

As Passed by the House

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

Am. S. B. No. 28

Senator Obhof

**Cosponsors: Senators Hite, Schaffer, Tavares, Beagle, Coley, Faber,
Hughes, Oelslager, Peterson, Sawyer, Seitz, Uecker
Representatives Boose, Letson, Barnes, McClain, Patmon, Rogers, Sprague,
Adams, J., Amstutz, Beck, Bishoff, Buchy, Conditt, Milkovich, O'Brien,
Pillich, Scherer, Smith, Winburn Speaker Batchelder**

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A B I L L

To amend sections 5701.11 and 5751.01 of the Revised 1
Code to expressly incorporate changes in the 2
Internal Revenue Code since December 20, 2012, 3
into Ohio law, to allow a distribution center to 4
qualify for the commercial activity tax exclusion 5
for receipts from sales to qualified distribution 6
centers if it does not currently meet the 7
exclusion requirements but expects to meet those 8
requirements within three years, and to declare an 9
emergency. 10

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

Section 1. That sections 5701.11 and 5751.01 of the Revised 11
Code be amended to read as follows: 12

Sec. 5701.11. The effective date to which this section refers 13
is the effective date of this section as amended by ~~H.B. 472~~ S.B. 14
28 of the ~~129th~~ 130th general assembly. 15

(A)(1) Except as provided under division (A)(2) or (B) of 16
this section, any reference in Title LVII of the Revised Code to 17
the Internal Revenue Code, to the Internal Revenue Code "as 18
amended," to other laws of the United States, or to other laws of 19
the United States, "as amended," means the Internal Revenue Code 20
or other laws of the United States as they exist on the effective 21
date. 22

(2) This section does not apply to any reference in Title 23
LVII of the Revised Code to the Internal Revenue Code as of a date 24
certain specifying the day, month, and year, or to other laws of 25
the United States as of a date certain specifying the day, month, 26
and year. 27

(B)(1) For purposes of applying section 5733.04, 5745.01, or 28
5747.01 of the Revised Code to a taxpayer's taxable year ending 29
after ~~March 7, 2011~~ December 20, 2012, and before the effective 30
date, a taxpayer may irrevocably elect to incorporate the 31
provisions of the Internal Revenue Code or other laws of the 32
United States that are in effect for federal income tax purposes 33
for that taxable year if those provisions differ from the 34
provisions that, under division (A) of this section, would 35
otherwise apply. The filing by the taxpayer for that taxable year 36
of a report or return that incorporates the provisions of the 37
Internal Revenue Code or other laws of the United States 38
applicable for federal income tax purposes for that taxable year, 39
and that does not include any adjustments to reverse the effects 40
of any differences between those provisions and the provisions 41
that would otherwise apply, constitutes the making of an 42
irrevocable election under this division for that taxable year. 43

(2) Elections under prior versions of division (B)(1) of this 44
section remain in effect for the taxable years to which they 45
apply. 46

Sec. 5751.01. As used in this chapter: 47

(A) "Person" means, but is not limited to, individuals, 48
combinations of individuals of any form, receivers, assignees, 49
trustees in bankruptcy, firms, companies, joint-stock companies, 50
business trusts, estates, partnerships, limited liability 51
partnerships, limited liability companies, associations, joint 52
ventures, clubs, societies, for-profit corporations, S 53
corporations, qualified subchapter S subsidiaries, qualified 54
subchapter S trusts, trusts, entities that are disregarded for 55
federal income tax purposes, and any other entities. 56

(B) "Consolidated elected taxpayer" means a group of two or 57
more persons treated as a single taxpayer for purposes of this 58
chapter as the result of an election made under section 5751.011 59
of the Revised Code. 60

(C) "Combined taxpayer" means a group of two or more persons 61
treated as a single taxpayer for purposes of this chapter under 62
section 5751.012 of the Revised Code. 63

(D) "Taxpayer" means any person, or any group of persons in 64
the case of a consolidated elected taxpayer or combined taxpayer 65
treated as one taxpayer, required to register or pay tax under 66
this chapter. "Taxpayer" does not include excluded persons. 67

(E) "Excluded person" means any of the following: 68

(1) Any person with not more than one hundred fifty thousand 69
dollars of taxable gross receipts during the calendar year. 70
Division (E)(1) of this section does not apply to a person that is 71
a member of a consolidated elected taxpayer; 72

(2) A public utility that paid the excise tax imposed by 73
section 5727.24 or 5727.30 of the Revised Code based on one or 74
more measurement periods that include the entire tax period under 75
this chapter, except that a public utility that is a combined 76

company is a taxpayer with regard to the following gross receipts:	77
(a) Taxable gross receipts directly attributed to a public utility activity, but not directly attributed to an activity that is subject to the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code;	78 79 80 81
(b) Taxable gross receipts that cannot be directly attributed to any activity, multiplied by a fraction whose numerator is the taxable gross receipts described in division (E)(2)(a) of this section and whose denominator is the total taxable gross receipts that can be directly attributed to any activity;	82 83 84 85 86
(c) Except for any differences resulting from the use of an accrual basis method of accounting for purposes of determining gross receipts under this chapter and the use of the cash basis method of accounting for purposes of determining gross receipts under section 5727.24 of the Revised Code, the gross receipts directly attributed to the activity of a natural gas company shall be determined in a manner consistent with division (D) of section 5727.03 of the Revised Code.	87 88 89 90 91 92 93 94
As used in division (E)(2) of this section, "combined company" and "public utility" have the same meanings as in section 5727.01 of the Revised Code.	95 96 97
(3) A financial institution, as defined in section 5726.01 of the Revised Code, that paid the tax imposed by section 5726.02 of the Revised Code based on one or more taxable years that include the entire tax period under this chapter;	98 99 100 101
(4) A person directly or indirectly owned by one or more financial institutions, as defined in section 5726.01 of the Revised Code, that paid the tax imposed by section 5726.02 of the Revised Code based on one or more taxable years that include the entire tax period under this chapter.	102 103 104 105 106
For the purposes of division (E)(4) of this section, a person	107

owns another person under the following circumstances: 108

(a) In the case of corporations issuing capital stock, one 109
corporation owns another corporation if it owns fifty per cent or 110
more of the other corporation's capital stock with current voting 111
rights; 112

(b) In the case of a limited liability company, one person 113
owns the company if that person's membership interest, as defined 114
in section 1705.01 of the Revised Code, is fifty per cent or more 115
of the combined membership interests of all persons owning such 116
interests in the company; 117

(c) In the case of a partnership, trust, or other 118
unincorporated business organization other than a limited 119
liability company, one person owns the organization if, under the 120
articles of organization or other instrument governing the affairs 121
of the organization, that person has a beneficial interest in the 122
organization's profits, surpluses, losses, or distributions of 123
fifty per cent or more of the combined beneficial interests of all 124
persons having such an interest in the organization. 125

(5) A domestic insurance company or foreign insurance 126
company, as defined in section 5725.01 of the Revised Code, that 127
paid the insurance company premiums tax imposed by section 5725.18 128
or Chapter 5729. of the Revised Code, or an unauthorized insurance 129
company whose gross premiums are subject to tax under section 130
3905.36 of the Revised Code based on one or more measurement 131
periods that include the entire tax period under this chapter; 132

(6) A person that solely facilitates or services one or more 133
securitizations of phase-in-recovery property pursuant to a final 134
financing order as those terms are defined in section 4928.23 of 135
the Revised Code. For purposes of this division, "securitization" 136
means transferring one or more assets to one or more persons and 137
then issuing securities backed by the right to receive payment 138

from the asset or assets so transferred. 139

(7) Except as otherwise provided in this division, a 140
pre-income tax trust as defined in division (FF)(4) of section 141
5747.01 of the Revised Code and any pass-through entity of which 142
such pre-income tax trust owns or controls, directly, indirectly, 143
or constructively through related interests, more than five per 144
cent of the ownership or equity interests. If the pre-income tax 145
trust has made a qualifying pre-income tax trust election under 146
division (FF)(3) of section 5747.01 of the Revised Code, then the 147
trust and the pass-through entities of which it owns or controls, 148
directly, indirectly, or constructively through related interests, 149
more than five per cent of the ownership or equity interests, 150
shall not be excluded persons for purposes of the tax imposed 151
under section 5751.02 of the Revised Code. 152

(8) Nonprofit organizations or the state and its agencies, 153
instrumentalities, or political subdivisions. 154

(F) Except as otherwise provided in divisions (F)(2), (3), 155
and (4) of this section, "gross receipts" means the total amount 156
realized by a person, without deduction for the cost of goods sold 157
or other expenses incurred, that contributes to the production of 158
gross income of the person, including the fair market value of any 159
property and any services received, and any debt transferred or 160
forgiven as consideration. 161

(1) The following are examples of gross receipts: 162

(a) Amounts realized from the sale, exchange, or other 163
disposition of the taxpayer's property to or with another; 164

(b) Amounts realized from the taxpayer's performance of 165
services for another; 166

(c) Amounts realized from another's use or possession of the 167
taxpayer's property or capital; 168

(d) Any combination of the foregoing amounts.	169
(2) "Gross receipts" excludes the following amounts:	170
(a) Interest income except interest on credit sales;	171
(b) Dividends and distributions from corporations, and	172
distributive or proportionate shares of receipts and income from a	173
pass-through entity as defined under section 5733.04 of the	174
Revised Code;	175
(c) Receipts from the sale, exchange, or other disposition of	176
an asset described in section 1221 or 1231 of the Internal Revenue	177
Code, without regard to the length of time the person held the	178
asset. Notwithstanding section 1221 of the Internal Revenue Code,	179
receipts from hedging transactions also are excluded to the extent	180
the transactions are entered into primarily to protect a financial	181
position, such as managing the risk of exposure to (i) foreign	182
currency fluctuations that affect assets, liabilities, profits,	183
losses, equity, or investments in foreign operations; (ii)	184
interest rate fluctuations; or (iii) commodity price fluctuations.	185
As used in division (F)(2)(c) of this section, "hedging	186
transaction" has the same meaning as used in section 1221 of the	187
Internal Revenue Code and also includes transactions accorded	188
hedge accounting treatment under statement of financial accounting	189
standards number 133 of the financial accounting standards board.	190
For the purposes of division (F)(2)(c) of this section, the actual	191
transfer of title of real or tangible personal property to another	192
entity is not a hedging transaction.	193
(d) Proceeds received attributable to the repayment,	194
maturity, or redemption of the principal of a loan, bond, mutual	195
fund, certificate of deposit, or marketable instrument;	196
(e) The principal amount received under a repurchase	197
agreement or on account of any transaction properly characterized	198
as a loan to the person;	199

(f) Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to which Title 26, Subtitle A, Chapter 1, Subchapter (D) of the Internal Revenue Code applies;	200 201 202 203
(g) Compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee, former employee, or the employee's legal successor for services rendered to or for an employer, including reimbursements received by or for an individual for medical or education expenses, health insurance premiums, or employee expenses, or on account of a dependent care spending account, legal services plan, any cafeteria plan described in section 125 of the Internal Revenue Code, or any similar employee reimbursement;	204 205 206 207 208 209 210 211 212
(h) Proceeds received from the issuance of the taxpayer's own stock, options, warrants, puts, or calls, or from the sale of the taxpayer's treasury stock;	213 214 215
(i) Proceeds received on the account of payments from insurance policies, except those proceeds received for the loss of business revenue;	216 217 218
(j) Gifts or charitable contributions received; membership dues received by trade, professional, homeowners', or condominium associations; and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; and fundraising receipts received by any person when any excess receipts are donated or used exclusively for charitable purposes;	219 220 221 222 223 224 225
(k) Damages received as the result of litigation in excess of amounts that, if received without litigation, would be gross receipts;	226 227 228
(l) Property, money, and other amounts received or acquired by an agent on behalf of another in excess of the agent's	229 230

commission, fee, or other remuneration;	231
(m) Tax refunds, other tax benefit recoveries, and	232
reimbursements for the tax imposed under this chapter made by	233
entities that are part of the same combined taxpayer or	234
consolidated elected taxpayer group, and reimbursements made by	235
entities that are not members of a combined taxpayer or	236
consolidated elected taxpayer group that are required to be made	237
for economic parity among multiple owners of an entity whose tax	238
obligation under this chapter is required to be reported and paid	239
entirely by one owner, pursuant to the requirements of sections	240
5751.011 and 5751.012 of the Revised Code;	241
(n) Pension reversions;	242
(o) Contributions to capital;	243
(p) Sales or use taxes collected as a vendor or an	244
out-of-state seller on behalf of the taxing jurisdiction from a	245
consumer or other taxes the taxpayer is required by law to collect	246
directly from a purchaser and remit to a local, state, or federal	247
tax authority;	248
(q) In the case of receipts from the sale of cigarettes or	249
tobacco products by a wholesale dealer, retail dealer,	250
distributor, manufacturer, or seller, all as defined in section	251
5743.01 of the Revised Code, an amount equal to the federal and	252
state excise taxes paid by any person on or for such cigarettes or	253
tobacco products under subtitle E of the Internal Revenue Code or	254
Chapter 5743. of the Revised Code;	255
(r) In the case of receipts from the sale of motor fuel by a	256
licensed motor fuel dealer, licensed retail dealer, or licensed	257
permissive motor fuel dealer, all as defined in section 5735.01 of	258
the Revised Code, an amount equal to federal and state excise	259
taxes paid by any person on such motor fuel under section 4081 of	260
the Internal Revenue Code or Chapter 5735. of the Revised Code;	261

(s) In the case of receipts from the sale of beer or 262
intoxicating liquor, as defined in section 4301.01 of the Revised 263
Code, by a person holding a permit issued under Chapter 4301. or 264
4303. of the Revised Code, an amount equal to federal and state 265
excise taxes paid by any person on or for such beer or 266
intoxicating liquor under subtitle E of the Internal Revenue Code 267
or Chapter 4301. or 4305. of the Revised Code; 268

(t) Receipts realized by a new motor vehicle dealer or used 269
motor vehicle dealer, as defined in section 4517.01 of the Revised 270
Code, from the sale or other transfer of a motor vehicle, as 271
defined in that section, to another motor vehicle dealer for the 272
purpose of resale by the transferee motor vehicle dealer, but only 273
if the sale or other transfer was based upon the transferee's need 274
to meet a specific customer's preference for a motor vehicle; 275

(u) Receipts from a financial institution described in 276
division (E)(3) of this section for services provided to the 277
financial institution in connection with the issuance, processing, 278
servicing, and management of loans or credit accounts, if such 279
financial institution and the recipient of such receipts have at 280
least fifty per cent of their ownership interests owned or 281
controlled, directly or constructively through related interests, 282
by common owners; 283

(v) Receipts realized from administering anti-neoplastic 284
drugs and other cancer chemotherapy, biologicals, therapeutic 285
agents, and supportive drugs in a physician's office to patients 286
with cancer; 287

(w) Funds received or used by a mortgage broker that is not a 288
dealer in intangibles, other than fees or other consideration, 289
pursuant to a table-funding mortgage loan or warehouse-lending 290
mortgage loan. Terms used in division (F)(2)(w) of this section 291
have the same meanings as in section 1322.01 of the Revised Code, 292
except "mortgage broker" means a person assisting a buyer in 293

obtaining a mortgage loan for a fee or other consideration paid by 294
the buyer or a lender, or a person engaged in table-funding or 295
warehouse-lending mortgage loans that are first lien mortgage 296
loans. 297

(x) Property, money, and other amounts received by a 298
professional employer organization, as defined in section 4125.01 299
of the Revised Code, from a client employer, as defined in that 300
section, in excess of the administrative fee charged by the 301
professional employer organization to the client employer; 302

(y) In the case of amounts retained as commissions by a 303
permit holder under Chapter 3769. of the Revised Code, an amount 304
equal to the amounts specified under that chapter that must be 305
paid to or collected by the tax commissioner as a tax and the 306
amounts specified under that chapter to be used as purse money; 307

(z) Qualifying distribution center receipts. 308

(i) For purposes of division (F)(2)(z) of this section: 309

(I) "Qualifying distribution center receipts" means receipts 310
of a supplier from qualified property that is delivered to a 311
qualified distribution center, multiplied by a quantity that 312
equals one minus the Ohio delivery percentage. If the qualified 313
distribution center is a refining facility, "supplier" includes 314
all dealers, brokers, processors, sellers, vendors, cosigners, and 315
distributors of qualified property. 316

(II) "Qualified property" means tangible personal property 317
delivered to a qualified distribution center that is shipped to 318
that qualified distribution center solely for further shipping by 319
the qualified distribution center to another location in this 320
state or elsewhere or, in the case of gold, silver, platinum, or 321
palladium delivered to a refining facility solely for refining to 322
a grade and fineness acceptable for delivery to a registered 323
commodities exchange. "Further shipping" includes storing and 324

repackaging property into smaller or larger bundles, so long as 325
the property is not subject to further manufacturing or 326
processing. "Refining" is limited to extracting impurities from 327
gold, silver, platinum, or palladium through smelting or some 328
other process at a refining facility. 329

(III) "Qualified distribution center" means a warehouse, a 330
facility similar to a warehouse, or a refining facility in this 331
state that, for the qualifying year, is operated by a person that 332
is not part of a combined taxpayer group and that has a qualifying 333
certificate. All warehouses or facilities similar to warehouses 334
that are operated by persons in the same taxpayer group and that 335
are located within one mile of each other shall be treated as one 336
qualified distribution center. All refining facilities that are 337
operated by persons in the same taxpayer group and that are 338
located in the same or adjacent counties may be treated as one 339
qualified distribution center. 340

(IV) "Qualifying year" means the calendar year to which the 341
qualifying certificate applies. 342

(V) "Qualifying period" means the period of the first day of 343
July of the second year preceding the qualifying year through the 344
thirtieth day of June of the year preceding the qualifying year. 345

(VI) "Qualifying certificate" means the certificate issued by 346
the tax commissioner after the operator of a distribution center 347
files an annual application with the commissioner. The application 348
and annual fee shall be filed and paid for each qualified 349
distribution center on or before the first day of September before 350
the qualifying year or within forty-five days after the 351
distribution center opens, whichever is later. 352

The applicant must substantiate to the commissioner's 353
satisfaction that, for the qualifying period, all persons 354
operating the distribution center have more than fifty per cent of 355

the cost of the qualified property shipped to a location such that 356
it would be situated outside this state under the provisions of 357
division (E) of section 5751.033 of the Revised Code. The 358
applicant must also substantiate that the distribution center 359
cumulatively had costs from its suppliers equal to or exceeding 360
five hundred million dollars during the qualifying period. (For 361
purposes of division (F)(2)(z)(i)(VI) of this section, "supplier" 362
excludes any person that is part of the consolidated elected 363
taxpayer group, if applicable, of the operator of the qualified 364
distribution center.) The commissioner may require the applicant 365
to have an independent certified public accountant certify that 366
the calculation of the minimum thresholds required for a qualified 367
distribution center by the operator of a distribution center has 368
been made in accordance with generally accepted accounting 369
principles. The commissioner shall issue or deny the issuance of a 370
certificate within sixty days after the receipt of the 371
application. A denial is subject to appeal under section 5717.02 372
of the Revised Code. If the operator files a timely appeal under 373
section 5717.02 of the Revised Code, the operator shall be granted 374
a qualifying certificate, provided that the operator is liable for 375
any tax, interest, or penalty upon amounts claimed as qualifying 376
distribution center receipts, other than those receipts exempt 377
under division (C)(1) of section 5751.011 of the Revised Code, 378
that would have otherwise not been owed by its suppliers if the 379
qualifying certificate was valid. 380

(VII) "Ohio delivery percentage" means the proportion of the 381
total property delivered to a destination inside Ohio from the 382
qualified distribution center during the qualifying period 383
compared with total deliveries from such distribution center 384
everywhere during the qualifying period. 385

(VIII) "Refining facility" means one or more buildings 386
located in a county in the Appalachian region of this state as 387

defined by section 107.21 of the Revised Code and utilized for 388
refining or smelting gold, silver, platinum, or palladium to a 389
grade and fineness acceptable for delivery to a registered 390
commodities exchange. 391

(IX) "Registered commodities exchange" means a board of 392
trade, such as New York mercantile exchange, inc. or commodity 393
exchange, inc., designated as a contract market by the commodity 394
futures trading commission under the "Commodity Exchange Act," 7 395
U.S.C. 1 et seq., as amended. 396

(ii)(I) If the distribution center is new and was not open 397
for the entire qualifying period, the operator of the distribution 398
center may request that the commissioner grant a qualifying 399
certificate. If the certificate is granted and it is later 400
determined that more than fifty per cent of the qualified property 401
during that year was not shipped to a location such that it would 402
be sitused outside of this state under the provisions of division 403
(E) of section 5751.033 of the Revised Code or if it is later 404
determined that the person that operates the distribution center 405
had average monthly costs from its suppliers of less than forty 406
million dollars during that year, then the operator of the 407
distribution center shall ~~be liable for any tax, interest, or~~ 408
~~penalty upon amounts claimed as qualifying distribution center~~ 409
~~receipts, other than those receipts exempt under division (C)(1)~~ 410
~~of section 5751.011 of the Revised Code, that would have not~~ 411
~~otherwise been owed by its suppliers during the qualifying year if~~ 412
~~the qualifying certificate was valid~~ pay a penalty for that year 413
equal to five hundred thousand dollars. (For purposes of division 414
(F)(2)(z)(ii) of this section, "supplier" excludes any person that 415
is part of the consolidated elected taxpayer group, if applicable, 416
of the operator of the qualified distribution center.) 417

(II) The commissioner may grant a qualifying certificate to a 418
distribution center that does not qualify as a qualified 419

distribution center for an entire qualifying period if the 420
operator of the distribution center demonstrates that the business 421
operations of the distribution center have changed or will change 422
such that the distribution center will qualify as a qualified 423
distribution center within thirty-six months after the date the 424
operator first applies for a certificate. If, at the end of that 425
thirty-six-month period, the business operations of the 426
distribution center have not changed such that the distribution 427
center qualifies as a qualified distribution center, the operator 428
of the distribution center shall pay a penalty equal to five 429
hundred thousand dollars for each year that the distribution 430
center received a certificate but did not qualify as a qualified 431
distribution center. For each year the distribution center 432
receives a certificate under division (F)(2)(z)(ii)(II) of this 433
section, the distribution center shall pay all applicable fees 434
required under division (F)(2)(z) of this section and shall submit 435
an updated business plan showing the progress the distribution 436
center made toward qualifying as a qualified distribution center 437
during the preceding year. 438

(III) An operator may appeal the imposition of a penalty 439
imposed under division (F)(2)(z)(ii)(I) or (II) of this section as 440
provided in section 5717.02 of the Revised Code. 441

(iii) When filing an application for a qualifying certificate 442
under division (F)(2)(z)(i)(VI) of this section, the operator of a 443
qualified distribution center also shall provide documentation, as 444
the commissioner requires, for the commissioner to ascertain the 445
Ohio delivery percentage. The commissioner, upon issuing the 446
qualifying certificate, also shall certify the Ohio delivery 447
percentage. The operator of the qualified distribution center may 448
appeal the commissioner's certification of the Ohio delivery 449
percentage in the same manner as an appeal is taken from the 450
denial of a qualifying certificate under division (F)(2)(z)(i)(VI) 451

of this section. 452

Within thirty days after all appeals have been exhausted, the 453
operator of the qualified distribution center shall ~~notify~~ provide 454
the commissioner with a list of all affected suppliers of 455
qualified property. The commissioner shall notify all such 456
suppliers that ~~such~~ the suppliers are required to file, within 457
sixty days after receiving the notice ~~from the operator of the~~ 458
~~qualified distribution center~~, amended reports for the ~~impacted~~ 459
affected calendar quarter or quarters or calendar year, whichever 460
the case may be. Any additional tax liability or tax overpayment 461
shall be subject to interest but shall not be subject to the 462
imposition of any penalty so long as the amended returns are 463
timely filed. The supplier of tangible personal property delivered 464
to the qualified distribution center shall include in its report 465
of taxable gross receipts the receipts from the total sales of 466
property delivered to the qualified distribution center for the 467
calendar quarter or calendar year, whichever the case may be, 468
multiplied by the Ohio delivery percentage for the qualifying 469
year. Nothing in division (F)(2)(z)(iii) of this section shall be 470
construed as imposing liability on the operator of a qualified 471
distribution center for the tax imposed by this chapter arising 472
from any change to the Ohio delivery percentage. 473

(iv)(I) In the case where the distribution center is new and 474
not open for the entire qualifying period, the operator shall make 475
a good faith estimate of an Ohio delivery percentage for use by 476
suppliers in their reports of taxable gross receipts for the 477
remainder of the qualifying period. The operator of the facility 478
shall disclose to the suppliers that such Ohio delivery percentage 479
is an estimate and is subject to recalculation. By the due date of 480
the next application for a qualifying certificate, the operator 481
shall determine the actual Ohio delivery percentage for the 482
estimated qualifying period and proceed as provided in division 483

(F)(2)(z)(iii) of this section with respect to the calculation and 484
recalculation of the Ohio delivery percentage. The supplier is 485
required to file, within sixty days after receiving notice from 486
the operator of the qualified distribution center, amended reports 487
for the impacted calendar quarter or quarters or calendar year, 488
whichever the case may be. Any additional tax liability or tax 489
overpayment shall be subject to interest but shall not be subject 490
to the imposition of any penalty so long as the amended returns 491
are timely filed. 492

(II) The operator of a distribution center that receives a 493
qualifying certificate under division (F)(2)(ii)(II) of this 494
section shall make a good faith estimate of the Ohio delivery 495
percentage that the operator estimates will apply to the 496
distribution center at the end of the thirty-six-month period 497
after the operator first applied for a qualifying certificate 498
under that division. The result of the estimate shall be 499
multiplied by a factor of one and seventy-five one-hundredths. The 500
product of that calculation shall be the Ohio delivery percentage 501
used by suppliers in their reports of taxable gross receipts for 502
each qualifying year that the distribution center receives a 503
qualifying certificate under division (F)(2)(ii)(II) of this 504
section, except that, if the product is less than five per cent, 505
the Ohio delivery percentage used shall be five per cent and that, 506
if the product exceeds forty-nine per cent, the Ohio delivery 507
percentage used shall be forty-nine per cent. 508

(v) Qualifying certificates and Ohio delivery percentages 509
issued by the commissioner shall be open to public inspection and 510
shall be timely published by the commissioner. A supplier relying 511
in good faith on a certificate issued under this division shall 512
not be subject to tax on the qualifying distribution center 513
receipts under division (F)(2)(z) of this section. A person 514
receiving a qualifying certificate is ~~responsible~~ liable for 515

~~paying the tax, interest, and penalty upon amounts claimed as~~ 516
~~qualifying distribution center receipts that would not otherwise~~ 517
~~have been owed by the supplier if the qualifying certificate were~~ 518
~~available when it is later determined that the qualifying~~ 519
~~certificate~~ a penalty equal to five hundred thousand dollars for 520
each year the person received a certificate that should not have 521
been issued because the statutory requirements were in fact not 522
met. 523

(vi) The annual fee for a qualifying certificate shall be one 524
hundred thousand dollars for each qualified distribution center. 525
If a qualifying certificate is not issued, the annual fee is 526
subject to refund after the exhaustion of all appeals provided for 527
in division (F)(2)(z)(i)(VI) of this section. The fee imposed 528
under this division may be assessed in the same manner as the tax 529
imposed under this chapter. The first one hundred thousand dollars 530
of the annual application fees collected each calendar year shall 531
be credited to the revenue enhancement fund. The remainder of the 532
annual application fees collected shall be distributed in the same 533
manner required under section 5751.20 of the Revised Code. 534

(vii) The tax commissioner may require that adequate security 535
be posted by the operator of the distribution center on appeal 536
when the commissioner disagrees that the applicant has met the 537
minimum thresholds for a qualified distribution center as set 538
forth in divisions (F)(2)(z)(i)(VI) and (F)(2)(z)(ii) of this 539
section. 540

(aa) Receipts of an employer from payroll deductions relating 541
to the reimbursement of the employer for advancing moneys to an 542
unrelated third party on an employee's behalf; 543

(bb) Cash discounts allowed and taken; 544

(cc) Returns and allowances; 545

(dd) Bad debts from receipts on the basis of which the tax 546

imposed by this chapter was paid in a prior quarterly tax payment 547
period. For the purpose of this division, "bad debts" means any 548
debts that have become worthless or uncollectible between the 549
preceding and current quarterly tax payment periods, have been 550
uncollected for at least six months, and that may be claimed as a 551
deduction under section 166 of the Internal Revenue Code and the 552
regulations adopted under that section, or that could be claimed 553
as such if the taxpayer kept its accounts on the accrual basis. 554
"Bad debts" does not include repossessed property, uncollectible 555
amounts on property that remains in the possession of the taxpayer 556
until the full purchase price is paid, or expenses in attempting 557
to collect any account receivable or for any portion of the debt 558
recovered; 559

(ee) Any amount realized from the sale of an account 560
receivable to the extent the receipts from the underlying 561
transaction giving rise to the account receivable were included in 562
the gross receipts of the taxpayer; 563

(ff) Any receipts directly attributed to providing public 564
services pursuant to sections 126.60 to 126.605 of the Revised 565
Code, or any receipts directly attributed to a transfer agreement 566
or to the enterprise transferred under that agreement under 567
section 4313.02 of the Revised Code. 568

(gg)(i) As used in this division: 569

(I) "Qualified uranium receipts" means receipts from the 570
sale, exchange, lease, loan, production, processing, or other 571
disposition of uranium within a uranium enrichment zone certified 572
by the tax commissioner under division (F)(2)(gg)(ii) of this 573
section. "Qualified uranium receipts" does not include any 574
receipts with a situs in this state outside a uranium enrichment 575
zone certified by the tax commissioner under division 576
(F)(2)(gg)(ii) of this section. 577

(II) "Uranium enrichment zone" means all real property that 578
is part of a uranium enrichment facility licensed by the United 579
States nuclear regulatory commission and that was or is owned or 580
controlled by the United States department of energy or its 581
successor. 582

(ii) Any person that owns, leases, or operates real or 583
tangible personal property constituting or located within a 584
uranium enrichment zone may apply to the tax commissioner to have 585
the uranium enrichment zone certified for the purpose of excluding 586
qualified uranium receipts under division (F)(2)(gg) of this 587
section. The application shall include such information that the 588
tax commissioner prescribes. Within sixty days after receiving the 589
application, the tax commissioner shall certify the zone for that 590
purpose if the commissioner determines that the property qualifies 591
as a uranium enrichment zone as defined in division (F)(2)(gg) of 592
this section, or, if the tax commissioner determines that the 593
property does not qualify, the commissioner shall deny the 594
application or request additional information from the applicant. 595
If the tax commissioner denies an application, the commissioner 596
shall state the reasons for the denial. The applicant may appeal 597
the denial of an application to the board of tax appeals pursuant 598
to section 5717.02 of the Revised Code. If the applicant files a 599
timely appeal, the tax commissioner shall conditionally certify 600
the applicant's property. The conditional certification shall 601
expire when all of the applicant's appeals are exhausted. Until 602
final resolution of the appeal, the applicant shall retain the 603
applicant's records in accordance with section 5751.12 of the 604
Revised Code, notwithstanding any time limit on the preservation 605
of records under that section. 606

(hh) Amounts realized by licensed motor fuel dealers or 607
licensed permissive motor fuel dealers from the exchange of 608
petroleum products, including motor fuel, between such dealers, 609

provided that delivery of the petroleum products occurs at a 610
refinery, terminal, pipeline, or marine vessel and that the 611
exchanging dealers agree neither dealer shall require monetary 612
compensation from the other for the value of the exchanged 613
petroleum products other than such compensation for differences in 614
product location or grade. Division (F)(2)(hh) of this section 615
does not apply to amounts realized as a result of differences in 616
location or grade of exchanged petroleum products or from 617
handling, lubricity, dye, or other additive injections fees, 618
pipeline security fees, or similar fees. As used in this division, 619
"motor fuel," "licensed motor fuel dealer," "licensed permissive 620
motor fuel dealer," and "terminal" have the same meanings as in 621
section 5735.01 of the Revised Code. 622

(ii) In the case of amounts collected by a licensed casino 623
operator from casino gaming, amounts in excess of the casino 624
operator's gross casino revenue. In this division, "casino 625
operator" and "casino gaming" have the meanings defined in section 626
3772.01 of the Revised Code, and "gross casino revenue" has the 627
meaning defined in section 5753.01 of the Revised Code. 628

(jj) Any receipts for which the tax imposed by this chapter 629
is prohibited by the constitution or laws of the United States or 630
the constitution of this state. 631

(3) In the case of a taxpayer when acting as a real estate 632
broker, "gross receipts" includes only the portion of any fee for 633
the service of a real estate broker, or service of a real estate 634
salesperson associated with that broker, that is retained by the 635
broker and not paid to an associated real estate salesperson or 636
another real estate broker. For the purposes of this division, 637
"real estate broker" and "real estate salesperson" have the same 638
meanings as in section 4735.01 of the Revised Code. 639

(4) A taxpayer's method of accounting for gross receipts for 640
a tax period shall be the same as the taxpayer's method of 641

accounting for federal income tax purposes for the taxpayer's 642
federal taxable year that includes the tax period. If a taxpayer's 643
method of accounting for federal income tax purposes changes, its 644
method of accounting for gross receipts under this chapter shall 645
be changed accordingly. 646

(G) "Taxable gross receipts" means gross receipts sitused to 647
this state under section 5751.033 of the Revised Code. 648

(H) A person has "substantial nexus with this state" if any 649
of the following applies. The person: 650

(1) Owns or uses a part or all of its capital in this state; 651

(2) Holds a certificate of compliance with the laws of this 652
state authorizing the person to do business in this state; 653

(3) Has bright-line presence in this state; 654

(4) Otherwise has nexus with this state to an extent that the 655
person can be required to remit the tax imposed under this chapter 656
under the Constitution of the United States. 657

(I) A person has "bright-line presence" in this state for a 658
reporting period and for the remaining portion of the calendar 659
year if any of the following applies. The person: 660

(1) Has at any time during the calendar year property in this 661
state with an aggregate value of at least fifty thousand dollars. 662
For the purpose of division (I)(1) of this section, owned property 663
is valued at original cost and rented property is valued at eight 664
times the net annual rental charge. 665

(2) Has during the calendar year payroll in this state of at 666
least fifty thousand dollars. Payroll in this state includes all 667
of the following: 668

(a) Any amount subject to withholding by the person under 669
section 5747.06 of the Revised Code; 670

(b) Any other amount the person pays as compensation to an 671

individual under the supervision or control of the person for work 672
done in this state; and 673

(c) Any amount the person pays for services performed in this 674
state on its behalf by another. 675

(3) Has during the calendar year taxable gross receipts of at 676
least five hundred thousand dollars. 677

(4) Has at any time during the calendar year within this 678
state at least twenty-five per cent of the person's total 679
property, total payroll, or total gross receipts. 680

(5) Is domiciled in this state as an individual or for 681
corporate, commercial, or other business purposes. 682

(J) "Tangible personal property" has the same meaning as in 683
section 5739.01 of the Revised Code. 684

(K) "Internal Revenue Code" means the Internal Revenue Code 685
of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term used in 686
this chapter that is not otherwise defined has the same meaning as 687
when used in a comparable context in the laws of the United States 688
relating to federal income taxes unless a different meaning is 689
clearly required. Any reference in this chapter to the Internal 690
Revenue Code includes other laws of the United States relating to 691
federal income taxes. 692

(L) "Calendar quarter" means a three-month period ending on 693
the thirty-first day of March, the thirtieth day of June, the 694
thirtieth day of September, or the thirty-first day of December. 695

(M) "Tax period" means the calendar quarter or calendar year 696
on the basis of which a taxpayer is required to pay the tax 697
imposed under this chapter. 698

(N) "Calendar year taxpayer" means a taxpayer for which the 699
tax period is a calendar year. 700

(O) "Calendar quarter taxpayer" means a taxpayer for which 701

the tax period is a calendar quarter. 702

(P) "Agent" means a person authorized by another person to 703
act on its behalf to undertake a transaction for the other, 704
including any of the following: 705

(1) A person receiving a fee to sell financial instruments; 706

(2) A person retaining only a commission from a transaction 707
with the other proceeds from the transaction being remitted to 708
another person; 709

(3) A person issuing licenses and permits under section 710
1533.13 of the Revised Code; 711

(4) A lottery sales agent holding a valid license issued 712
under section 3770.05 of the Revised Code; 713

(5) A person acting as an agent of the division of liquor 714
control under section 4301.17 of the Revised Code. 715

(Q) "Received" includes amounts accrued under the accrual 716
method of accounting. 717

(R) "Reporting person" means a person in a consolidated 718
elected taxpayer or combined taxpayer group that is designated by 719
that group to legally bind the group for all filings and tax 720
liabilities and to receive all legal notices with respect to 721
matters under this chapter, or, for the purposes of section 722
5751.04 of the Revised Code, a separate taxpayer that is not a 723
member of such a group. 724

Section 2. That existing sections 5701.11 and 5751.01 of the 725
Revised Code are hereby repealed. 726

Section 3. This act is hereby declared to be an emergency 727
measure necessary for the immediate preservation of the public 728
peace, health, and safety. The reason for such necessity is to 729
enable taxpayers to avoid making miscellaneous adjustments on 730

their 2012 tax returns that increase tax liabilities. Therefore, 731
this act shall go into immediate effect. 732

Section 4. Section 5751.01 of the Revised Code is presented 733
in this act as a composite of the section as amended by both Am. 734
Sub. H.B. 472 and Am. Sub. H.B. 510 of the 129th General Assembly. 735
The General Assembly, applying the principle stated in division 736
(B) of section 1.52 of the Revised Code that amendments are to be 737
harmonized if reasonably capable of simultaneous operation, finds 738
that the composite is the resulting version of the section in 739
effect prior to the effective date of the section as presented in 740
this act. 741