) For the purposes of division (A)(20)(a)(v) of this 1827
section, net operating loss carryback and carryforward shall not 1828
include the allowance of any net operating loss deduction 1829
carryback or carryforward to the taxable year to the extent such 1830
loss resulted from depreciation allowed by section 168(k) of the 1831
Internal Revenue Code and by the qualifying section 179 1832
depreciation expense amount. 1833

(e) For the purposes of divisions (A)(20) and (21) of this 1834
section: 1835

(i) "Income taxes withheld" means the total amount withheld 1836
and remitted under sections 5747.06 and 5747.07 of the Revised 1837
Code by an employer during the employer's taxable year. 1838

(ii) "Increase in income taxes withheld" means the amount by 1839
which the amount of income taxes withheld by an employer during 1840
the employer's current taxable year exceeds the amount of income 1841
taxes withheld by that employer during the employer's immediately 1842
preceding taxable year. 1843

(iii) "Qualifying section 179 depreciation expense" means the 1844
difference between (I) the amount of depreciation expense directly 1845

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

(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 of the following:

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

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

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

(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 results in or increases a federal net operating loss 1877
carryback or carryforward. If no such deduction is available for a 1878
taxable year, the taxpayer may carry forward the amount not 1879
deducted in such taxable year to the next taxable year and add 1880
that amount to any deduction otherwise available under division 1881
(A)(21)(a) of this section for that next taxable year. The 1882
carryforward of amounts not so deducted shall continue until the 1883
entire addition required by division (A)(20)(a) of this section 1884
has been deducted. 1885

(d) No refund shall be allowed as a result of adjustments 1886
made by division (A)(21) of this section. 1887

(22) Deduct, to the extent not otherwise deducted or excluded 1888
in computing federal or Ohio adjusted gross income for the taxable 1889
year, the amount the taxpayer received during the taxable year as 1890
reimbursement for life insurance premiums under section 5919.31 of 1891
the Revised Code. 1892

(23) Deduct, to the extent not otherwise deducted or excluded 1893
in computing federal or Ohio adjusted gross income for the taxable 1894
year, the amount the taxpayer received during the taxable year as 1895
a death benefit paid by the adjutant general under section 5919.33 1896
of the Revised Code. 1897

(24) Deduct, to the extent included in federal adjusted gross 1898
income and not otherwise allowable as a deduction or exclusion in 1899
computing federal or Ohio adjusted gross income for the taxable 1900
year, military pay and allowances received by the taxpayer during 1901
the taxable year for active duty service in the United States 1902
army, air force, navy, marine corps, or coast guard or reserve 1903
components thereof or the national guard. The deduction may not be 1904
claimed for military pay and allowances received by the taxpayer 1905
while the taxpayer is stationed in this state. 1906

(25) Deduct, to the extent not otherwise allowable as a 1907

deduction or exclusion in computing federal or Ohio adjusted gross 1908
income for the taxable year and not otherwise compensated for by 1909
any other source, the amount of qualified organ donation expenses 1910
incurred by the taxpayer during the taxable year, not to exceed 1911
ten thousand dollars. A taxpayer may deduct qualified organ 1912
donation expenses only once for all taxable years beginning with 1913
taxable years beginning in 2007. 1914

For the purposes of division (A)(25) of this section: 1915

(a) "Human organ" means all or any portion of a human liver, 1916
pancreas, kidney, intestine, or lung, and any portion of human 1917
bone marrow. 1918

(b) "Qualified organ donation expenses" means travel 1919
expenses, lodging expenses, and wages and salary forgone by a 1920
taxpayer in connection with the taxpayer's donation, while living, 1921
of one or more of the taxpayer's human organs to another human 1922
being. 1923

(26) Deduct, to the extent not otherwise deducted or excluded 1924
in computing federal or Ohio adjusted gross income for the taxable 1925
year, amounts received by the taxpayer as retired personnel pay 1926
for service in the uniformed services or reserve components 1927
thereof, or the national guard, or received by the surviving 1928
spouse or former spouse of such a taxpayer under the survivor 1929
benefit plan on account of such a taxpayer's death. If the 1930
taxpayer receives income on account of retirement paid under the 1931
federal civil service retirement system or federal employees 1932
retirement system, or under any successor retirement program 1933
enacted by the congress of the United States that is established 1934
and maintained for retired employees of the United States 1935
government, and such retirement income is based, in whole or in 1936
part, on credit for the taxpayer's uniformed service, the 1937
deduction allowed under this division shall include only that 1938
portion of such retirement income that is attributable to the 1939

taxpayer's uniformed service, to the extent that portion of such 1940
retirement income is otherwise included in federal adjusted gross 1941
income and is not otherwise deducted under this section. Any 1942
amount deducted under division (A)(26) of this section is not 1943
included in a taxpayer's adjusted gross income for the purposes of 1944
section 5747.055 of the Revised Code. No amount may be deducted 1945
under division (A)(26) of this section on the basis of which a 1946
credit was claimed under section 5747.055 of the Revised Code. 1947

(27) Deduct, to the extent not otherwise deducted or excluded 1948
in computing federal or Ohio adjusted gross income for the taxable 1949
year, the amount the taxpayer received during the taxable year 1950
from the military injury relief fund created in section 5101.98 of 1951
the Revised Code. 1952

(28) Deduct, to the extent not otherwise deducted or excluded 1953
in computing federal or Ohio adjusted gross income for the taxable 1954
year, the amount the taxpayer received as a veterans bonus during 1955
the taxable year from the Ohio department of veterans services as 1956
authorized by Section 2r of Article VIII, Ohio Constitution. 1957

(29) Deduct, to the extent not otherwise deducted or excluded 1958
in computing federal or Ohio adjusted gross income for the taxable 1959
year, any income derived from a transfer agreement or from the 1960
enterprise transferred under that agreement under section 4313.02 1961
of the Revised Code. 1962

(30) Deduct, to the extent not otherwise deducted or excluded 1963
in computing federal or Ohio adjusted gross income for the taxable 1964
year, Ohio college opportunity or federal Pell grant amounts 1965
received by the taxpayer or the taxpayer's spouse or dependent 1966
pursuant to section 3333.122 of the Revised Code or 20 U.S.C. 1967
1070a, et seq., and used to pay room or board furnished by the 1968
educational institution for which the grant was awarded at the 1969
institution's facilities, including meal plans administered by the 1970
institution. For the purposes of this division, receipt of a grant 1971

includes the distribution of a grant directly to an educational 1972
institution and the crediting of the grant to the enrollee's 1973
account with the institution. 1974

(31) Deduct one-half of the taxpayer's Ohio small business 1975
investor income, the deduction not to exceed sixty-two thousand 1976
five hundred dollars for each spouse if spouses file separate 1977
returns under section 5747.08 of the Revised Code or one hundred 1978
twenty-five thousand dollars for all other taxpayers. No 1979
pass-through entity may claim a deduction under this division. 1980

For the purposes of this division, "Ohio small business 1981
investor income" means the portion of a taxpayer's adjusted gross 1982
income that is business income reduced by deductions from business 1983
income and apportioned or allocated to this state under sections 1984
5747.21 and 5747.22 of the Revised Code, to the extent not 1985
otherwise deducted or excluded in computing federal or Ohio 1986
adjusted gross income for the taxable year. 1987

(32)(a) Deduct, to the extent not otherwise deducted or 1988
excluded in computing federal or Ohio adjusted gross income for 1989
the taxable year, business income derived from a partnering 1990
business's operation in a startup zone pursuant to a partnership 1991
contract with a university under Chapter 195. of the Revised Code. 1992
Business income may not be deducted under this division for any 1993
taxable year ending before the startup zone certificate takes 1994
effect or beginning after the expiration or termination of the 1995
certificate. Business income derived from a partnering business's 1996
operations outside the startup zone or beyond the scope of the 1997
partnership contract may not be deducted under this division. 1998

For the purpose of computing the business income derived from 1999
a partnering business's operation in a startup zone, business 2000
income apportioned or allocated to this state under sections 2001
5747.21 and 5747.22 of the Revised Code shall be multiplied by 2002
fifty per cent of the sum of the following fractions: 2003

(i) A fraction computed in the same manner as the property factor computed under division (B)(2)(a) of section 5733.05 of the Revised Code except the numerator shall be the average value of real and tangible personal property used in business in the startup zone and the denominator shall be the average value of such property used in business in this state, and except there shall be no exclusions as otherwise provided under that division;

(ii) A fraction computed in the same manner as the payroll factor computed under division (B)(2)(b) of section 5733.05 of the Revised Code except the numerator shall be the compensation paid for services performed solely in the startup zone and the denominator shall be the compensation paid in this state as computed under that division, and except there shall be no exclusion for employees engaged in qualified research.

(b) Any person claiming a deduction under this division shall retain a copy of the startup zone certificate for four years following the end of the taxable year for which the deduction is claimed, and shall make it available for inspection by the tax commissioner or an agent thereof upon request.

(c) As used in divisions (A)(32) and (33) of this section, "startup zone," "partnership contract," "partnering business," "startup zone certificate," and "university" have the same meanings as in section 195.01 of the Revised Code.

(33) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, compensation received from a partnering business for services performed in a startup zone by the holder of a new employee certificate awarded by such partnering business under section 195.09 of the Revised Code. This deduction applies only to compensation received after the individual was awarded the new employee certificate and before the expiration of the partnership contract, the termination of the partnership contract under

section 195.10 of the Revised Code, or the revocation of the new 2036
employee certificate under division (C) of section 195.09 of the 2037
Revised Code, whichever comes first. Compensation received for 2038
services performed outside the startup zone shall not be deducted 2039
under this division. The deduction claimed under this division 2040
shall not exceed two hundred fifty thousand dollars for any 2041
taxable year. An individual claiming a deduction under this 2042
division shall retain the new employee certificate for four years 2043
following the end of the taxable year for which the deduction is 2044
claimed, and shall make it available for inspection by the tax 2045
commissioner or an agent thereof upon request. 2046

As used in this section, "new employee certificate" has the 2047
same meaning as in section 195.01 of the Revised Code. 2048

(B) "Business income" means income, including gain or loss, 2049
arising from transactions, activities, and sources in the regular 2050
course of a trade or business and includes income, gain, or loss 2051
from real property, tangible property, and intangible property if 2052
the acquisition, rental, management, and disposition of the 2053
property constitute integral parts of the regular course of a 2054
trade or business operation. "Business income" includes income, 2055
including gain or loss, from a partial or complete liquidation of 2056
a business, including, but not limited to, gain or loss from the 2057
sale or other disposition of goodwill. 2058

(C) "Nonbusiness income" means all income other than business 2059
income and may include, but is not limited to, compensation, rents 2060
and royalties from real or tangible personal property, capital 2061
gains, interest, dividends and distributions, patent or copyright 2062
royalties, or lottery winnings, prizes, and awards. 2063

(D) "Compensation" means any form of remuneration paid to an 2064
employee for personal services. 2065

(E) "Fiduciary" means a guardian, trustee, executor, 2066

administrator, receiver, conservator, or any other person acting 2067
in any fiduciary capacity for any individual, trust, or estate. 2068

(F) "Fiscal year" means an accounting period of twelve months 2069
ending on the last day of any month other than December. 2070

(G) "Individual" means any natural person. 2071

(H) "Internal Revenue Code" means the "Internal Revenue Code 2072
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 2073

(I) "Resident" means any of the following, provided that 2074
division (I)(3) of this section applies only to taxable years of a 2075
trust beginning in 2002 or thereafter: 2076

(1) An individual who is domiciled in this state, subject to 2077
section 5747.24 of the Revised Code; 2078

(2) The estate of a decedent who at the time of death was 2079
domiciled in this state. The domicile tests of section 5747.24 of 2080
the Revised Code are not controlling for purposes of division 2081
(I)(2) of this section. 2082

(3) A trust that, in whole or part, resides in this state. If 2083
only part of a trust resides in this state, the trust is a 2084
resident only with respect to that part. 2085

For the purposes of division (I)(3) of this section: 2086

(a) A trust resides in this state for the trust's current 2087
taxable year to the extent, as described in division (I)(3)(d) of 2088
this section, that the trust consists directly or indirectly, in 2089
whole or in part, of assets, net of any related liabilities, that 2090
were transferred, or caused to be transferred, directly or 2091
indirectly, to the trust by any of the following: 2092

(i) A person, a court, or a governmental entity or 2093
instrumentality on account of the death of a decedent, but only if 2094
the trust is described in division (I)(3)(e)(i) or (ii) of this 2095
section; 2096

(ii) A person who was domiciled in this state for the 2097
purposes of this chapter when the person directly or indirectly 2098
transferred assets to an irrevocable trust, but only if at least 2099
one of the trust's qualifying beneficiaries is domiciled in this 2100
state for the purposes of this chapter during all or some portion 2101
of the trust's current taxable year; 2102

(iii) A person who was domiciled in this state for the 2103
purposes of this chapter when the trust document or instrument or 2104
part of the trust document or instrument became irrevocable, but 2105
only if at least one of the trust's qualifying beneficiaries is a 2106
resident domiciled in this state for the purposes of this chapter 2107
during all or some portion of the trust's current taxable year. If 2108
a trust document or instrument became irrevocable upon the death 2109
of a person who at the time of death was domiciled in this state 2110
for purposes of this chapter, that person is a person described in 2111
division (I)(3)(a)(iii) of this section. 2112

(b) A trust is irrevocable to the extent that the transferor 2113
is not considered to be the owner of the net assets of the trust 2114
under sections 671 to 678 of the Internal Revenue Code. 2115

(c) With respect to a trust other than a charitable lead 2116
trust, "qualifying beneficiary" has the same meaning as "potential 2117
current beneficiary" as defined in section 1361(e)(2) of the 2118
Internal Revenue Code, and with respect to a charitable lead trust 2119
"qualifying beneficiary" is any current, future, or contingent 2120
beneficiary, but with respect to any trust "qualifying 2121
beneficiary" excludes a person or a governmental entity or 2122
instrumentality to any of which a contribution would qualify for 2123
the charitable deduction under section 170 of the Internal Revenue 2124
Code. 2125

(d) For the purposes of division (I)(3)(a) of this section, 2126
the extent to which a trust consists directly or indirectly, in 2127
whole or in part, of assets, net of any related liabilities, that 2128

were transferred directly or indirectly, in whole or part, to the trust by any of the sources enumerated in that division shall be ascertained by multiplying the fair market value of the trust's assets, net of related liabilities, by the qualifying ratio, which shall be computed as follows:

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

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

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

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

(i) A trust is described in division (I)(3)(e)(i) of this section if the trust is a testamentary trust and the testator of

that testamentary trust was domiciled in this state at the time of 2160
the testator's death for purposes of the taxes levied under 2161
Chapter 5731. of the Revised Code. 2162

(ii) A trust is described in division (I)(3)(e)(ii) of this 2163
section if the transfer is a qualifying transfer described in any 2164
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 2165
irrevocable inter vivos trust, and at least one of the trust's 2166
qualifying beneficiaries is domiciled in this state for purposes 2167
of this chapter during all or some portion of the trust's current 2168
taxable year. 2169

(f) For the purposes of division (I)(3)(e)(ii) of this 2170
section, a "qualifying transfer" is a transfer of assets, net of 2171
any related liabilities, directly or indirectly to a trust, if the 2172
transfer is described in any of the following: 2173

(i) The transfer is made to a trust, created by the decedent 2174
before the decedent's death and while the decedent was domiciled 2175
in this state for the purposes of this chapter, and, prior to the 2176
death of the decedent, the trust became irrevocable while the 2177
decedent was domiciled in this state for the purposes of this 2178
chapter. 2179

(ii) The transfer is made to a trust to which the decedent, 2180
prior to the decedent's death, had directly or indirectly 2181
transferred assets, net of any related liabilities, while the 2182
decedent was domiciled in this state for the purposes of this 2183
chapter, and prior to the death of the decedent the trust became 2184
irrevocable while the decedent was domiciled in this state for the 2185
purposes of this chapter. 2186

(iii) The transfer is made on account of a contractual 2187
relationship existing directly or indirectly between the 2188
transferor and either the decedent or the estate of the decedent 2189
at any time prior to the date of the decedent's death, and the 2190

decedent was domiciled in this state at the time of death for 2191
purposes of the taxes levied under Chapter 5731. of the Revised 2192
Code. 2193

(iv) The transfer is made to a trust on account of a 2194
contractual relationship existing directly or indirectly between 2195
the transferor and another person who at the time of the 2196
decedent's death was domiciled in this state for purposes of this 2197
chapter. 2198

(v) The transfer is made to a trust on account of the will of 2199
a testator who was domiciled in this state at the time of the 2200
testator's death for purposes of the taxes levied under Chapter 2201
5731. of the Revised Code. 2202

(vi) The transfer is made to a trust created by or caused to 2203
be created by a court, and the trust was directly or indirectly 2204
created in connection with or as a result of the death of an 2205
individual who, for purposes of the taxes levied under Chapter 2206
5731. of the Revised Code, was domiciled in this state at the time 2207
of the individual's death. 2208

(g) The tax commissioner may adopt rules to ascertain the 2209
part of a trust residing in this state. 2210

(J) "Nonresident" means an individual or estate that is not a 2211
resident. An individual who is a resident for only part of a 2212
taxable year is a nonresident for the remainder of that taxable 2213
year. 2214

(K) "Pass-through entity" has the same meaning as in section 2215
5733.04 of the Revised Code. 2216

(L) "Return" means the notifications and reports required to 2217
be filed pursuant to this chapter for the purpose of reporting the 2218
tax due and includes declarations of estimated tax when so 2219
required. 2220

(M) "Taxable year" means the calendar year or the taxpayer's 2221
fiscal year ending during the calendar year, or fractional part 2222
thereof, upon which the adjusted gross income is calculated 2223
pursuant to this chapter. 2224

(N) "Taxpayer" means any person subject to the tax imposed by 2225
section 5747.02 of the Revised Code or any pass-through entity 2226
that makes the election under division (D) of section 5747.08 of 2227
the Revised Code. 2228

(O) "Dependents" means dependents as defined in the Internal 2229
Revenue Code and as claimed in the taxpayer's federal income tax 2230
return for the taxable year or which the taxpayer would have been 2231
permitted to claim had the taxpayer filed a federal income tax 2232
return. 2233

(P) "Principal county of employment" means, in the case of a 2234
nonresident, the county within the state in which a taxpayer 2235
performs services for an employer or, if those services are 2236
performed in more than one county, the county in which the major 2237
portion of the services are performed. 2238

(Q) As used in sections 5747.50 to 5747.55 of the Revised 2239
Code: 2240

(1) "Subdivision" means any county, municipal corporation, 2241
park district, or township. 2242

(2) "Essential local government purposes" includes all 2243
functions that any subdivision is required by general law to 2244
exercise, including like functions that are exercised under a 2245
charter adopted pursuant to the Ohio Constitution. 2246

(R) "Overpayment" means any amount already paid that exceeds 2247
the figure determined to be the correct amount of the tax. 2248

(S) "Taxable income" or "Ohio taxable income" applies only to 2249
estates and trusts, and means federal taxable income, as defined 2250

and used in the Internal Revenue Code, adjusted as follows: 2251

(1) Add interest or dividends, net of ordinary, necessary, 2252
and reasonable expenses not deducted in computing federal taxable 2253
income, on obligations or securities of any state or of any 2254
political subdivision or authority of any state, other than this 2255
state and its subdivisions and authorities, but only to the extent 2256
that such net amount is not otherwise includible in Ohio taxable 2257
income and is described in either division (S)(1)(a) or (b) of 2258
this section: 2259

(a) The net amount is not attributable to the S portion of an 2260
electing small business trust and has not been distributed to 2261
beneficiaries for the taxable year; 2262

(b) The net amount is attributable to the S portion of an 2263
electing small business trust for the taxable year. 2264

(2) Add interest or dividends, net of ordinary, necessary, 2265
and reasonable expenses not deducted in computing federal taxable 2266
income, on obligations of any authority, commission, 2267
instrumentality, territory, or possession of the United States to 2268
the extent that the interest or dividends are exempt from federal 2269
income taxes but not from state income taxes, but only to the 2270
extent that such net amount is not otherwise includible in Ohio 2271
taxable income and is described in either division (S)(1)(a) or 2272
(b) of this section; 2273

(3) Add the amount of personal exemption allowed to the 2274
estate pursuant to section 642(b) of the Internal Revenue Code; 2275

(4) Deduct interest or dividends, net of related expenses 2276
deducted in computing federal taxable income, on obligations of 2277
the United States and its territories and possessions or of any 2278
authority, commission, or instrumentality of the United States to 2279
the extent that the interest or dividends are exempt from state 2280
taxes under the laws of the United States, but only to the extent 2281

that such amount is included in federal taxable income and is 2282
described in either division (S)(1)(a) or (b) of this section; 2283

(5) Deduct the amount of wages and salaries, if any, not 2284
otherwise allowable as a deduction but that would have been 2285
allowable as a deduction in computing federal taxable income for 2286
the taxable year, had the targeted jobs credit allowed under 2287
sections 38, 51, and 52 of the Internal Revenue Code not been in 2288
effect, but only to the extent such amount relates either to 2289
income included in federal taxable income for the taxable year or 2290
to income of the S portion of an electing small business trust for 2291
the taxable year; 2292

(6) Deduct any interest or interest equivalent, net of 2293
related expenses deducted in computing federal taxable income, on 2294
public obligations and purchase obligations, but only to the 2295
extent that such net amount relates either to income included in 2296
federal taxable income for the taxable year or to income of the S 2297
portion of an electing small business trust for the taxable year; 2298

(7) Add any loss or deduct any gain resulting from sale, 2299
exchange, or other disposition of public obligations to the extent 2300
that such loss has been deducted or such gain has been included in 2301
computing either federal taxable income or income of the S portion 2302
of an electing small business trust for the taxable year; 2303

(8) Except in the case of the final return of an estate, add 2304
any amount deducted by the taxpayer on both its Ohio estate tax 2305
return pursuant to section 5731.14 of the Revised Code, and on its 2306
federal income tax return in determining federal taxable income; 2307

(9)(a) Deduct any amount included in federal taxable income 2308
solely because the amount represents a reimbursement or refund of 2309
expenses that in a previous year the decedent had deducted as an 2310
itemized deduction pursuant to section 63 of the Internal Revenue 2311
Code and applicable treasury regulations. The deduction otherwise 2312

allowed under division (S)(9)(a) of this section shall be reduced 2313
to the extent the reimbursement is attributable to an amount the 2314
taxpayer or decedent deducted under this section in any taxable 2315
year. 2316

(b) Add any amount not otherwise included in Ohio taxable 2317
income for any taxable year to the extent that the amount is 2318
attributable to the recovery during the taxable year of any amount 2319
deducted or excluded in computing federal or Ohio taxable income 2320
in any taxable year, but only to the extent such amount has not 2321
been distributed to beneficiaries for the taxable year. 2322

(10) Deduct any portion of the deduction described in section 2323
1341(a)(2) of the Internal Revenue Code, for repaying previously 2324
reported income received under a claim of right, that meets both 2325
of the following requirements: 2326

(a) It is allowable for repayment of an item that was 2327
included in the taxpayer's taxable income or the decedent's 2328
adjusted gross income for a prior taxable year and did not qualify 2329
for a credit under division (A) or (B) of section 5747.05 of the 2330
Revised Code for that year. 2331

(b) It does not otherwise reduce the taxpayer's taxable 2332
income or the decedent's adjusted gross income for the current or 2333
any other taxable year. 2334

(11) Add any amount claimed as a credit under section 2335
5747.059 or 5747.65 of the Revised Code to the extent that the 2336
amount satisfies either of the following: 2337

(a) The amount was deducted or excluded from the computation 2338
of the taxpayer's federal taxable income as required to be 2339
reported for the taxpayer's taxable year under the Internal 2340
Revenue Code; 2341

(b) The amount resulted in a reduction in the taxpayer's 2342
federal taxable income as required to be reported for any of the 2343

taxpayer's taxable years under the Internal Revenue Code. 2344

(12) Deduct any amount, net of related expenses deducted in 2345
computing federal taxable income, that a trust is required to 2346
report as farm income on its federal income tax return, but only 2347
if the assets of the trust include at least ten acres of land 2348
satisfying the definition of "land devoted exclusively to 2349
agricultural use" under section 5713.30 of the Revised Code, 2350
regardless of whether the land is valued for tax purposes as such 2351
land under sections 5713.30 to 5713.38 of the Revised Code. If the 2352
trust is a pass-through entity investor, section 5747.231 of the 2353
Revised Code applies in ascertaining if the trust is eligible to 2354
claim the deduction provided by division (S)(12) of this section 2355
in connection with the pass-through entity's farm income. 2356

Except for farm income attributable to the S portion of an 2357
electing small business trust, the deduction provided by division 2358
(S)(12) of this section is allowed only to the extent that the 2359
trust has not distributed such farm income. Division (S)(12) of 2360
this section applies only to taxable years of a trust beginning in 2361
2002 or thereafter. 2362

(13) Add the net amount of income described in section 641(c) 2363
of the Internal Revenue Code to the extent that amount is not 2364
included in federal taxable income. 2365

(14) Add or deduct the amount the taxpayer would be required 2366
to add or deduct under division (A)(20) or (21) of this section if 2367
the taxpayer's Ohio taxable income were computed in the same 2368
manner as an individual's Ohio adjusted gross income is computed 2369
under this section. In the case of a trust, division (S)(14) of 2370
this section applies only to any of the trust's taxable years 2371
beginning in 2002 or thereafter. 2372

(T) "School district income" and "school district income tax" 2373
have the same meanings as in section 5748.01 of the Revised Code. 2374

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) 2375
of this section, "public obligations," "purchase obligations," and 2376
"interest or interest equivalent" have the same meanings as in 2377
section 5709.76 of the Revised Code. 2378

(V) "Limited liability company" means any limited liability 2379
company formed under Chapter 1705. of the Revised Code or under 2380
the laws of any other state. 2381

(W) "Pass-through entity investor" means any person who, 2382
during any portion of a taxable year of a pass-through entity, is 2383
a partner, member, shareholder, or equity investor in that 2384
pass-through entity. 2385

(X) "Banking day" has the same meaning as in section 1304.01 2386
of the Revised Code. 2387

(Y) "Month" means a calendar month. 2388

(Z) "Quarter" means the first three months, the second three 2389
months, the third three months, or the last three months of the 2390
taxpayer's taxable year. 2391

(AA)(1) "Eligible institution" means a state university or 2392
state institution of higher education as defined in section 2393
3345.011 of the Revised Code, or a private, nonprofit college, 2394
university, or other post-secondary institution located in this 2395
state that possesses a certificate of authorization issued by the 2396
Ohio board of regents pursuant to Chapter 1713. of the Revised 2397
Code or a certificate of registration issued by the state board of 2398
career colleges and schools under Chapter 3332. of the Revised 2399
Code. 2400

(2) "Qualified tuition and fees" means tuition and fees 2401
imposed by an eligible institution as a condition of enrollment or 2402
attendance, not exceeding two thousand five hundred dollars in 2403
each of the individual's first two years of post-secondary 2404
education. If the individual is a part-time student, "qualified 2405

tuition and fees" includes tuition and fees paid for the academic 2406
equivalent of the first two years of post-secondary education 2407
during a maximum of five taxable years, not exceeding a total of 2408
five thousand dollars. "Qualified tuition and fees" does not 2409
include: 2410

(a) Expenses for any course or activity involving sports, 2411
games, or hobbies unless the course or activity is part of the 2412
individual's degree or diploma program; 2413

(b) The cost of books, room and board, student activity fees, 2414
athletic fees, insurance expenses, or other expenses unrelated to 2415
the individual's academic course of instruction; 2416

(c) Tuition, fees, or other expenses paid or reimbursed 2417
through an employer, scholarship, grant in aid, or other 2418
educational benefit program. 2419

(BB)(1) "Modified business income" means the business income 2420
included in a trust's Ohio taxable income after such taxable 2421
income is first reduced by the qualifying trust amount, if any. 2422

(2) "Qualifying trust amount" of a trust means capital gains 2423
and losses from the sale, exchange, or other disposition of equity 2424
or ownership interests in, or debt obligations of, a qualifying 2425
investee to the extent included in the trust's Ohio taxable 2426
income, but only if the following requirements are satisfied: 2427

(a) The book value of the qualifying investee's physical 2428
assets in this state and everywhere, as of the last day of the 2429
qualifying investee's fiscal or calendar year ending immediately 2430
prior to the date on which the trust recognizes the gain or loss, 2431
is available to the trust. 2432

(b) The requirements of section 5747.011 of the Revised Code 2433
are satisfied for the trust's taxable year in which the trust 2434
recognizes the gain or loss. 2435

Any gain or loss that is not a qualifying trust amount is 2436
modified business income, qualifying investment income, or 2437
modified nonbusiness income, as the case may be. 2438

(3) "Modified nonbusiness income" means a trust's Ohio 2439
taxable income other than modified business income, other than the 2440
qualifying trust amount, and other than qualifying investment 2441
income, as defined in section 5747.012 of the Revised Code, to the 2442
extent such qualifying investment income is not otherwise part of 2443
modified business income. 2444

(4) "Modified Ohio taxable income" applies only to trusts, 2445
and means the sum of the amounts described in divisions (BB)(4)(a) 2446
to (c) of this section: 2447

(a) The fraction, calculated under section 5747.013, and 2448
applying section 5747.231 of the Revised Code, multiplied by the 2449
sum of the following amounts: 2450

(i) The trust's modified business income; 2451

(ii) The trust's qualifying investment income, as defined in 2452
section 5747.012 of the Revised Code, but only to the extent the 2453
qualifying investment income does not otherwise constitute 2454
modified business income and does not otherwise constitute a 2455
qualifying trust amount. 2456

(b) The qualifying trust amount multiplied by a fraction, the 2457
numerator of which is the sum of the book value of the qualifying 2458
investee's physical assets in this state on the last day of the 2459
qualifying investee's fiscal or calendar year ending immediately 2460
prior to the day on which the trust recognizes the qualifying 2461
trust amount, and the denominator of which is the sum of the book 2462
value of the qualifying investee's total physical assets 2463
everywhere on the last day of the qualifying investee's fiscal or 2464
calendar year ending immediately prior to the day on which the 2465
trust recognizes the qualifying trust amount. If, for a taxable 2466

year, the trust recognizes a qualifying trust amount with respect 2467
to more than one qualifying investee, the amount described in 2468
division (BB)(4)(b) of this section shall equal the sum of the 2469
products so computed for each such qualifying investee. 2470

(c)(i) With respect to a trust or portion of a trust that is 2471
a resident as ascertained in accordance with division (I)(3)(d) of 2472
this section, its modified nonbusiness income. 2473

(ii) With respect to a trust or portion of a trust that is 2474
not a resident as ascertained in accordance with division 2475
(I)(3)(d) of this section, the amount of its modified nonbusiness 2476
income satisfying the descriptions in divisions (B)(2) to (5) of 2477
section 5747.20 of the Revised Code, except as otherwise provided 2478
in division (BB)(4)(c)(ii) of this section. With respect to a 2479
trust or portion of a trust that is not a resident as ascertained 2480
in accordance with division (I)(3)(d) of this section, the trust's 2481
portion of modified nonbusiness income recognized from the sale, 2482
exchange, or other disposition of a debt interest in or equity 2483
interest in a section 5747.212 entity, as defined in section 2484
5747.212 of the Revised Code, without regard to division (A) of 2485
that section, shall not be allocated to this state in accordance 2486
with section 5747.20 of the Revised Code but shall be apportioned 2487
to this state in accordance with division (B) of section 5747.212 2488
of the Revised Code without regard to division (A) of that 2489
section. 2490

If the allocation and apportionment of a trust's income under 2491
divisions (BB)(4)(a) and (c) of this section do not fairly 2492
represent the modified Ohio taxable income of the trust in this 2493
state, the alternative methods described in division (C) of 2494
section 5747.21 of the Revised Code may be applied in the manner 2495
and to the same extent provided in that section. 2496

(5)(a) Except as set forth in division (BB)(5)(b) of this 2497
section, "qualifying investee" means a person in which a trust has 2498

an equity or ownership interest, or a person or unit of government 2499
the debt obligations of either of which are owned by a trust. For 2500
the purposes of division (BB)(2)(a) of this section and for the 2501
purpose of computing the fraction described in division (BB)(4)(b) 2502
of this section, all of the following apply: 2503

(i) If the qualifying investee is a member of a qualifying 2504
controlled group on the last day of the qualifying investee's 2505
fiscal or calendar year ending immediately prior to the date on 2506
which the trust recognizes the gain or loss, then "qualifying 2507
investee" includes all persons in the qualifying controlled group 2508
on such last day. 2509

(ii) If the qualifying investee, or if the qualifying 2510
investee and any members of the qualifying controlled group of 2511
which the qualifying investee is a member on the last day of the 2512
qualifying investee's fiscal or calendar year ending immediately 2513
prior to the date on which the trust recognizes the gain or loss, 2514
separately or cumulatively own, directly or indirectly, on the 2515
last day of the qualifying investee's fiscal or calendar year 2516
ending immediately prior to the date on which the trust recognizes 2517
the qualifying trust amount, more than fifty per cent of the 2518
equity of a pass-through entity, then the qualifying investee and 2519
the other members are deemed to own the proportionate share of the 2520
pass-through entity's physical assets which the pass-through 2521
entity directly or indirectly owns on the last day of the 2522
pass-through entity's calendar or fiscal year ending within or 2523
with the last day of the qualifying investee's fiscal or calendar 2524
year ending immediately prior to the date on which the trust 2525
recognizes the qualifying trust amount. 2526

(iii) For the purposes of division (BB)(5)(a)(iii) of this 2527
section, "upper level pass-through entity" means a pass-through 2528
entity directly or indirectly owning any equity of another 2529
pass-through entity, and "lower level pass-through entity" means 2530

that other pass-through entity. 2531

An upper level pass-through entity, whether or not it is also 2532
a qualifying investee, is deemed to own, on the last day of the 2533
upper level pass-through entity's calendar or fiscal year, the 2534
proportionate share of the lower level pass-through entity's 2535
physical assets that the lower level pass-through entity directly 2536
or indirectly owns on the last day of the lower level pass-through 2537
entity's calendar or fiscal year ending within or with the last 2538
day of the upper level pass-through entity's fiscal or calendar 2539
year. If the upper level pass-through entity directly and 2540
indirectly owns less than fifty per cent of the equity of the 2541
lower level pass-through entity on each day of the upper level 2542
pass-through entity's calendar or fiscal year in which or with 2543
which ends the calendar or fiscal year of the lower level 2544
pass-through entity and if, based upon clear and convincing 2545
evidence, complete information about the location and cost of the 2546
physical assets of the lower pass-through entity is not available 2547
to the upper level pass-through entity, then solely for purposes 2548
of ascertaining if a gain or loss constitutes a qualifying trust 2549
amount, the upper level pass-through entity shall be deemed as 2550
owning no equity of the lower level pass-through entity for each 2551
day during the upper level pass-through entity's calendar or 2552
fiscal year in which or with which ends the lower level 2553
pass-through entity's calendar or fiscal year. Nothing in division 2554
(BB)(5)(a)(iii) of this section shall be construed to provide for 2555
any deduction or exclusion in computing any trust's Ohio taxable 2556
income. 2557

(b) With respect to a trust that is not a resident for the 2558
taxable year and with respect to a part of a trust that is not a 2559
resident for the taxable year, "qualifying investee" for that 2560
taxable year does not include a C corporation if both of the 2561
following apply: 2562

(i) During the taxable year the trust or part of the trust recognizes a gain or loss from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, the C corporation.	2563 2564 2565 2566
(ii) Such gain or loss constitutes nonbusiness income.	2567
(6) "Available" means information is such that a person is able to learn of the information by the due date plus extensions, if any, for filing the return for the taxable year in which the trust recognizes the gain or loss.	2568 2569 2570 2571
(CC) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code.	2572 2573
(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code.	2574 2575
(EE)(1) For the purposes of division (EE) of this section:	2576
(a) "Qualifying person" means any person other than a qualifying corporation.	2577 2578
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	2579 2580 2581
(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;	2582 2583 2584 2585
(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.	2586 2587 2588 2589
(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.	2590 2591 2592

(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:	2593 2594
(1) "Trust" does not include a qualified pre-income tax trust.	2595 2596
(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.	2597 2598 2599
(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.	2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610
(4) A "pre-income tax trust" is a trust that satisfies all of the following requirements:	2611 2612
(a) The document or instrument creating the trust was executed by the grantor before January 1, 1972;	2613 2614
(b) The trust became irrevocable upon the creation of the trust; and	2615 2616
(c) The grantor was domiciled in this state at the time the trust was created.	2617 2618
(GG) "Uniformed services" has the same meaning as in 10 U.S.C. 101.	2619 2620
Sec. 5751.01. As used in this chapter:	2621

(A) "Person" means, but is not limited to, individuals, 2622
combinations of individuals of any form, receivers, assignees, 2623
trustees in bankruptcy, firms, companies, joint-stock companies, 2624
business trusts, estates, partnerships, limited liability 2625
partnerships, limited liability companies, associations, joint 2626
ventures, clubs, societies, for-profit corporations, S 2627
corporations, qualified subchapter S subsidiaries, qualified 2628
subchapter S trusts, trusts, entities that are disregarded for 2629
federal income tax purposes, and any other entities. 2630

(B) "Consolidated elected taxpayer" means a group of two or 2631
more persons treated as a single taxpayer for purposes of this 2632
chapter as the result of an election made under section 5751.011 2633
of the Revised Code. 2634

(C) "Combined taxpayer" means a group of two or more persons 2635
treated as a single taxpayer for purposes of this chapter under 2636
section 5751.012 of the Revised Code. 2637

(D) "Taxpayer" means any person, or any group of persons in 2638
the case of a consolidated elected taxpayer or combined taxpayer 2639
treated as one taxpayer, required to register or pay tax under 2640
this chapter. "Taxpayer" does not include excluded persons. 2641

(E) "Excluded person" means any of the following: 2642

(1) Any person with not more than one hundred fifty thousand 2643
dollars of taxable gross receipts during the calendar year. 2644
Division (E)(1) of this section does not apply to a person that is 2645
a member of a consolidated elected taxpayer; 2646

(2) A public utility that paid the excise tax imposed by 2647
section 5727.24 or 5727.30 of the Revised Code based on one or 2648
more measurement periods that include the entire tax period under 2649
this chapter, except that a public utility that is a combined 2650
company is a taxpayer with regard to the following gross receipts: 2651

(a) Taxable gross receipts directly attributed to a public 2652

utility activity, but not directly attributed to an activity that 2653
is subject to the excise tax imposed by section 5727.24 or 5727.30 2654
of the Revised Code; 2655

(b) Taxable gross receipts that cannot be directly attributed 2656
to any activity, multiplied by a fraction whose numerator is the 2657
taxable gross receipts described in division (E)(2)(a) of this 2658
section and whose denominator is the total taxable gross receipts 2659
that can be directly attributed to any activity; 2660

(c) Except for any differences resulting from the use of an 2661
accrual basis method of accounting for purposes of determining 2662
gross receipts under this chapter and the use of the cash basis 2663
method of accounting for purposes of determining gross receipts 2664
under section 5727.24 of the Revised Code, the gross receipts 2665
directly attributed to the activity of a natural gas company shall 2666
be determined in a manner consistent with division (D) of section 2667
5727.03 of the Revised Code. 2668

As used in division (E)(2) of this section, "combined 2669
company" and "public utility" have the same meanings as in section 2670
5727.01 of the Revised Code. 2671

(3) A financial institution, as defined in section 5726.01 of 2672
the Revised Code, that paid the tax imposed by section 5726.02 of 2673
the Revised Code based on one or more taxable years that include 2674
the entire tax period under this chapter; 2675

(4) A person directly or indirectly owned by one or more 2676
financial institutions, as defined in section 5726.01 of the 2677
Revised Code, that paid the tax imposed by section 5726.02 of the 2678
Revised Code based on one or more taxable years that include the 2679
entire tax period under this chapter. 2680

For the purposes of division (E)(4) of this section, a person 2681
owns another person under the following circumstances: 2682

(a) In the case of corporations issuing capital stock, one 2683

corporation owns another corporation if it owns fifty per cent or 2684
more of the other corporation's capital stock with current voting 2685
rights; 2686

(b) In the case of a limited liability company, one person 2687
owns the company if that person's membership interest, as defined 2688
in section 1705.01 of the Revised Code, is fifty per cent or more 2689
of the combined membership interests of all persons owning such 2690
interests in the company; 2691

(c) In the case of a partnership, trust, or other 2692
unincorporated business organization other than a limited 2693
liability company, one person owns the organization if, under the 2694
articles of organization or other instrument governing the affairs 2695
of the organization, that person has a beneficial interest in the 2696
organization's profits, surpluses, losses, or distributions of 2697
fifty per cent or more of the combined beneficial interests of all 2698
persons having such an interest in the organization. 2699

(5) A domestic insurance company or foreign insurance 2700
company, as defined in section 5725.01 of the Revised Code, that 2701
paid the insurance company premiums tax imposed by section 5725.18 2702
or Chapter 5729. of the Revised Code, or an unauthorized insurance 2703
company whose gross premiums are subject to tax under section 2704
3905.36 of the Revised Code based on one or more measurement 2705
periods that include the entire tax period under this chapter; 2706

(6) A person that solely facilitates or services one or more 2707
securitizations of phase-in-recovery property pursuant to a final 2708
financing order as those terms are defined in section 4928.23 of 2709
the Revised Code. For purposes of this division, "securitization" 2710
means transferring one or more assets to one or more persons and 2711
then issuing securities backed by the right to receive payment 2712
from the asset or assets so transferred. 2713

(7) Except as otherwise provided in this division, a 2714

pre-income tax trust as defined in division (FF)(4) of section 2715
5747.01 of the Revised Code and any pass-through entity of which 2716
such pre-income tax trust owns or controls, directly, indirectly, 2717
or constructively through related interests, more than five per 2718
cent of the ownership or equity interests. If the pre-income tax 2719
trust has made a qualifying pre-income tax trust election under 2720
division (FF)(3) of section 5747.01 of the Revised Code, then the 2721
trust and the pass-through entities of which it owns or controls, 2722
directly, indirectly, or constructively through related interests, 2723
more than five per cent of the ownership or equity interests, 2724
shall not be excluded persons for purposes of the tax imposed 2725
under section 5751.02 of the Revised Code. 2726

(8) Nonprofit organizations or the state and its agencies, 2727
instrumentalities, or political subdivisions. 2728

(F) Except as otherwise provided in divisions (F)(2), (3), 2729
and (4) of this section, "gross receipts" means the total amount 2730
realized by a person, without deduction for the cost of goods sold 2731
or other expenses incurred, that contributes to the production of 2732
gross income of the person, including the fair market value of any 2733
property and any services received, and any debt transferred or 2734
forgiven as consideration. 2735

(1) The following are examples of gross receipts: 2736

(a) Amounts realized from the sale, exchange, or other 2737
disposition of the taxpayer's property to or with another; 2738

(b) Amounts realized from the taxpayer's performance of 2739
services for another; 2740

(c) Amounts realized from another's use or possession of the 2741
taxpayer's property or capital; 2742

(d) Any combination of the foregoing amounts. 2743

(2) "Gross receipts" excludes the following amounts: 2744

(a) Interest income except interest on credit sales;	2745
(b) Dividends and distributions from corporations, and distributive or proportionate shares of receipts and income from a pass-through entity as defined under section 5733.04 of the Revised Code;	2746 2747 2748 2749
(c) Receipts from the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset. Notwithstanding section 1221 of the Internal Revenue Code, receipts from hedging transactions also are excluded to the extent the transactions are entered into primarily to protect a financial position, such as managing the risk of exposure to (i) foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; (ii) interest rate fluctuations; or (iii) commodity price fluctuations. As used in division (F)(2)(c) of this section, "hedging transaction" has the same meaning as used in section 1221 of the Internal Revenue Code and also includes transactions accorded hedge accounting treatment under statement of financial accounting standards number 133 of the financial accounting standards board. For the purposes of division (F)(2)(c) of this section, the actual transfer of title of real or tangible personal property to another entity is not a hedging transaction.	2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767
(d) Proceeds received attributable to the repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or marketable instrument;	2768 2769 2770
(e) The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan to the person;	2771 2772 2773
(f) Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the	2774 2775

Internal Revenue Code, or to which Title 26, Subtitle A, Chapter	2776
1, Subchapter (D) of the Internal Revenue Code applies;	2777
(g) Compensation, whether current or deferred, and whether in	2778
cash or in kind, received or to be received by an employee, former	2779
employee, or the employee's legal successor for services rendered	2780
to or for an employer, including reimbursements received by or for	2781
an individual for medical or education expenses, health insurance	2782
premiums, or employee expenses, or on account of a dependent care	2783
spending account, legal services plan, any cafeteria plan	2784
described in section 125 of the Internal Revenue Code, or any	2785
similar employee reimbursement;	2786
(h) Proceeds received from the issuance of the taxpayer's own	2787
stock, options, warrants, puts, or calls, or from the sale of the	2788
taxpayer's treasury stock;	2789
(i) Proceeds received on the account of payments from	2790
insurance policies, except those proceeds received for the loss of	2791
business revenue;	2792
(j) Gifts or charitable contributions received; membership	2793
dues received by trade, professional, homeowners', or condominium	2794
associations; and payments received for educational courses,	2795
meetings, meals, or similar payments to a trade, professional, or	2796
other similar association; and fundraising receipts received by	2797
any person when any excess receipts are donated or used	2798
exclusively for charitable purposes;	2799
(k) Damages received as the result of litigation in excess of	2800
amounts that, if received without litigation, would be gross	2801
receipts;	2802
(l) Property, money, and other amounts received or acquired	2803
by an agent on behalf of another in excess of the agent's	2804
commission, fee, or other remuneration;	2805
(m) Tax refunds, other tax benefit recoveries, and	2806

reimbursements for the tax imposed under this chapter made by	2807
entities that are part of the same combined taxpayer or	2808
consolidated elected taxpayer group, and reimbursements made by	2809
entities that are not members of a combined taxpayer or	2810
consolidated elected taxpayer group that are required to be made	2811
for economic parity among multiple owners of an entity whose tax	2812
obligation under this chapter is required to be reported and paid	2813
entirely by one owner, pursuant to the requirements of sections	2814
5751.011 and 5751.012 of the Revised Code;	2815
(n) Pension reversions;	2816
(o) Contributions to capital;	2817
(p) Sales or use taxes collected as a vendor or an	2818
out-of-state seller on behalf of the taxing jurisdiction from a	2819
consumer or other taxes the taxpayer is required by law to collect	2820
directly from a purchaser and remit to a local, state, or federal	2821
tax authority;	2822
(q) In the case of receipts from the sale of cigarettes or	2823
tobacco products by a wholesale dealer, retail dealer,	2824
distributor, manufacturer, or seller, all as defined in section	2825
5743.01 of the Revised Code, an amount equal to the federal and	2826
state excise taxes paid by any person on or for such cigarettes or	2827
tobacco products under subtitle E of the Internal Revenue Code or	2828
Chapter 5743. of the Revised Code;	2829
(r) In the case of receipts from the sale, transfer,	2830
exchange, or other disposition of motor fuel as "motor fuel" is	2831
defined in section 5736.01 of the Revised Code, an amount equal to	2832
the value of the motor fuel, including federal and state motor	2833
fuel excise taxes and receipts from billing or invoicing the tax	2834
imposed under section 5736.02 of the Revised Code to another	2835
person;	2836
(s) In the case of receipts from the sale of beer or	2837

intoxicating liquor, as defined in section 4301.01 of the Revised Code, by a person holding a permit issued under Chapter 4301. or 4303. of the Revised Code, an amount equal to federal and state excise taxes paid by any person on or for such beer or intoxicating liquor under subtitle E of the Internal Revenue Code or Chapter 4301. or 4305. of the Revised Code;

(t) Receipts realized by a new motor vehicle dealer or used motor vehicle dealer, as defined in section 4517.01 of the Revised Code, from the sale or other transfer of a motor vehicle, as defined in that section, to another motor vehicle dealer for the purpose of resale by the transferee motor vehicle dealer, but only if the sale or other transfer was based upon the transferee's need to meet a specific customer's preference for a motor vehicle;

(u) Receipts from a financial institution described in division (E)(3) of this section for services provided to the financial institution in connection with the issuance, processing, servicing, and management of loans or credit accounts, if such financial institution and the recipient of such receipts have at least fifty per cent of their ownership interests owned or controlled, directly or constructively through related interests, by common owners;

(v) Receipts realized from administering anti-neoplastic drugs and other cancer chemotherapy, biologicals, therapeutic agents, and supportive drugs in a physician's office to patients with cancer;

(w) Funds received or used by a mortgage broker that is not a dealer in intangibles, other than fees or other consideration, pursuant to a table-funding mortgage loan or warehouse-lending mortgage loan. Terms used in division (F)(2)(w) of this section have the same meanings as in section 1322.01 of the Revised Code, except "mortgage broker" means a person assisting a buyer in obtaining a mortgage loan for a fee or other consideration paid by

the buyer or a lender, or a person engaged in table-funding or warehouse-lending mortgage loans that are first lien mortgage loans. 2870
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(x) Property, money, and other amounts received by a professional employer organization, as defined in section 4125.01 of the Revised Code, from a client employer, as defined in that section, in excess of the administrative fee charged by the professional employer organization to the client employer; 2873
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(y) In the case of amounts retained as commissions by a permit holder under Chapter 3769. of the Revised Code, an amount equal to the amounts specified under that chapter that must be paid to or collected by the tax commissioner as a tax and the amounts specified under that chapter to be used as purse money; 2878
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(z) Qualifying distribution center receipts. 2883

(i) For purposes of division (F)(2)(z) of this section: 2884

(I) "Qualifying distribution center receipts" means receipts of a supplier from qualified property that is delivered to a qualified distribution center, multiplied by a quantity that equals one minus the Ohio delivery percentage. If the qualified distribution center is a refining facility, "supplier" includes all dealers, brokers, processors, sellers, vendors, cosigners, and distributors of qualified property. 2885
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(II) "Qualified property" means tangible personal property delivered to a qualified distribution center that is shipped to that qualified distribution center solely for further shipping by the qualified distribution center to another location in this state or elsewhere or, in the case of gold, silver, platinum, or palladium delivered to a refining facility solely for refining to a grade and fineness acceptable for delivery to a registered commodities exchange. "Further shipping" includes storing and repackaging property into smaller or larger bundles, so long as 2892
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the property is not subject to further manufacturing or 2901
processing. "Refining" is limited to extracting impurities from 2902
gold, silver, platinum, or palladium through smelting or some 2903
other process at a refining facility. 2904

(III) "Qualified distribution center" means a warehouse, a 2905
facility similar to a warehouse, or a refining facility in this 2906
state that, for the qualifying year, is operated by a person that 2907
is not part of a combined taxpayer group and that has a qualifying 2908
certificate. All warehouses or facilities similar to warehouses 2909
that are operated by persons in the same taxpayer group and that 2910
are located within one mile of each other shall be treated as one 2911
qualified distribution center. All refining facilities that are 2912
operated by persons in the same taxpayer group and that are 2913
located in the same or adjacent counties may be treated as one 2914
qualified distribution center. 2915

(IV) "Qualifying year" means the calendar year to which the 2916
qualifying certificate applies. 2917

(V) "Qualifying period" means the period of the first day of 2918
July of the second year preceding the qualifying year through the 2919
thirtieth day of June of the year preceding the qualifying year. 2920

(VI) "Qualifying certificate" means the certificate issued by 2921
the tax commissioner after the operator of a distribution center 2922
files an annual application with the commissioner. The application 2923
and annual fee shall be filed and paid for each qualified 2924
distribution center on or before the first day of September before 2925
the qualifying year or within forty-five days after the 2926
distribution center opens, whichever is later. 2927

The applicant must substantiate to the commissioner's 2928
satisfaction that, for the qualifying period, all persons 2929
operating the distribution center have more than fifty per cent of 2930
the cost of the qualified property shipped to a location such that 2931

it would be situated outside this state under the provisions of 2932
division (E) of section 5751.033 of the Revised Code. The 2933
applicant must also substantiate that the distribution center 2934
cumulatively had costs from its suppliers equal to or exceeding 2935
five hundred million dollars during the qualifying period. (For 2936
purposes of division (F)(2)(z)(i)(VI) of this section, "supplier" 2937
excludes any person that is part of the consolidated elected 2938
taxpayer group, if applicable, of the operator of the qualified 2939
distribution center.) The commissioner may require the applicant 2940
to have an independent certified public accountant certify that 2941
the calculation of the minimum thresholds required for a qualified 2942
distribution center by the operator of a distribution center has 2943
been made in accordance with generally accepted accounting 2944
principles. The commissioner shall issue or deny the issuance of a 2945
certificate within sixty days after the receipt of the 2946
application. A denial is subject to appeal under section 5717.02 2947
of the Revised Code. If the operator files a timely appeal under 2948
section 5717.02 of the Revised Code, the operator shall be granted 2949
a qualifying certificate effective for the remainder of the 2950
qualifying year or until the appeal is finalized, whichever is 2951
earlier. If the operator does not prevail in the appeal, the 2952
operator shall pay the ineligible operator's supplier tax 2953
liability. 2954

(VII) "Ohio delivery percentage" means the proportion of the 2955
total property delivered to a destination inside Ohio from the 2956
qualified distribution center during the qualifying period 2957
compared with total deliveries from such distribution center 2958
everywhere during the qualifying period. 2959

(VIII) "Refining facility" means one or more buildings 2960
located in a county in the Appalachian region of this state as 2961
defined by section 107.21 of the Revised Code and utilized for 2962
refining or smelting gold, silver, platinum, or palladium to a 2963

grade and fineness acceptable for delivery to a registered 2964
commodities exchange. 2965

(IX) "Registered commodities exchange" means a board of 2966
trade, such as New York mercantile exchange, inc. or commodity 2967
exchange, inc., designated as a contract market by the commodity 2968
futures trading commission under the "Commodity Exchange Act," 7 2969
U.S.C. 1 et seq., as amended. 2970

(X) "Ineligible operator's supplier tax liability" means an 2971
amount equal to the tax liability of all suppliers of a 2972
distribution center had the distribution center not been issued a 2973
qualifying certificate for the qualifying year. Ineligible 2974
operator's supplier tax liability shall not include interest or 2975
penalties. The tax commissioner shall determine an ineligible 2976
operator's supplier tax liability based on information that the 2977
commissioner may request from the operator of the distribution 2978
center. An operator shall provide a list of all suppliers of the 2979
distribution center and the corresponding costs of qualified 2980
property for the qualifying year at issue within sixty days of a 2981
request by the commissioner under this division. 2982

(ii)(I) If the distribution center is new and was not open 2983
for the entire qualifying period, the operator of the distribution 2984
center may request that the commissioner grant a qualifying 2985
certificate. If the certificate is granted and it is later 2986
determined that more than fifty per cent of the qualified property 2987
during that year was not shipped to a location such that it would 2988
be sitused outside of this state under the provisions of division 2989
(E) of section 5751.033 of the Revised Code or if it is later 2990
determined that the person that operates the distribution center 2991
had average monthly costs from its suppliers of less than forty 2992
million dollars during that year, then the operator of the 2993
distribution center shall pay the ineligible operator's supplier 2994
tax liability. (For purposes of division (F)(2)(z)(ii) of this 2995

section, "supplier" excludes any person that is part of the 2996
consolidated elected taxpayer group, if applicable, of the 2997
operator of the qualified distribution center.) 2998

(II) The commissioner may grant a qualifying certificate to a 2999
distribution center that does not qualify as a qualified 3000
distribution center for an entire qualifying period if the 3001
operator of the distribution center demonstrates that the business 3002
operations of the distribution center have changed or will change 3003
such that the distribution center will qualify as a qualified 3004
distribution center within thirty-six months after the date the 3005
operator first applies for a certificate. If, at the end of that 3006
thirty-six-month period, the business operations of the 3007
distribution center have not changed such that the distribution 3008
center qualifies as a qualified distribution center, the operator 3009
of the distribution center shall pay the ineligible operator's 3010
supplier tax liability for each year that the distribution center 3011
received a certificate but did not qualify as a qualified 3012
distribution center. For each year the distribution center 3013
receives a certificate under division (F)(2)(z)(ii)(II) of this 3014
section, the distribution center shall pay all applicable fees 3015
required under division (F)(2)(z) of this section and shall submit 3016
an updated business plan showing the progress the distribution 3017
center made toward qualifying as a qualified distribution center 3018
during the preceding year. 3019

(III) An operator may appeal a determination under division 3020
(F)(2)(z)(ii)(I) or (II) of this section that the ineligible 3021
operator is liable for the operator's supplier tax liability as a 3022
result of not qualifying as a qualified distribution center, as 3023
provided in section 5717.02 of the Revised Code. 3024

(iii) When filing an application for a qualifying certificate 3025
under division (F)(2)(z)(i)(VI) of this section, the operator of a 3026
qualified distribution center also shall provide documentation, as 3027

the commissioner requires, for the commissioner to ascertain the 3028
Ohio delivery percentage. The commissioner, upon issuing the 3029
qualifying certificate, also shall certify the Ohio delivery 3030
percentage. The operator of the qualified distribution center may 3031
appeal the commissioner's certification of the Ohio delivery 3032
percentage in the same manner as an appeal is taken from the 3033
denial of a qualifying certificate under division (F)(2)(z)(i)(VI) 3034
of this section. 3035

(iv)(I) In the case where the distribution center is new and 3036
not open for the entire qualifying period, the operator shall make 3037
a good faith estimate of an Ohio delivery percentage for use by 3038
suppliers in their reports of taxable gross receipts for the 3039
remainder of the qualifying period. The operator of the facility 3040
shall disclose to the suppliers that such Ohio delivery percentage 3041
is an estimate and is subject to recalculation. By the due date of 3042
the next application for a qualifying certificate, the operator 3043
shall determine the actual Ohio delivery percentage for the 3044
estimated qualifying period and proceed as provided in division 3045
(F)(2)(z)(iii) of this section with respect to the calculation and 3046
recalculation of the Ohio delivery percentage. The supplier is 3047
required to file, within sixty days after receiving notice from 3048
the operator of the qualified distribution center, amended reports 3049
for the impacted calendar quarter or quarters or calendar year, 3050
whichever the case may be. Any additional tax liability or tax 3051
overpayment shall be subject to interest but shall not be subject 3052
to the imposition of any penalty so long as the amended returns 3053
are timely filed. 3054

(II) The operator of a distribution center that receives a 3055
qualifying certificate under division (F)(2)(z)(ii)(II) of this 3056
section shall make a good faith estimate of the Ohio delivery 3057
percentage that the operator estimates will apply to the 3058
distribution center at the end of the thirty-six-month period 3059

after the operator first applied for a qualifying certificate 3060
under that division. The result of the estimate shall be 3061
multiplied by a factor of one and seventy-five one-hundredths. The 3062
product of that calculation shall be the Ohio delivery percentage 3063
used by suppliers in their reports of taxable gross receipts for 3064
each qualifying year that the distribution center receives a 3065
qualifying certificate under division (F)(2)(z)(ii)(II) of this 3066
section, except that, if the product is less than five per cent, 3067
the Ohio delivery percentage used shall be five per cent and that, 3068
if the product exceeds forty-nine per cent, the Ohio delivery 3069
percentage used shall be forty-nine per cent. 3070

(v) Qualifying certificates and Ohio delivery percentages 3071
issued by the commissioner shall be open to public inspection and 3072
shall be timely published by the commissioner. A supplier relying 3073
in good faith on a certificate issued under this division shall 3074
not be subject to tax on the qualifying distribution center 3075
receipts under division (F)(2)(z) of this section. An operator 3076
receiving a qualifying certificate is liable for the ineligible 3077
operator's supplier tax liability for each year the operator 3078
received a certificate but did not qualify as a qualified 3079
distribution center. 3080

(vi) The annual fee for a qualifying certificate shall be one 3081
hundred thousand dollars for each qualified distribution center. 3082
If a qualifying certificate is not issued, the annual fee is 3083
subject to refund after the exhaustion of all appeals provided for 3084
in division (F)(2)(z)(i)(VI) of this section. The first one 3085
hundred thousand dollars of the annual application fees collected 3086
each calendar year shall be credited to the revenue enhancement 3087
fund. The remainder of the annual application fees collected shall 3088
be distributed in the same manner required under section 5751.20 3089
of the Revised Code. 3090

(vii) The tax commissioner may require that adequate security 3091

be posted by the operator of the distribution center on appeal 3092
when the commissioner disagrees that the applicant has met the 3093
minimum thresholds for a qualified distribution center as set 3094
forth in division (F)(2)(z) of this section. 3095

(aa) Receipts of an employer from payroll deductions relating 3096
to the reimbursement of the employer for advancing moneys to an 3097
unrelated third party on an employee's behalf; 3098

(bb) Cash discounts allowed and taken; 3099

(cc) Returns and allowances; 3100

(dd) Bad debts from receipts on the basis of which the tax 3101
imposed by this chapter was paid in a prior quarterly tax payment 3102
period. For the purpose of this division, "bad debts" means any 3103
debts that have become worthless or uncollectible between the 3104
preceding and current quarterly tax payment periods, have been 3105
uncollected for at least six months, and that may be claimed as a 3106
deduction under section 166 of the Internal Revenue Code and the 3107
regulations adopted under that section, or that could be claimed 3108
as such if the taxpayer kept its accounts on the accrual basis. 3109
"Bad debts" does not include repossessed property, uncollectible 3110
amounts on property that remains in the possession of the taxpayer 3111
until the full purchase price is paid, or expenses in attempting 3112
to collect any account receivable or for any portion of the debt 3113
recovered; 3114

(ee) Any amount realized from the sale of an account 3115
receivable to the extent the receipts from the underlying 3116
transaction giving rise to the account receivable were included in 3117
the gross receipts of the taxpayer; 3118

(ff) Any receipts directly attributed to a transfer agreement 3119
or to the enterprise transferred under that agreement under 3120
section 4313.02 of the Revised Code. 3121

(gg)(i) As used in this division: 3122

(I) "Qualified uranium receipts" means receipts from the 3123
sale, exchange, lease, loan, production, processing, or other 3124
disposition of uranium within a uranium enrichment zone certified 3125
by the tax commissioner under division (F)(2)(gg)(ii) of this 3126
section. "Qualified uranium receipts" does not include any 3127
receipts with a situs in this state outside a uranium enrichment 3128
zone certified by the tax commissioner under division 3129
(F)(2)(gg)(ii) of this section. 3130

(II) "Uranium enrichment zone" means all real property that 3131
is part of a uranium enrichment facility licensed by the United 3132
States nuclear regulatory commission and that was or is owned or 3133
controlled by the United States department of energy or its 3134
successor. 3135

(ii) Any person that owns, leases, or operates real or 3136
tangible personal property constituting or located within a 3137
uranium enrichment zone may apply to the tax commissioner to have 3138
the uranium enrichment zone certified for the purpose of excluding 3139
qualified uranium receipts under division (F)(2)(gg) of this 3140
section. The application shall include such information that the 3141
tax commissioner prescribes. Within sixty days after receiving the 3142
application, the tax commissioner shall certify the zone for that 3143
purpose if the commissioner determines that the property qualifies 3144
as a uranium enrichment zone as defined in division (F)(2)(gg) of 3145
this section, or, if the tax commissioner determines that the 3146
property does not qualify, the commissioner shall deny the 3147
application or request additional information from the applicant. 3148
If the tax commissioner denies an application, the commissioner 3149
shall state the reasons for the denial. The applicant may appeal 3150
the denial of an application to the board of tax appeals pursuant 3151
to section 5717.02 of the Revised Code. If the applicant files a 3152
timely appeal, the tax commissioner shall conditionally certify 3153
the applicant's property. The conditional certification shall 3154

expire when all of the applicant's appeals are exhausted. Until 3155
final resolution of the appeal, the applicant shall retain the 3156
applicant's records in accordance with section 5751.12 of the 3157
Revised Code, notwithstanding any time limit on the preservation 3158
of records under that section. 3159

(hh) In the case of amounts collected by a licensed casino 3160
operator from casino gaming, amounts in excess of the casino 3161
operator's gross casino revenue. In this division, "casino 3162
operator" and "casino gaming" have the meanings defined in section 3163
3772.01 of the Revised Code, and "gross casino revenue" has the 3164
meaning defined in section 5753.01 of the Revised Code. 3165

(ii) Receipts realized from the sale of agricultural 3166
commodities by an agricultural commodity handler, both as defined 3167
in section 926.01 of the Revised Code, that is licensed by the 3168
director of agriculture to handle agricultural commodities in this 3169
state. 3170

(jj) Receipts realized by a partnering business from business 3171
conducted in a startup zone pursuant to a partnership contract 3172
with a university under Chapter 195. of the Revised Code. Receipts 3173
may be excluded under this division only for tax periods ending on 3174
or before the expiration or termination of the partnership 3175
contract. Receipts realized from business conducted outside the 3176
startup zone or beyond the scope of the partnership contract shall 3177
not be excluded under this division. As used in this division, 3178
"startup zone," "partnering business," "partnership contract," and 3179
"university" have the same meanings as in section 195.01 of the 3180
Revised Code. 3181

(kk) Any receipts for which the tax imposed by this chapter 3182
is prohibited by the constitution or laws of the United States or 3183
the constitution of this state. 3184

(3) In the case of a taxpayer when acting as a real estate 3185

broker, "gross receipts" includes only the portion of any fee for 3186
the service of a real estate broker, or service of a real estate 3187
salesperson associated with that broker, that is retained by the 3188
broker and not paid to an associated real estate salesperson or 3189
another real estate broker. For the purposes of this division, 3190
"real estate broker" and "real estate salesperson" have the same 3191
meanings as in section 4735.01 of the Revised Code. 3192

(4) A taxpayer's method of accounting for gross receipts for 3193
a tax period shall be the same as the taxpayer's method of 3194
accounting for federal income tax purposes for the taxpayer's 3195
federal taxable year that includes the tax period. If a taxpayer's 3196
method of accounting for federal income tax purposes changes, its 3197
method of accounting for gross receipts under this chapter shall 3198
be changed accordingly. 3199

(G) "Taxable gross receipts" means gross receipts situated to 3200
this state under section 5751.033 of the Revised Code. 3201

(H) A person has "substantial nexus with this state" if any 3202
of the following applies. The person: 3203

(1) Owns or uses a part or all of its capital in this state; 3204

(2) Holds a certificate of compliance with the laws of this 3205
state authorizing the person to do business in this state; 3206

(3) Has bright-line presence in this state; 3207

(4) Otherwise has nexus with this state to an extent that the 3208
person can be required to remit the tax imposed under this chapter 3209
under the Constitution of the United States. 3210

(I) A person has "bright-line presence" in this state for a 3211
reporting period and for the remaining portion of the calendar 3212
year if any of the following applies. The person: 3213

(1) Has at any time during the calendar year property in this 3214
state with an aggregate value of at least fifty thousand dollars. 3215

For the purpose of division (I)(1) of this section, owned property	3216
is valued at original cost and rented property is valued at eight	3217
times the net annual rental charge.	3218
(2) Has during the calendar year payroll in this state of at	3219
least fifty thousand dollars. Payroll in this state includes all	3220
of the following:	3221
(a) Any amount subject to withholding by the person under	3222
section 5747.06 of the Revised Code;	3223
(b) Any other amount the person pays as compensation to an	3224
individual under the supervision or control of the person for work	3225
done in this state; and	3226
(c) Any amount the person pays for services performed in this	3227
state on its behalf by another.	3228
(3) Has during the calendar year taxable gross receipts of at	3229
least five hundred thousand dollars.	3230
(4) Has at any time during the calendar year within this	3231
state at least twenty-five per cent of the person's total	3232
property, total payroll, or total gross receipts.	3233
(5) Is domiciled in this state as an individual or for	3234
corporate, commercial, or other business purposes.	3235
(J) "Tangible personal property" has the same meaning as in	3236
section 5739.01 of the Revised Code.	3237
(K) "Internal Revenue Code" means the Internal Revenue Code	3238
of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term used in	3239
this chapter that is not otherwise defined has the same meaning as	3240
when used in a comparable context in the laws of the United States	3241
relating to federal income taxes unless a different meaning is	3242
clearly required. Any reference in this chapter to the Internal	3243
Revenue Code includes other laws of the United States relating to	3244
federal income taxes.	3245

(L) "Calendar quarter" means a three-month period ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, or the thirty-first day of December.	3246 3247 3248
(M) "Tax period" means the calendar quarter or calendar year on the basis of which a taxpayer is required to pay the tax imposed under this chapter.	3249 3250 3251
(N) "Calendar year taxpayer" means a taxpayer for which the tax period is a calendar year.	3252 3253
(O) "Calendar quarter taxpayer" means a taxpayer for which the tax period is a calendar quarter.	3254 3255
(P) "Agent" means a person authorized by another person to act on its behalf to undertake a transaction for the other, including any of the following:	3256 3257 3258
(1) A person receiving a fee to sell financial instruments;	3259
(2) A person retaining only a commission from a transaction with the other proceeds from the transaction being remitted to another person;	3260 3261 3262
(3) A person issuing licenses and permits under section 1533.13 of the Revised Code;	3263 3264
(4) A lottery sales agent holding a valid license issued under section 3770.05 of the Revised Code;	3265 3266
(5) A person acting as an agent of the division of liquor control under section 4301.17 of the Revised Code.	3267 3268
(Q) "Received" includes amounts accrued under the accrual method of accounting.	3269 3270
(R) "Reporting person" means a person in a consolidated elected taxpayer or combined taxpayer group that is designated by that group to legally bind the group for all filings and tax liabilities and to receive all legal notices with respect to matters under this chapter, or, for the purposes of section	3271 3272 3273 3274 3275

5751.04 of the Revised Code, a separate taxpayer that is not a 3276
member of such a group. 3277

Section 2. That existing sections 150.03, 322.02, 5739.02, 3278
5739.03, 5747.01, and 5751.01 of the Revised Code are hereby 3279
repealed. 3280

Section 3. By June 30, 2015, the Director of Budget and 3281
Management shall transfer \$100,000,000 cash from the General 3282
Revenue Fund to the Program Fund created under section 150.03 of 3283
the Revised Code. The transferred amount shall be used in the same 3284
manner as Program Fund revenue received under Chapter 150. of the 3285
Revised Code, for the purposes described in division (B) of 3286
section 150.01 of the Revised Code, and is hereby appropriated by 3287
the General Assembly. 3288