

**As Introduced**

**135th General Assembly  
Regular Session  
2023-2024**

**H. B. No. 116**

**Representatives Peterson, Claggett**

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**A BILL**

To amend section 5747.01 of the Revised Code to  
allow taxpayers to deduct in a single year the  
full bonus depreciation and enhanced expensing  
allowances the taxpayer deducts for federal  
income tax purposes.

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

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

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

As used in this chapter:

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

in the Internal Revenue Code, adjusted as provided in this 20  
section: 21

(1) Add interest or dividends on obligations or securities 22  
of any state or of any political subdivision or authority of any 23  
state, other than this state and its subdivisions and 24  
authorities. 25

(2) Add interest or dividends on obligations of any 26  
authority, commission, instrumentality, territory, or possession 27  
of the United States to the extent that the interest or 28  
dividends are exempt from federal income taxes but not from 29  
state income taxes. 30

(3) Deduct interest or dividends on obligations of the 31  
United States and its territories and possessions or of any 32  
authority, commission, or instrumentality of the United States 33  
to the extent that the interest or dividends are included in 34  
federal adjusted gross income but exempt from state income taxes 35  
under the laws of the United States. 36

(4) Deduct disability and survivor's benefits to the 37  
extent included in federal adjusted gross income. 38

(5) Deduct the following, to the extent not otherwise 39  
deducted or excluded in computing federal or Ohio adjusted gross 40  
income: 41

(a) Benefits under Title II of the Social Security Act and 42  
tier 1 railroad retirement; 43

(b) Railroad retirement benefits, other than tier 1 44  
railroad retirement benefits, to the extent such amounts are 45  
exempt from state taxation under federal law. 46

(6) Deduct the amount of wages and salaries, if any, not 47

otherwise allowable as a deduction but that would have been 48  
allowable as a deduction in computing federal adjusted gross 49  
income for the taxable year, had the work opportunity tax credit 50  
allowed and determined under sections 38, 51, and 52 of the 51  
Internal Revenue Code not been in effect. 52

(7) Deduct any interest or interest equivalent on public 53  
obligations and purchase obligations to the extent that the 54  
interest or interest equivalent is included in federal adjusted 55  
gross income. 56

(8) Add any loss or deduct any gain resulting from the 57  
sale, exchange, or other disposition of public obligations to 58  
the extent that the loss has been deducted or the gain has been 59  
included in computing federal adjusted gross income. 60

(9) Deduct or add amounts, as provided under section 61  
5747.70 of the Revised Code, related to contributions made to or 62  
tuition units purchased under a qualified tuition program 63  
established pursuant to section 529 of the Internal Revenue 64  
Code. 65

(10) (a) Deduct, to the extent not otherwise allowable as a 66  
deduction or exclusion in computing federal or Ohio adjusted 67  
gross income for the taxable year, the amount the taxpayer paid 68  
during the taxable year for medical care insurance and qualified 69  
long-term care insurance for the taxpayer, the taxpayer's 70  
spouse, and dependents. No deduction for medical care insurance 71  
under division (A) (10) (a) of this section shall be allowed 72  
either to any taxpayer who is eligible to participate in any 73  
subsidized health plan maintained by any employer of the 74  
taxpayer or of the taxpayer's spouse, or to any taxpayer who is 75  
entitled to, or on application would be entitled to, benefits 76  
under part A of Title XVIII of the "Social Security Act," 49 77

Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of 78  
division (A) (10) (a) of this section, "subsidized health plan" 79  
means a health plan for which the employer pays any portion of 80  
the plan's cost. The deduction allowed under division (A) (10) (a) 81  
of this section shall be the net of any related premium refunds, 82  
related premium reimbursements, or related insurance premium 83  
dividends received during the taxable year. 84

(b) Deduct, to the extent not otherwise deducted or 85  
excluded in computing federal or Ohio adjusted gross income 86  
during the taxable year, the amount the taxpayer paid during the 87  
taxable year, not compensated for by any insurance or otherwise, 88  
for medical care of the taxpayer, the taxpayer's spouse, and 89  
dependents, to the extent the expenses exceed seven and one-half 90  
per cent of the taxpayer's federal adjusted gross income. 91

(c) For purposes of division (A) (10) of this section, 92  
"medical care" has the meaning given in section 213 of the 93  
Internal Revenue Code, subject to the special rules, 94  
limitations, and exclusions set forth therein, and "qualified 95  
long-term care" has the same meaning given in section 7702B(c) 96  
of the Internal Revenue Code. Solely for purposes of division 97  
(A) (10) (a) of this section, "dependent" includes a person who 98  
otherwise would be a "qualifying relative" and thus a 99  
"dependent" under section 152 of the Internal Revenue Code but 100  
for the fact that the person fails to meet the income and 101  
support limitations under section 152(d) (1) (B) and (C) of the 102  
Internal Revenue Code. 103

(11) (a) Deduct any amount included in federal adjusted 104  
gross income solely because the amount represents a 105  
reimbursement or refund of expenses that in any year the 106  
taxpayer had deducted as an itemized deduction pursuant to 107

section 63 of the Internal Revenue Code and applicable United States department of the treasury regulations. The deduction otherwise allowed under division (A) (11) (a) of this section shall be reduced to the extent the reimbursement is attributable to an amount the taxpayer deducted under this section in any taxable year.

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

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

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

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

(13) Deduct an amount equal to the deposits made to, and net investment earnings of, a medical savings account during the taxable year, in accordance with section 3924.66 of the Revised Code. The deduction allowed by division (A) (13) 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.

(14) (a) Add an amount equal to the funds withdrawn from a

medical savings account during the taxable year, and the net 137  
investment earnings on those funds, when the funds withdrawn 138  
were used for any purpose other than to reimburse an account 139  
holder for, or to pay, eligible medical expenses, in accordance 140  
with section 3924.66 of the Revised Code; 141

(b) Add the amounts distributed from a medical savings 142  
account under division (A) (2) of section 3924.68 of the Revised 143  
Code during the taxable year. 144

(15) Add any amount claimed as a credit under section 145  
5747.059 of the Revised Code to the extent that such amount 146  
satisfies either of the following: 147

(a) The amount was deducted or excluded from the 148  
computation of the taxpayer's federal adjusted gross income as 149  
required to be reported for the taxpayer's taxable year under 150  
the Internal Revenue Code; 151

(b) The amount resulted in a reduction of the taxpayer's 152  
federal adjusted gross income as required to be reported for any 153  
of the taxpayer's taxable years under the Internal Revenue Code. 154

(16) Deduct the amount contributed by the taxpayer to an 155  
individual development account program established by a county 156  
department of job and family services pursuant to sections 157  
329.11 to 329.14 of the Revised Code for the purpose of matching 158  
funds deposited by program participants. On request of the tax 159  
commissioner, the taxpayer shall provide any information that, 160  
in the tax commissioner's opinion, is necessary to establish the 161  
amount deducted under division (A) (16) of this section. 162

~~(17) (a) (i) Subject to divisions (A) (17) (a) (iii), (iv), and 163  
(v) of this section, add five sixths of the amount of 164  
depreciation expense allowed by subsection (k) of section 168 of 165~~

~~the Internal Revenue Code, including the taxpayer's~~ 166  
~~proportionate or distributive share of the amount of~~ 167  
~~depreciation expense allowed by that subsection to a pass~~ 168  
~~through entity in which the taxpayer has a direct or indirect~~ 169  
~~ownership interest.~~ 170

~~(ii) Subject to divisions (A) (17) (a) (iii), (iv), and (v)~~ 171  
~~of this section, add five sixths of the amount of qualifying~~ 172  
~~section 179 depreciation expense, including the taxpayer's~~ 173  
~~proportionate or distributive share of the amount of qualifying~~ 174  
~~section 179 depreciation expense allowed to any pass through~~ 175  
~~entity in which the taxpayer has a direct or indirect ownership~~ 176  
~~interest.~~ 177

~~(iii) Subject to division (A) (17) (a) (v) of this section,~~ 178  
~~for taxable years beginning in 2012 or thereafter, if the~~ 179  
~~increase in income taxes withheld by the taxpayer is equal to or~~ 180  
~~greater than ten per cent of income taxes withheld by the~~ 181  
~~taxpayer during the taxpayer's immediately preceding taxable~~ 182  
~~year, "two-thirds" shall be substituted for "five-sixths" for~~ 183  
~~the purpose of divisions (A) (17) (a) (i) and (ii) of this section.~~ 184

~~(iv) Subject to division (A) (17) (a) (v) of this section,~~ 185  
~~for taxable years beginning in 2012 or thereafter, a taxpayer is~~ 186  
~~not required to add an amount under division (A) (17) of this~~ 187  
~~section if the increase in income taxes withheld by the taxpayer~~ 188  
~~and by any pass through entity in which the taxpayer has a~~ 189  
~~direct or indirect ownership interest is equal to or greater~~ 190  
~~than the sum of (I) the amount of qualifying section 179~~ 191  
~~depreciation expense and (II) the amount of depreciation expense~~ 192  
~~allowed to the taxpayer by subsection (k) of section 168 of the~~ 193  
~~Internal Revenue Code, and including the taxpayer's~~ 194  
~~proportionate or distributive shares of such amounts allowed to~~ 195

~~any such pass through entities.~~ 196

~~(v) If a taxpayer directly or indirectly incurs a net operating loss for the taxable year for federal income tax purposes, to the extent such loss resulted from depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code and by qualifying section 179 depreciation expense, "the entire" shall be substituted for "five sixths of the" for the purpose of divisions (A) (17) (a) (i) and (ii) of this section.~~ 197  
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~~The tax commissioner, under procedures established by the commissioner, may waive the add-backs related to a pass-through entity if the taxpayer owns, directly or indirectly, less than five per cent of the pass-through entity.~~ 204  
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~~(b) Nothing in division (A) (17) of this section shall be construed to adjust or modify the adjusted basis of any asset.~~ 208  
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~~(c) To the extent the add-back required under division (A) (17) (a) of this section is attributable to property generating nonbusiness income or loss allocated under section 5747.20 of the Revised Code, the add-back shall be situated to the same location as the nonbusiness income or loss generated by the property for the purpose of determining the credit under division (A) of section 5747.05 of the Revised Code. Otherwise, the add-back shall be apportioned, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.~~ 210  
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~~(d) For the purposes of division (A) (17) (a) (v) of this section, net operating loss carryback and carryforward shall not include the allowance of any net operating loss deduction carryback or carryforward to the taxable year to the extent such loss resulted from depreciation allowed by section 168(k) of the~~ 220  
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<del>Internal Revenue Code and by the qualifying section 179</del>	225
<del>depreciation expense amount.</del>	226
<del>(e) For the purposes of divisions (A) (17) and (18) of this</del>	227
<del>section:</del>	228
<del>(i) "Income taxes withheld" means the total amount</del>	229
<del>withheld and remitted under sections 5747.06 and 5747.07 of the</del>	230
<del>Revised Code by an employer during the employer's taxable year.</del>	231
<del>(ii) "Increase in income taxes withheld" means the amount</del>	232
<del>by which the amount of income taxes withheld by an employer</del>	233
<del>during the employer's current taxable year exceeds the amount of</del>	234
<del>income taxes withheld by that employer during the employer's</del>	235
<del>immediately preceding taxable year.</del>	236
<del>(iii) "Qualifying section 179 depreciation expense" means</del>	237
<del>the difference between (I) the amount of depreciation expense</del>	238
<del>directly or indirectly allowed to a taxpayer under section 179</del>	239
<del>of the Internal Revised Code, and (II) the amount of</del>	240
<del>depreciation expense directly or indirectly allowed to the</del>	241
<del>taxpayer under section 179 of the Internal Revenue Code as that</del>	242
<del>section existed on December 31, 2002. <u>(17) Deduct, to the extent</u></del>	243
<del><u>included in federal adjusted gross income, income attributable</u></del>	244
<del><u>to loan repayments on behalf of the taxpayer under the rural</u></del>	245
<del><u>practice incentive program under section 3333.135 of the Revised</u></del>	246
<del><u>Code.</u></del>	247
<del>(18) (a) If, <u>in computing the taxpayer's Ohio adjusted</u></del>	248
<del><u>gross income for a taxable year beginning before January 1,</u></del>	249
<del><u>2023, the taxpayer was required to add <u>an amount back a</u></u></del>	250
<del><u>depreciation expense allowed</u> under <del>division (A) (17) (a) of this</del></del>	251
<del><u>section for a taxable year</u> <del>subsection (k) of section 168 or</del></del>	252
<del><u>section 179 of the Internal Revenue Code, deduct one of the</u></del>	253

following:	254
(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;	255 256 257 258 259
(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;	260 261 262
(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.	263 264 265
(b) If the amount deducted under division (A) (18) (a) of this section is attributable to an add-back <del>allocated under division (A) (17) (c) of this section</del> <u>that is attributable to property generating nonbusiness income or loss allocated under section 5747.20 of the Revised Code</u> , the amount deducted shall be sitused to the same location <u>as the add-back</u> . 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.	266 267 268 269 270 271 272 273 274 275
(c) No deduction is available under division (A) (18) (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 carryback or carryforward. If no such deduction is available for a taxable year, the taxpayer may carry forward the	276 277 278 279 280 281 282

amount not deducted in such taxable year to the next taxable 283  
year and add that amount to any deduction otherwise available 284  
under division (A) (18) (a) of this section for that next taxable 285  
year. The carryforward of amounts not so deducted shall continue 286  
until the entire ~~addition required by division (A) (17) (a) of~~ 287  
~~this section~~ amount added back for taxable years beginning 288  
before January 1, 2023, has been deducted. 289

(d) Notwithstanding division (A) (18) (a) or (c) of this 290  
section, for taxable years beginning in 2023 or thereafter, a 291  
taxpayer that was required to add back a depreciation expense in 292  
computing the taxpayer's Ohio adjusted gross income for a 293  
taxable year beginning before January 1, 2023, may elect to 294  
deduct the entire amount so added, less any amount already 295  
deducted under this section in any preceding taxable year with 296  
respect to that depreciation expense. The taxpayer shall make 297  
the election on the annual return filed for the first taxable 298  
year beginning after January 1, 2023, for which the taxpayer 299  
files a return, and the election shall be irrevocable after the 300  
due date plus extensions, if any, for filing that return. 301

(e) As used in division (A) (18) of this section, 302  
"qualifying section 179 depreciation expense" means the 303  
difference between (I) the amount of depreciation expense 304  
directly or indirectly allowed to a taxpayer under section 179 305  
of the Internal Revised Code, and (II) the amount of 306  
depreciation expense directly or indirectly allowed to the 307  
taxpayer under section 179 of the Internal Revenue Code as that 308  
section existed on December 31, 2002. 309

(19) Deduct, to the extent not otherwise deducted or 310  
excluded in computing federal or Ohio adjusted gross income for 311  
the taxable year, the amount the taxpayer received during the 312

taxable year as reimbursement for life insurance premiums under 313  
section 5919.31 of the Revised Code. 314

(20) Deduct, to the extent not otherwise deducted or 315  
excluded in computing federal or Ohio adjusted gross income for 316  
the taxable year, the amount the taxpayer received during the 317  
taxable year as a death benefit paid by the adjutant general 318  
under section 5919.33 of the Revised Code. 319

(21) Deduct, to the extent included in federal adjusted 320  
gross income and not otherwise allowable as a deduction or 321  
exclusion in computing federal or Ohio adjusted gross income for 322  
the taxable year, military pay and allowances received by the 323  
taxpayer during the taxable year for active duty service in the 324  
United States army, air force, navy, marine corps, or coast 325  
guard or reserve components thereof or the national guard. The 326  
deduction may not be claimed for military pay and allowances 327  
received by the taxpayer while the taxpayer is stationed in this 328  
state. 329

(22) Deduct, to the extent not otherwise allowable as a 330  
deduction or exclusion in computing federal or Ohio adjusted 331  
gross income for the taxable year and not otherwise compensated 332  
for by any other source, the amount of qualified organ donation 333  
expenses incurred by the taxpayer during the taxable year, not 334  
to exceed ten thousand dollars. A taxpayer may deduct qualified 335  
organ donation expenses only once for all taxable years 336  
beginning with taxable years beginning in 2007. 337

For the purposes of division (A) (22) of this section: 338

(a) "Human organ" means all or any portion of a human 339  
liver, pancreas, kidney, intestine, or lung, and any portion of 340  
human bone marrow. 341

(b) "Qualified organ donation expenses" means travel 342  
expenses, lodging expenses, and wages and salary forgone by a 343  
taxpayer in connection with the taxpayer's donation, while 344  
living, of one or more of the taxpayer's human organs to another 345  
human being. 346

(23) Deduct, to the extent not otherwise deducted or 347  
excluded in computing federal or Ohio adjusted gross income for 348  
the taxable year, amounts received by the taxpayer as retired 349  
personnel pay for service in the uniformed services or reserve 350  
components thereof, or the national guard, or received by the 351  
surviving spouse or former spouse of such a taxpayer under the 352  
survivor benefit plan on account of such a taxpayer's death. If 353  
the taxpayer receives income on account of retirement paid under 354  
the federal civil service retirement system or federal employees 355  
retirement system, or under any successor retirement program 356  
enacted by the congress of the United States that is established 357  
and maintained for retired employees of the United States 358  
government, and such retirement income is based, in whole or in 359  
part, on credit for the taxpayer's uniformed service, the 360  
deduction allowed under this division shall include only that 361  
portion of such retirement income that is attributable to the 362  
taxpayer's uniformed service, to the extent that portion of such 363  
retirement income is otherwise included in federal adjusted 364  
gross income and is not otherwise deducted under this section. 365  
Any amount deducted under division (A) (23) of this section is 366  
not included in a taxpayer's adjusted gross income for the 367  
purposes of section 5747.055 of the Revised Code. No amount may 368  
be deducted under division (A) (23) of this section on the basis 369  
of which a credit was claimed under section 5747.055 of the 370  
Revised Code. 371

(24) Deduct, to the extent not otherwise deducted or 372

excluded in computing federal or Ohio adjusted gross income for 373  
the taxable year, the amount the taxpayer received during the 374  
taxable year from the military injury relief fund created in 375  
section 5902.05 of the Revised Code. 376

(25) Deduct, to the extent not otherwise deducted or 377  
excluded in computing federal or Ohio adjusted gross income for 378  
the taxable year, the amount the taxpayer received as a veterans 379  
bonus during the taxable year from the Ohio department of 380  
veterans services as authorized by Section 2r of Article VIII, 381  
Ohio Constitution. 382

(26) Deduct, to the extent not otherwise deducted or 383  
excluded in computing federal or Ohio adjusted gross income for 384  
the taxable year, any income derived from a transfer agreement 385  
or from the enterprise transferred under that agreement under 386  
section 4313.02 of the Revised Code. 387

(27) Deduct, to the extent not otherwise deducted or 388  
excluded in computing federal or Ohio adjusted gross income for 389  
the taxable year, Ohio college opportunity or federal Pell grant 390  
amounts received by the taxpayer or the taxpayer's spouse or 391  
dependent pursuant to section 3333.122 of the Revised Code or 20 392  
U.S.C. 1070a, et seq., and used to pay room or board furnished 393  
by the educational institution for which the grant was awarded 394  
at the institution's facilities, including meal plans 395  
administered by the institution. For the purposes of this 396  
division, receipt of a grant includes the distribution of a 397  
grant directly to an educational institution and the crediting 398  
of the grant to the enrollee's account with the institution. 399

(28) Deduct from the portion of an individual's federal 400  
adjusted gross income that is business income, to the extent not 401  
otherwise deducted or excluded in computing federal adjusted 402

gross income for the taxable year, one hundred twenty-five 403  
thousand dollars for each spouse if spouses file separate 404  
returns under section 5747.08 of the Revised Code or two hundred 405  
fifty thousand dollars for all other individuals. 406

(29) Deduct, as provided under section 5747.78 of the 407  
Revised Code, contributions to ABLE savings accounts made in 408  
accordance with sections 113.50 to 113.56 of the Revised Code. 409

(30) (a) Deduct, to the extent not otherwise deducted or 410  
excluded in computing federal or Ohio adjusted gross income 411  
during the taxable year, all of the following: 412

(i) Compensation paid to a qualifying employee described 413  
in division (A) (14) (a) of section 5703.94 of the Revised Code to 414  
the extent such compensation is for disaster work conducted in 415  
this state during a disaster response period pursuant to a 416  
qualifying solicitation received by the employee's employer; 417

(ii) Compensation paid to a qualifying employee described 418  
in division (A) (14) (b) of section 5703.94 of the Revised Code to 419  
the extent such compensation is for disaster work conducted in 420  
this state by the employee during the disaster response period 421  
on critical infrastructure owned or used by the employee's 422  
employer; 423

(iii) Income received by an out-of-state disaster business 424  
for disaster work conducted in this state during a disaster 425  
response period, or, if the out-of-state disaster business is a 426  
pass-through entity, a taxpayer's distributive share of the 427  
pass-through entity's income from the business conducting 428  
disaster work in this state during a disaster response period, 429  
if, in either case, the disaster work is conducted pursuant to a 430  
qualifying solicitation received by the business. 431

(b) All terms used in division (A) (30) of this section 432  
have the same meanings as in section 5703.94 of the Revised 433  
Code. 434

(31) For a taxpayer who is a qualifying Ohio educator, 435  
deduct, to the extent not otherwise deducted or excluded in 436  
computing federal or Ohio adjusted gross income for the taxable 437  
year, the lesser of two hundred fifty dollars or the amount of 438  
expenses described in subsections (a) (2) (D) (i) and (ii) of 439  
section 62 of the Internal Revenue Code paid or incurred by the 440  
taxpayer during the taxpayer's taxable year in excess of the 441  
amount the taxpayer is authorized to deduct for that taxable 442  
year under subsection (a) (2) (D) of that section. 443

(32) Deduct, to the extent not otherwise deducted or 444  
excluded in computing federal or Ohio adjusted gross income for 445  
the taxable year, amounts received by the taxpayer as a 446  
disability severance payment, computed under 10 U.S.C. 1212, 447  
following discharge or release under honorable conditions from 448  
the armed forces, as defined by 10 U.S.C. 101. 449

(33) Deduct, to the extent not otherwise deducted or 450  
excluded in computing federal adjusted gross income or Ohio 451  
adjusted gross income, amounts not subject to tax due to an 452  
agreement entered into under division (A) (2) of section 5747.05 453  
of the Revised Code. 454

(34) Deduct amounts as provided under section 5747.79 of 455  
the Revised Code related to the taxpayer's qualifying capital 456  
gains and deductible payroll. 457

To the extent a qualifying capital gain described under 458  
division (A) (34) of this section is business income, the 459  
taxpayer shall deduct those gains under this division before 460



deducting any such gains under division (A) (28) of this section. 461

(35) (a) For taxable years beginning in or after 2026, 462  
deduct, to the extent not otherwise deducted or excluded in 463  
computing federal or Ohio adjusted gross income for the taxable 464  
year: 465

(i) One hundred per cent of the capital gain received by 466  
the taxpayer in the taxable year from a qualifying interest in 467  
an Ohio venture capital operating company attributable to the 468  
company's investments in Ohio businesses during the period for 469  
which the company was an Ohio venture operating company; and 470

(ii) Fifty per cent of the capital gain received by the 471  
taxpayer in the taxable year from a qualifying interest in an 472  
Ohio venture capital operating company attributable to the 473  
company's investments in all other businesses during the period 474  
for which the company was an Ohio venture operating company. 475

(b) Add amounts previously deducted by the taxpayer under 476  
division (A) (35) (a) of this section if the director of 477  
development certifies to the tax commissioner that the 478  
requirements for the deduction were not met. 479

(c) All terms used in division (A) (35) of this section 480  
have the same meanings as in section 122.851 of the Revised 481  
Code. 482

(d) To the extent a capital gain described in division (A) 483  
(35) (a) of this section is business income, the taxpayer shall 484  
apply that division before applying division (A) (28) of this 485  
section. 486

(36) Add, to the extent not otherwise included in 487  
computing federal or Ohio adjusted gross income for any taxable 488  
year, the taxpayer's proportionate share of the amount of the 489

tax levied under section 5747.38 of the Revised Code and paid by 490  
an electing pass-through entity for the taxable year. 491

(37) Deduct, to the extent not otherwise deducted or 492  
excluded in computing federal or Ohio adjusted gross income for 493  
the taxable year, amounts delivered to a qualifying institution 494  
pursuant to section 3333.128 of the Revised Code for the benefit 495  
of the taxpayer or the taxpayer's spouse or dependent. 496

(38) Deduct, to the extent not otherwise deducted or 497  
excluded in computing federal or Ohio adjusted gross income for 498  
the taxable year, amounts received under the Ohio adoption grant 499  
program pursuant to section 5101.191 of the Revised Code. 500

~~(39) Deduct, to the extent included in federal adjusted 501  
gross income, income attributable to loan repayments on behalf 502  
of the taxpayer under the rural practice incentive program under 503  
section 3333.135 of the Revised Code. 504~~

(B) "Business income" means income, including gain or 505  
loss, arising from transactions, activities, and sources in the 506  
regular course of a trade or business and includes income, gain, 507  
or loss from real property, tangible property, and intangible 508  
property if the acquisition, rental, management, and disposition 509  
of the property constitute integral parts of the regular course 510  
of a trade or business operation. "Business income" includes 511  
income, including gain or loss, from a partial or complete 512  
liquidation of a business, including, but not limited to, gain 513  
or loss from the sale or other disposition of goodwill or the 514  
sale of an equity or ownership interest in a business. 515

As used in this division, the "sale of an equity or 516  
ownership interest in a business" means sales to which either or 517  
both of the following apply: 518

(1) The sale is treated for federal income tax purposes as the sale of assets.	519 520
(2) The seller materially participated, as described in 26 C.F.R. 1.469-5T, in the activities of the business during the taxable year in which the sale occurs or during any of the five preceding taxable years.	521 522 523 524
(C) "Nonbusiness income" means all income other than business income and may include, but is not limited to, compensation, rents and royalties from real or tangible personal property, capital gains, interest, dividends and distributions, patent or copyright royalties, or lottery winnings, prizes, and awards.	525 526 527 528 529 530
(D) "Compensation" means any form of remuneration paid to an employee for personal services.	531 532
(E) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any other person acting in any fiduciary capacity for any individual, trust, or estate.	533 534 535
(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.	536 537
(G) "Individual" means any natural person.	538
(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	539 540
(I) "Resident" means any of the following:	541
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	542 543
(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24	544 545

of the Revised Code are not controlling for purposes of division 546  
(I) (2) of this section. 547

(3) A trust that, in whole or part, resides in this state. 548  
If only part of a trust resides in this state, the trust is a 549  
resident only with respect to that part. 550

For the purposes of division (I) (3) of this section: 551

(a) A trust resides in this state for the trust's current 552  
taxable year to the extent, as described in division (I) (3) (d) 553  
of this section, that the trust consists directly or indirectly, 554  
in whole or in part, of assets, net of any related liabilities, 555  
that were transferred, or caused to be transferred, directly or 556  
indirectly, to the trust by any of the following: 557

(i) A person, a court, or a governmental entity or 558  
instrumentality on account of the death of a decedent, but only 559  
if the trust is described in division (I) (3) (e) (i) or (ii) of 560  
this section; 561

(ii) A person who was domiciled in this state for the 562  
purposes of this chapter when the person directly or indirectly 563  
transferred assets to an irrevocable trust, but only if at least 564  
one of the trust's qualifying beneficiaries is domiciled in this 565  
state for the purposes of this chapter during all or some 566  
portion of the trust's current taxable year; 567

(iii) A person who was domiciled in this state for the 568  
purposes of this chapter when the trust document or instrument 569  
or part of the trust document or instrument became irrevocable, 570  
but only if at least one of the trust's qualifying beneficiaries 571  
is a resident domiciled in this state for the purposes of this 572  
chapter during all or some portion of the trust's current 573  
taxable year. If a trust document or instrument became 574

irrevocable upon the death of a person who at the time of death 575  
was domiciled in this state for purposes of this chapter, that 576  
person is a person described in division (I) (3) (a) (iii) of this 577  
section. 578

(b) A trust is irrevocable to the extent that the 579  
transferor is not considered to be the owner of the net assets 580  
of the trust under sections 671 to 678 of the Internal Revenue 581  
Code. 582

(c) With respect to a trust other than a charitable lead 583  
trust, "qualifying beneficiary" has the same meaning as 584  
"potential current beneficiary" as defined in section 1361(e) (2) 585  
of the Internal Revenue Code, and with respect to a charitable 586  
lead trust "qualifying beneficiary" is any current, future, or 587  
contingent beneficiary, but with respect to any trust 588  
"qualifying beneficiary" excludes a person or a governmental 589  
entity or instrumentality to any of which a contribution would 590  
qualify for the charitable deduction under section 170 of the 591  
Internal Revenue Code. 592

(d) For the purposes of division (I) (3) (a) of this 593  
section, the extent to which a trust consists directly or 594  
indirectly, in whole or in part, of assets, net of any related 595  
liabilities, that were transferred directly or indirectly, in 596  
whole or part, to the trust by any of the sources enumerated in 597  
that division shall be ascertained by multiplying the fair 598  
market value of the trust's assets, net of related liabilities, 599  
by the qualifying ratio, which shall be computed as follows: 600

(i) The first time the trust receives assets, the 601  
numerator of the qualifying ratio is the fair market value of 602  
those assets at that time, net of any related liabilities, from 603  
sources enumerated in division (I) (3) (a) of this section. The 604

denominator of the qualifying ratio is the fair market value of 605  
all the trust's assets at that time, net of any related 606  
liabilities. 607

(ii) Each subsequent time the trust receives assets, a 608  
revised qualifying ratio shall be computed. The numerator of the 609  
revised qualifying ratio is the sum of (1) the fair market value 610  
of the trust's assets immediately prior to the subsequent 611  
transfer, net of any related liabilities, multiplied by the 612  
qualifying ratio last computed without regard to the subsequent 613  
transfer, and (2) the fair market value of the subsequently 614  
transferred assets at the time transferred, net of any related 615  
liabilities, from sources enumerated in division (I) (3) (a) of 616  
this section. The denominator of the revised qualifying ratio is 617  
the fair market value of all the trust's assets immediately 618  
after the subsequent transfer, net of any related liabilities. 619

(iii) Whether a transfer to the trust is by or from any of 620  
the sources enumerated in division (I) (3) (a) of this section 621  
shall be ascertained without regard to the domicile of the 622  
trust's beneficiaries. 623

(e) For the purposes of division (I) (3) (a) (i) of this 624  
section: 625

(i) A trust is described in division (I) (3) (e) (i) of this 626  
section if the trust is a testamentary trust and the testator of 627  
that testamentary trust was domiciled in this state at the time 628  
of the testator's death for purposes of the taxes levied under 629  
Chapter 5731. of the Revised Code. 630

(ii) A trust is described in division (I) (3) (e) (ii) of 631  
this section if the transfer is a qualifying transfer described 632  
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 633

trust is an irrevocable inter vivos trust, and at least one of 634  
the trust's qualifying beneficiaries is domiciled in this state 635  
for purposes of this chapter during all or some portion of the 636  
trust's current taxable year. 637

(f) For the purposes of division (I)(3)(e)(ii) of this 638  
section, a "qualifying transfer" is a transfer of assets, net of 639  
any related liabilities, directly or indirectly to a trust, if 640  
the transfer is described in any of the following: 641

(i) The transfer is made to a trust, created by the 642  
decedent before the decedent's death and while the decedent was 643  
domiciled in this state for the purposes of this chapter, and, 644  
prior to the death of the decedent, the trust became irrevocable 645  
while the decedent was domiciled in this state for the purposes 646  
of this chapter. 647

(ii) The transfer is made to a trust to which the 648  
decedent, prior to the decedent's death, had directly or 649  
indirectly transferred assets, net of any related liabilities, 650  
while the decedent was domiciled in this state for the purposes 651  
of this chapter, and prior to the death of the decedent the 652  
trust became irrevocable while the decedent was domiciled in 653  
this state for the purposes of this chapter. 654

(iii) The transfer is made on account of a contractual 655  
relationship existing directly or indirectly between the 656  
transferor and either the decedent or the estate of the decedent 657  
at any time prior to the date of the decedent's death, and the 658  
decedent was domiciled in this state at the time of death for 659  
purposes of the taxes levied under Chapter 5731. of the Revised 660  
Code. 661

(iv) The transfer is made to a trust on account of a 662

contractual relationship existing directly or indirectly between 663  
the transferor and another person who at the time of the 664  
decedent's death was domiciled in this state for purposes of 665  
this chapter. 666

(v) The transfer is made to a trust on account of the will 667  
of a testator who was domiciled in this state at the time of the 668  
testator's death for purposes of the taxes levied under Chapter 669  
5731. of the Revised Code. 670

(vi) The transfer is made to a trust created by or caused 671  
to be created by a court, and the trust was directly or 672  
indirectly created in connection with or as a result of the 673  
death of an individual who, for purposes of the taxes levied 674  
under Chapter 5731. of the Revised Code, was domiciled in this 675  
state at the time of the individual's death. 676

(g) The tax commissioner may adopt rules to ascertain the 677  
part of a trust residing in this state. 678

(J) "Nonresident" means an individual or estate that is 679  
not a resident. An individual who is a resident for only part of 680  
a taxable year is a nonresident for the remainder of that 681  
taxable year. 682

(K) "Pass-through entity" has the same meaning as in 683  
section 5733.04 of the Revised Code. 684

(L) "Return" means the notifications and reports required 685  
to be filed pursuant to this chapter for the purpose of 686  
reporting the tax due and includes declarations of estimated tax 687  
when so required. 688

(M) "Taxable year" means the calendar year or the 689  
taxpayer's fiscal year ending during the calendar year, or 690  
fractional part thereof, upon which the adjusted gross income is 691



calculated pursuant to this chapter. 692

(N) "Taxpayer" means any person subject to the tax imposed 693  
by section 5747.02 of the Revised Code or any pass-through 694  
entity that makes the election under division (D) of section 695  
5747.08 of the Revised Code. 696

(O) "Dependents" means one of the following: 697

(1) For taxable years beginning on or after January 1, 698  
2018, and before January 1, 2026, dependents as defined in the 699  
Internal Revenue Code; 700

(2) For all other taxable years, dependents as defined in 701  
the Internal Revenue Code and as claimed in the taxpayer's 702  
federal income tax return for the taxable year or which the 703  
taxpayer would have been permitted to claim had the taxpayer 704  
filed a federal income tax return. 705

(P) "Principal county of employment" means, in the case of 706  
a nonresident, the county within the state in which a taxpayer 707  
performs services for an employer or, if those services are 708  
performed in more than one county, the county in which the major 709  
portion of the services are performed. 710

(Q) As used in sections 5747.50 to 5747.55 of the Revised 711  
Code: 712

(1) "Subdivision" means any county, municipal corporation, 713  
park district, or township. 714

(2) "Essential local government purposes" includes all 715  
functions that any subdivision is required by general law to 716  
exercise, including like functions that are exercised under a 717  
charter adopted pursuant to the Ohio Constitution. 718

(R) "Overpayment" means any amount already paid that 719

exceeds the figure determined to be the correct amount of the 720  
tax. 721

(S) "Taxable income" or "Ohio taxable income" applies only 722  
to estates and trusts, and means federal taxable income, as 723  
defined and used in the Internal Revenue Code, adjusted as 724  
follows: 725

(1) Add interest or dividends, net of ordinary, necessary, 726  
and reasonable expenses not deducted in computing federal 727  
taxable income, on obligations or securities of any state or of 728  
any political subdivision or authority of any state, other than 729  
this state and its subdivisions and authorities, but only to the 730  
extent that such net amount is not otherwise includible in Ohio 731  
taxable income and is described in either division (S) (1) (a) or 732  
(b) of this section: 733

(a) The net amount is not attributable to the S portion of 734  
an electing small business trust and has not been distributed to 735  
beneficiaries for the taxable year; 736

(b) The net amount is attributable to the S portion of an 737  
electing small business trust for the taxable year. 738

(2) Add interest or dividends, net of ordinary, necessary, 739  
and reasonable expenses not deducted in computing federal 740  
taxable income, on obligations of any authority, commission, 741  
instrumentality, territory, or possession of the United States 742  
to the extent that the interest or dividends are exempt from 743  
federal income taxes but not from state income taxes, but only 744  
to the extent that such net amount is not otherwise includible 745  
in Ohio taxable income and is described in either division (S) 746  
(1) (a) or (b) of this section; 747

(3) Add the amount of personal exemption allowed to the 748

estate pursuant to section 642(b) of the Internal Revenue Code;	749
(4) Deduct interest or dividends, net of related expenses	750
deducted in computing federal taxable income, on obligations of	751
the United States and its territories and possessions or of any	752
authority, commission, or instrumentality of the United States	753
to the extent that the interest or dividends are exempt from	754
state taxes under the laws of the United States, but only to the	755
extent that such amount is included in federal taxable income	756
and is described in either division (S)(1)(a) or (b) of this	757
section;	758
(5) Deduct the amount of wages and salaries, if any, not	759
otherwise allowable as a deduction but that would have been	760
allowable as a deduction in computing federal taxable income for	761
the taxable year, had the work opportunity tax credit allowed	762
under sections 38, 51, and 52 of the Internal Revenue Code not	763
been in effect, but only to the extent such amount relates	764
either to income included in federal taxable income for the	765
taxable year or to income of the S portion of an electing small	766
business trust for the taxable year;	767
(6) Deduct any interest or interest equivalent, net of	768
related expenses deducted in computing federal taxable income,	769
on public obligations and purchase obligations, but only to the	770
extent that such net amount relates either to income included in	771
federal taxable income for the taxable year or to income of the	772
S portion of an electing small business trust for the taxable	773
year;	774
(7) Add any loss or deduct any gain resulting from sale,	775
exchange, or other disposition of public obligations to the	776
extent that such loss has been deducted or such gain has been	777
included in computing either federal taxable income or income of	778

the S portion of an electing small business trust for the 779  
taxable year; 780

(8) Except in the case of the final return of an estate, 781  
add any amount deducted by the taxpayer on both its Ohio estate 782  
tax return pursuant to section 5731.14 of the Revised Code, and 783  
on its federal income tax return in determining federal taxable 784  
income; 785

(9) (a) Deduct any amount included in federal taxable 786  
income solely because the amount represents a reimbursement or 787  
refund of expenses that in a previous year the decedent had 788  
deducted as an itemized deduction pursuant to section 63 of the 789  
Internal Revenue Code and applicable treasury regulations. The 790  
deduction otherwise allowed under division (S) (9) (a) of this 791  
section shall be reduced to the extent the reimbursement is 792  
attributable to an amount the taxpayer or decedent deducted 793  
under this section in any taxable year. 794

(b) Add any amount not otherwise included in Ohio taxable 795  
income for any taxable year to the extent that the amount is 796  
attributable to the recovery during the taxable year of any 797  
amount deducted or excluded in computing federal or Ohio taxable 798  
income in any taxable year, but only to the extent such amount 799  
has not been distributed to beneficiaries for the taxable year. 800

(10) Deduct any portion of the deduction described in 801  
section 1341(a) (2) of the Internal Revenue Code, for repaying 802  
previously reported income received under a claim of right, that 803  
meets both of the following requirements: 804

(a) It is allowable for repayment of an item that was 805  
included in the taxpayer's taxable income or the decedent's 806  
adjusted gross income for a prior taxable year and did not 807

qualify for a credit under division (A) or (B) of section 808  
5747.05 of the Revised Code for that year. 809

(b) It does not otherwise reduce the taxpayer's taxable 810  
income or the decedent's adjusted gross income for the current 811  
or any other taxable year. 812

(11) Add any amount claimed as a credit under section 813  
5747.059 of the Revised Code to the extent that the amount 814  
satisfies either of the following: 815

(a) The amount was deducted or excluded from the 816  
computation of the taxpayer's federal taxable income as required 817  
to be reported for the taxpayer's taxable year under the 818  
Internal Revenue Code; 819

(b) The amount resulted in a reduction in the taxpayer's 820  
federal taxable income as required to be reported for any of the 821  
taxpayer's taxable years under the Internal Revenue Code. 822

(12) Deduct any amount, net of related expenses deducted 823  
in computing federal taxable income, that a trust is required to 824  
report as farm income on its federal income tax return, but only 825  
if the assets of the trust include at least ten acres of land 826  
satisfying the definition of "land devoted exclusively to 827  
agricultural use" under section 5713.30 of the Revised Code, 828  
regardless of whether the land is valued for tax purposes as 829  
such land under sections 5713.30 to 5713.38 of the Revised Code. 830  
If the trust is a pass-through entity investor, section 5747.231 831  
of the Revised Code applies in ascertaining if the trust is 832  
eligible to claim the deduction provided by division (S)(12) of 833  
this section in connection with the pass-through entity's farm 834  
income. 835

Except for farm income attributable to the S portion of an 836

electing small business trust, the deduction provided by 837  
division (S) (12) of this section is allowed only to the extent 838  
that the trust has not distributed such farm income. 839

(13) Add the net amount of income described in section 840  
641(c) of the Internal Revenue Code to the extent that amount is 841  
not included in federal taxable income. 842

(14) ~~Add or deduct~~ Deduct the amount the taxpayer would be 843  
required to ~~add or deduct~~ under division ~~(A) (17) or (18)~~ (A) (18) 844  
of this section if the taxpayer's Ohio taxable income were 845  
computed in the same manner as an individual's Ohio adjusted 846  
gross income is computed under this section. 847

(15) Add, to the extent not otherwise included in 848  
computing taxable income or Ohio taxable income for any taxable 849  
year, the taxpayer's proportionate share of the amount of the 850  
tax levied under section 5747.38 of the Revised Code and paid by 851  
an electing pass-through entity for the taxable year. 852

(T) "School district income" and "school district income 853  
tax" have the same meanings as in section 5748.01 of the Revised 854  
Code. 855

(U) As used in divisions (A) (7), (A) (8), (S) (6), and (S) 856  
(7) of this section, "public obligations," "purchase 857  
obligations," and "interest or interest equivalent" have the 858  
same meanings as in section 5709.76 of the Revised Code. 859

(V) "Limited liability company" means any limited 860  
liability company formed under former Chapter 1705. ~~or of the~~ 861  
Revised Code as that chapter existed prior to February 11, 2022, 862  
Chapter 1706. of the Revised Code, or ~~under~~ the laws of any 863  
other state. 864

(W) "Pass-through entity investor" means any person who, 865

during any portion of a taxable year of a pass-through entity, 866  
is a partner, member, shareholder, or equity investor in that 867  
pass-through entity. 868

(X) "Banking day" has the same meaning as in section 869  
1304.01 of the Revised Code. 870

(Y) "Month" means a calendar month. 871

(Z) "Quarter" means the first three months, the second 872  
three months, the third three months, or the last three months 873  
of the taxpayer's taxable year. 874

(AA) (1) "Modified business income" means the business 875  
income included in a trust's Ohio taxable income after such 876  
taxable income is first reduced by the qualifying trust amount, 877  
if any. 878

(2) "Qualifying trust amount" of a trust means capital 879  
gains and losses from the sale, exchange, or other disposition 880  
of equity or ownership interests in, or debt obligations of, a 881  
qualifying investee to the extent included in the trust's Ohio 882  
taxable income, but only if the following requirements are 883  
satisfied: 884

(a) The book value of the qualifying investee's physical 885  
assets in this state and everywhere, as of the last day of the 886  
qualifying investee's fiscal or calendar year ending immediately 887  
prior to the date on which the trust recognizes the gain or 888  
loss, is available to the trust. 889

(b) The requirements of section 5747.011 of the Revised 890  
Code are satisfied for the trust's taxable year in which the 891  
trust recognizes the gain or loss. 892

Any gain or loss that is not a qualifying trust amount is 893

modified business income, qualifying investment income, or 894  
modified nonbusiness income, as the case may be. 895

(3) "Modified nonbusiness income" means a trust's Ohio 896  
taxable income other than modified business income, other than 897  
the qualifying trust amount, and other than qualifying 898  
investment income, as defined in section 5747.012 of the Revised 899  
Code, to the extent such qualifying investment income is not 900  
otherwise part of modified business income. 901

(4) "Modified Ohio taxable income" applies only to trusts, 902  
and means the sum of the amounts described in divisions (AA) (4) 903  
(a) to (c) of this section: 904

(a) The fraction, calculated under section 5747.013, and 905  
applying section 5747.231 of the Revised Code, multiplied by the 906  
sum of the following amounts: 907

(i) The trust's modified business income; 908

(ii) The trust's qualifying investment income, as defined 909  
in section 5747.012 of the Revised Code, but only to the extent 910  
the qualifying investment income does not otherwise constitute 911  
modified business income and does not otherwise constitute a 912  
qualifying trust amount. 913

(b) The qualifying trust amount multiplied by a fraction, 914  
the numerator of which is the sum of the book value of the 915  
qualifying investee's physical assets in this state on the last 916  
day of the qualifying investee's fiscal or calendar year ending 917  
immediately prior to the day on which the trust recognizes the 918  
qualifying trust amount, and the denominator of which is the sum 919  
of the book value of the qualifying investee's total physical 920  
assets everywhere on the last day of the qualifying investee's 921  
fiscal or calendar year ending immediately prior to the day on 922



which the trust recognizes the qualifying trust amount. If, for 923  
a taxable year, the trust recognizes a qualifying trust amount 924  
with respect to more than one qualifying investee, the amount 925  
described in division (AA) (4) (b) of this section shall equal the 926  
sum of the products so computed for each such qualifying 927  
investee. 928

(c) (i) With respect to a trust or portion of a trust that 929  
is a resident as ascertained in accordance with division (I) (3) 930  
(d) of this section, its modified nonbusiness income. 931

(ii) With respect to a trust or portion of a trust that is 932  
not a resident as ascertained in accordance with division (I) (3) 933  
(d) of this section, the amount of its modified nonbusiness 934  
income satisfying the descriptions in divisions (B) (2) to (5) of 935  
section 5747.20 of the Revised Code, except as otherwise 936  
provided in division (AA) (4) (c) (ii) of this section. With 937  
respect to a trust or portion of a trust that is not a resident 938  
as ascertained in accordance with division (I) (3) (d) of this 939  
section, the trust's portion of modified nonbusiness income 940  
recognized from the sale, exchange, or other disposition of a 941  
debt interest in or equity interest in a section 5747.212 942  
entity, as defined in section 5747.212 of the Revised Code, 943  
without regard to division (A) of that section, shall not be 944  
allocated to this state in accordance with section 5747.20 of 945  
the Revised Code but shall be apportioned to this state in 946  
accordance with division (B) of section 5747.212 of the Revised 947  
Code without regard to division (A) of that section. 948

If the allocation and apportionment of a trust's income 949  
under divisions (AA) (4) (a) and (c) of this section do not fairly 950  
represent the modified Ohio taxable income of the trust in this 951  
state, the alternative methods described in division (C) of 952

section 5747.21 of the Revised Code may be applied in the manner 953  
and to the same extent provided in that section. 954

(5) (a) Except as set forth in division (AA) (5) (b) of this 955  
section, "qualifying investee" means a person in which a trust 956  
has an equity or ownership interest, or a person or unit of 957  
government the debt obligations of either of which are owned by 958  
a trust. For the purposes of division (AA) (2) (a) of this section 959  
and for the purpose of computing the fraction described in 960  
division (AA) (4) (b) of this section, all of the following apply: 961

(i) If the qualifying investee is a member of a qualifying 962  
controlled group on the last day of the qualifying investee's 963  
fiscal or calendar year ending immediately prior to the date on 964  
which the trust recognizes the gain or loss, then "qualifying 965  
investee" includes all persons in the qualifying controlled 966  
group on such last day. 967

(ii) If the qualifying investee, or if the qualifying 968  
investee and any members of the qualifying controlled group of 969  
which the qualifying investee is a member on the last day of the 970  
qualifying investee's fiscal or calendar year ending immediately 971  
prior to the date on which the trust recognizes the gain or 972  
loss, separately or cumulatively own, directly or indirectly, on 973  
the last day of the qualifying investee's fiscal or calendar 974  
year ending immediately prior to the date on which the trust 975  
recognizes the qualifying trust amount, more than fifty per cent 976  
of the equity of a pass-through entity, then the qualifying 977  
investee and the other members are deemed to own the 978  
proportionate share of the pass-through entity's physical assets 979  
which the pass-through entity directly or indirectly owns on the 980  
last day of the pass-through entity's calendar or fiscal year 981  
ending within or with the last day of the qualifying investee's 982

fiscal or calendar year ending immediately prior to the date on 983  
which the trust recognizes the qualifying trust amount. 984

(iii) For the purposes of division (AA) (5) (a) (iii) of this 985  
section, "upper level pass-through entity" means a pass-through 986  
entity directly or indirectly owning any equity of another pass- 987  
through entity, and "lower level pass-through entity" means that 988  
other pass-through entity. 989

An upper level pass-through entity, whether or not it is 990  
also a qualifying investee, is deemed to own, on the last day of 991  
the upper level pass-through entity's calendar or fiscal year, 992  
the proportionate share of the lower level pass-through entity's 993  
physical assets that the lower level pass-through entity 994  
directly or indirectly owns on the last day of the lower level 995  
pass-through entity's calendar or fiscal year ending within or 996  
with the last day of the upper level pass-through entity's 997  
fiscal or calendar year. If the upper level pass-through entity 998  
directly and indirectly owns less than fifty per cent of the 999  
equity of the lower level pass-through entity on each day of the 1000  
upper level pass-through entity's calendar or fiscal year in 1001  
which or with which ends the calendar or fiscal year of the 1002  
lower level pass-through entity and if, based upon clear and 1003  
convincing evidence, complete information about the location and 1004  
cost of the physical assets of the lower pass-through entity is 1005  
not available to the upper level pass-through entity, then 1006  
solely for purposes of ascertaining if a gain or loss 1007  
constitutes a qualifying trust amount, the upper level pass- 1008  
through entity shall be deemed as owning no equity of the lower 1009  
level pass-through entity for each day during the upper level 1010  
pass-through entity's calendar or fiscal year in which or with 1011  
which ends the lower level pass-through entity's calendar or 1012  
fiscal year. Nothing in division (AA) (5) (a) (iii) of this section 1013

shall be construed to provide for any deduction or exclusion in 1014  
computing any trust's Ohio taxable income. 1015

(b) With respect to a trust that is not a resident for the 1016  
taxable year and with respect to a part of a trust that is not a 1017  
resident for the taxable year, "qualifying investee" for that 1018  
taxable year does not include a C corporation if both of the 1019  
following apply: 1020

(i) During the taxable year the trust or part of the trust 1021  
recognizes a gain or loss from the sale, exchange, or other 1022  
disposition of equity or ownership interests in, or debt 1023  
obligations of, the C corporation. 1024

(ii) Such gain or loss constitutes nonbusiness income. 1025

(6) "Available" means information is such that a person is 1026  
able to learn of the information by the due date plus 1027  
extensions, if any, for filing the return for the taxable year 1028  
in which the trust recognizes the gain or loss. 1029

(BB) "Qualifying controlled group" has the same meaning as 1030  
in section 5733.04 of the Revised Code. 1031

(CC) "Related member" has the same meaning as in section 1032  
5733.042 of the Revised Code. 1033

(DD) (1) For the purposes of division (DD) of this section: 1034

(a) "Qualifying person" means any person other than a 1035  
qualifying corporation. 1036

(b) "Qualifying corporation" means any person classified 1037  
for federal income tax purposes as an association taxable as a 1038  
corporation, except either of the following: 1039

(i) A corporation that has made an election under 1040

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;

(ii) A subsidiary that is wholly owned by any corporation that has made an election under subchapter S, chapter one, subtitle A of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year.

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

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

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

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

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

(4) A "pre-income tax trust" is a trust that satisfies all 1070  
of the following requirements: 1071

(a) The document or instrument creating the trust was 1072  
executed by the grantor before January 1, 1972; 1073

(b) The trust became irrevocable upon the creation of the 1074  
trust; and 1075

(c) The grantor was domiciled in this state at the time 1076  
the trust was created. 1077

(FF) "Uniformed services" has the same meaning as in 10  
U.S.C. 101. 1078  
1079

(GG) "Taxable business income" means the amount by which 1080  
an individual's business income that is included in federal 1081  
adjusted gross income exceeds the amount of business income the 1082  
individual is authorized to deduct under division (A) (28) of 1083  
this section for the taxable year. 1084

(HH) "Employer" does not include a franchisor with respect 1085  
to the franchisor's relationship with a franchisee or an 1086  
employee of a franchisee, unless the franchisor agrees to assume 1087  
that role in writing or a court of competent jurisdiction 1088  
determines that the franchisor exercises a type or degree of 1089  
control over the franchisee or the franchisee's employees that 1090  
is not customarily exercised by a franchisor for the purpose of 1091  
protecting the franchisor's trademark, brand, or both. For 1092  
purposes of this division, "franchisor" and "franchisee" have 1093  
the same meanings as in 16 C.F.R. 436.1. 1094

(II) "Modified adjusted gross income" means Ohio adjusted 1095  
gross income plus any amount deducted under divisions (A) (28) 1096  
and (34) of this section for the taxable year. 1097

(JJ) "Qualifying Ohio educator" means an individual who, 1098  
for a taxable year, qualifies as an eligible educator, as that 1099  
term is defined in section 62 of the Internal Revenue Code, and 1100  
who holds a certificate, license, or permit described in Chapter 1101  
3319. or section 3301.071 of the Revised Code. 1102

**Section 2.** That existing section 5747.01 of the Revised 1103  
Code is hereby repealed. 1104

**Section 3.** Section 5747.01 of the Revised Code is 1105  
presented in this act as a composite of the section as amended 1106  
by H.B. 45, H.B. 110, H.B. 150, H.B. 515, S.B. 33, and S.B. 246, 1107  
all of the 134th General Assembly. The General Assembly, 1108  
applying the principle stated in division (B) of section 1.52 of 1109  
the Revised Code that amendments are to be harmonized and 1110  
reconciled if reasonably capable of simultaneous operation, 1111  
finds that the composite is the resulting version of the section 1112  
in effect prior to the effective date of the section as 1113  
presented in this act. 1114