

As Reported by the House Ways and Means Committee

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Sub. H. B. No. 116

Representatives Peterson, Claggett

A BILL

To amend sections 5733.40 and 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 sections 5733.40 and 5747.01 of the
Revised Code be amended to read as follows:

Sec. 5733.40. As used in sections 5733.40 and 5733.41 and
Chapter 5747. of the Revised Code:

(A) (1) "Adjusted qualifying amount" means either of the
following:

(a) The sum of each qualifying investor's distributive
share of the income, gain, expense, or loss of a qualifying
pass-through entity for the qualifying taxable year of the
qualifying pass-through entity multiplied by the apportionment
fraction defined in division (B) of this section, subject to
section 5733.401 of the Revised Code and divisions (A) (2) to (7)
of this section;

(b) The sum of each qualifying beneficiary's share of the 19
qualifying net income and qualifying net gain distributed by a 20
qualifying trust for the qualifying taxable year of the 21
qualifying trust multiplied by the apportionment fraction 22
defined in division (B) of this section, subject to section 23
5733.401 of the Revised Code and divisions (A) (2) to (7) of this 24
section. 25

(2) The sum shall exclude any amount which, pursuant to 26
the Constitution of the United States, the Constitution of Ohio, 27
or any federal law is not subject to a tax on or measured by net 28
income. 29

(3) For the purposes of Chapters 5733. and 5747. of the 30
Revised Code, the profit or net income of the qualifying entity 31
shall be increased by disallowing all amounts representing 32
expenses, other than amounts described in division (A) (7) of 33
this section, that the qualifying entity paid to or incurred 34
with respect to direct or indirect transactions with one or more 35
related members, excluding the cost of goods sold calculated in 36
accordance with section 263A of the Internal Revenue Code and 37
United States department of the treasury regulations issued 38
thereunder. Nothing in division (A) (3) of this section shall be 39
construed to limit solely to this chapter the application of 40
section 263A of the Internal Revenue Code and United States 41
department of the treasury regulations issued thereunder. 42

(4) For the purposes of Chapters 5733. and 5747. of the 43
Revised Code, the profit or net income of the qualifying entity 44
shall be increased by disallowing all recognized losses, other 45
than losses from sales of inventory the cost of which is 46
calculated in accordance with section 263A of the Internal 47
Revenue Code and United States department of the treasury 48

regulations issued thereunder, with respect to all direct or 49
indirect transactions with one or more related members. For the 50
purposes of Chapters 5733. and 5747. of the Revised Code, losses 51
from the sales of such inventory shall be allowed only to the 52
extent calculated in accordance with section 482 of the Internal 53
Revenue Code and United States department of the treasury 54
regulations issued thereunder. Nothing in division (A) (4) of 55
this section shall be construed to limit solely to this section 56
the application of section 263A and section 482 of the Internal 57
Revenue Code and United States department of the treasury 58
regulations issued thereunder. 59

(5) The sum shall be ~~increased or~~ decreased by an amount 60
equal to the qualifying investor's or qualifying beneficiary's 61
distributive or proportionate share of the amount that the 62
qualifying entity would be ~~required~~ allowed to add or deduct 63
under ~~divisions (A) (17) and (18)~~ division (A) (18) of section 64
5747.01 of the Revised Code if the qualifying entity were a 65
taxpayer for the purposes of Chapter 5747. of the Revised Code. 66

(6) The sum shall be computed without regard to section 67
5733.051 or division (D) of section 5733.052 of the Revised 68
Code. 69

(7) For the purposes of Chapters 5733. and 5747. of the 70
Revised Code, guaranteed payments or compensation paid to 71
investors by a qualifying entity that is not subject to the tax 72
imposed by section 5733.06 of the Revised Code shall be 73
considered a distributive share of income of the qualifying 74
entity. Division (A) (7) of this section applies only to such 75
payments or such compensation paid to an investor who at any 76
time during the qualifying entity's taxable year holds at least 77
a twenty per cent direct or indirect interest in the profits or 78

capital of the qualifying entity. For the purposes of this 79
division, guaranteed payments and compensation shall be 80
considered to be paid to an investor by a qualifying entity if 81
the qualifying entity in which the investor holds at least a 82
twenty per cent direct or indirect interest is a client employer 83
of a professional employer organization or alternate employer 84
organization, as those terms are defined in section 4125.01 or 85
4133.01 of the Revised Code, as applicable, and the guaranteed 86
payments or compensation are paid to the investor by that 87
professional employer organization or alternate employer 88
organization. 89

(B) "Apportionment fraction" means: 90

(1) With respect to a qualifying pass-through entity other 91
than a financial institution, the fraction calculated pursuant 92
to division (B) (2) of section 5733.05 of the Revised Code as if 93
the qualifying pass-through entity were a corporation subject to 94
the tax imposed by section 5733.06 of the Revised Code; 95

(2) With respect to a qualifying pass-through entity that 96
is a financial institution, the fraction calculated pursuant to 97
division (C) of section 5733.056 of the Revised Code as if the 98
qualifying pass-through entity were a financial institution 99
subject to the tax imposed by section 5733.06 of the Revised 100
Code; 101

(3) With respect to a qualifying trust, the fraction 102
calculated pursuant to division (B) (2) of section 5733.05 of the 103
Revised Code as if the qualifying trust were a corporation 104
subject to the tax imposed by section 5733.06 of the Revised 105
Code, except that the property, payroll, and sales fractions 106
shall be calculated by including in the numerator and 107
denominator of the fractions only the property, payroll, and 108

sales, respectively, directly related to the production of 109
income or gain from acquisition, ownership, use, maintenance, 110
management, or disposition of tangible personal property located 111
in this state at any time during the qualifying trust's 112
qualifying taxable year or of real property located in this 113
state. 114

(C) "Qualifying beneficiary" means any individual that, 115
during the qualifying taxable year of a qualifying trust, is a 116
beneficiary of that trust, but does not include an individual 117
who is a resident taxpayer for the purposes of Chapter 5747. of 118
the Revised Code for the entire qualifying taxable year of the 119
qualifying trust. 120

(D) "Fiscal year" means an accounting period ending on any 121
day other than the thirty-first day of December. 122

(E) "Individual" means a natural person. 123

(F) "Month" means a calendar month. 124

(G) "Distributive share" includes the sum of the income, 125
gain, expense, or loss of a disregarded entity or qualified 126
subchapter S subsidiary. 127

(H) "Investor" means any person that, during any portion 128
of a taxable year of a qualifying pass-through entity, is a 129
partner, member, shareholder, or investor in that qualifying 130
pass-through entity. 131

(I) Except as otherwise provided in section 5733.402 or 132
5747.401 of the Revised Code, "qualifying investor" means any 133
investor except those described in divisions (I)(1) to (9) of 134
this section. 135

(1) An investor satisfying one of the descriptions under 136

section 501(a) or (c) of the Internal Revenue Code, a 137
partnership with equity securities registered with the United 138
States securities and exchange commission under section 12 of 139
the "Securities Exchange Act of 1934," as amended, or an 140
investor described in division (F) of section 3334.01, or 141
division (A) or (C) of section 5733.09 of the Revised Code for 142
the entire qualifying taxable year of the qualifying pass- 143
through entity. 144

(2) An investor who is either an individual or an estate 145
and is a resident taxpayer for the purposes of section 5747.01 146
of the Revised Code for the entire qualifying taxable year of 147
the qualifying pass-through entity. 148

(3) An investor who is an individual for whom the 149
qualifying pass-through entity makes a good faith and reasonable 150
effort to comply fully and timely with the filing and payment 151
requirements set forth in division (D) of section 5747.08 of the 152
Revised Code and section 5747.09 of the Revised Code with 153
respect to the individual's adjusted qualifying amount for the 154
entire qualifying taxable year of the qualifying pass-through 155
entity. 156

(4) An investor that is another qualifying pass-through 157
entity having only investors described in division (I)(1), (2), 158
(3), or (6) of this section during the three-year period 159
beginning twelve months prior to the first day of the qualifying 160
taxable year of the qualifying pass-through entity. 161

(5) An investor that is another pass-through entity having 162
no investors other than individuals and estates during the 163
qualifying taxable year of the qualifying pass-through entity in 164
which it is an investor, and that makes a good faith and 165
reasonable effort to comply fully and timely with the filing and 166

payment requirements set forth in division (D) of section 167
5747.08 of the Revised Code and section 5747.09 of the Revised 168
Code with respect to investors that are not resident taxpayers 169
of this state for the purposes of Chapter 5747. of the Revised 170
Code for the entire qualifying taxable year of the qualifying 171
pass-through entity in which it is an investor. 172

(6) An investor that is treated as a C corporation for 173
federal income tax purposes for the entire qualifying taxable 174
year of the qualifying pass-through entity in which it is an 175
investor. 176

(7) An investor other than an individual that satisfies 177
all the following: 178

(a) The investor submits a written statement to the 179
qualifying pass-through entity stating that the investor 180
irrevocably agrees that the investor has nexus with this state 181
under the Constitution of the United States and is subject to 182
and liable for the tax calculated under division (A) or (B) of 183
section 5733.06 of the Revised Code with respect to the 184
investor's adjusted qualifying amount for the entire qualifying 185
taxable year of the qualifying pass-through entity. The 186
statement is subject to the penalties of perjury, shall be 187
retained by the qualifying pass-through entity for no fewer than 188
seven years, and shall be delivered to the tax commissioner upon 189
request. 190

(b) The investor makes a good faith and reasonable effort 191
to comply timely and fully with all the reporting and payment 192
requirements set forth in Chapter 5733. of the Revised Code with 193
respect to the investor's adjusted qualifying amount for the 194
entire qualifying taxable year of the qualifying pass-through 195
entity. 196

(c) Neither the investor nor the qualifying pass-through entity in which it is an investor, before, during, or after the qualifying pass-through entity's qualifying taxable year, carries out any transaction or transactions with one or more related members of the investor or the qualifying pass-through entity resulting in a reduction or deferral of tax imposed by Chapter 5733. of the Revised Code with respect to all or any portion of the investor's adjusted qualifying amount for the qualifying pass-through entity's taxable year, or that constitute a sham, lack economic reality, or are part of a series of transactions the form of which constitutes a step transaction or transactions or does not reflect the substance of those transactions.

(8) Any other investor that the tax commissioner may designate by rule. The tax commissioner may adopt rules including a rule defining "qualifying investor" or "qualifying beneficiary" and governing the imposition of the withholding tax imposed by section 5747.41 of the Revised Code with respect to an individual who is a resident taxpayer for the purposes of Chapter 5747. of the Revised Code for only a portion of the qualifying taxable year of the qualifying entity.

(9) An investor that is a trust or fund the beneficiaries of which, during the qualifying taxable year of the qualifying pass-through entity, are limited to the following:

(a) A person that is or may be the beneficiary of a trust subject to Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code.

(b) A person that is or may be the beneficiary of or the recipient of payments from a trust or fund that is a nuclear decommissioning reserve fund, a designated settlement fund, or

any other trust or fund established to resolve and satisfy 227
claims that may otherwise be asserted by the beneficiary or a 228
member of the beneficiary's family. Sections 267(c)(4), 468A(e), 229
and 468B(d)(2) of the Internal Revenue Code apply to the 230
determination of whether such a person satisfies division (I)(9) 231
of this section. 232

(c) A person who is or may be the beneficiary of a trust 233
that, under its governing instrument, is not required to 234
distribute all of its income currently. Division (I)(9)(c) of 235
this section applies only if the trust, prior to the due date 236
for filing the qualifying pass-through entity's return for taxes 237
imposed by section 5733.41 and sections 5747.41 to 5747.453 of 238
the Revised Code, irrevocably agrees in writing that for the 239
taxable year during or for which the trust distributes any of 240
its income to any of its beneficiaries, the trust is a 241
qualifying trust and will pay the estimated tax, and will 242
withhold and pay the withheld tax, as required under sections 243
5747.40 to 5747.453 of the Revised Code. 244

For the purposes of division (I)(9) of this section, a 245
trust or fund shall be considered to have a beneficiary other 246
than persons described under divisions (I)(9)(a) to (c) of this 247
section if a beneficiary would not qualify under those divisions 248
under the doctrines of "economic reality," "sham transaction," 249
"step doctrine," or "substance over form." A trust or fund 250
described in division (I)(9) of this section bears the burden of 251
establishing by a preponderance of the evidence that any 252
transaction giving rise to the tax benefits provided under 253
division (I)(9) of this section does not have as a principal 254
purpose a claim of those tax benefits. Nothing in this section 255
shall be construed to limit solely to this section the 256
application of the doctrines referred to in this paragraph. 257

(J) "Qualifying net gain" means any recognized net gain 258
with respect to the acquisition, ownership, use, maintenance, 259
management, or disposition of tangible personal property located 260
in this state at any time during a trust's qualifying taxable 261
year or real property located in this state. 262

(K) "Qualifying net income" means any recognized income, 263
net of related deductible expenses, other than distributions 264
deductions with respect to the acquisition, ownership, use, 265
maintenance, management, or disposition of tangible personal 266
property located in this state at any time during the trust's 267
qualifying taxable year or real property located in this state. 268

(L) "Qualifying entity" means a qualifying pass-through 269
entity or a qualifying trust. 270

(M) "Qualifying trust" means a trust subject to subchapter 271
J of the Internal Revenue Code that, during any portion of the 272
trust's qualifying taxable year, has income or gain from the 273
acquisition, management, ownership, use, or disposition of 274
tangible personal property located in this state at any time 275
during the trust's qualifying taxable year or real property 276
located in this state. "Qualifying trust" does not include a 277
person described in section 501(c) of the Internal Revenue Code 278
or a person described in division (C) of section 5733.09 of the 279
Revised Code. 280

(N) "Qualifying pass-through entity" means a pass-through 281
entity as defined in section 5733.04 of the Revised Code, 282
excluding: a person described in section 501(c) of the Internal 283
Revenue Code; a partnership with equity securities registered 284
with the United States securities and exchange commission under 285
section 12 of the Securities Exchange Act of 1934, as amended; 286
or a person described in division (C) of section 5733.09 of the 287

Revised Code.	288
(O) "Quarter" means the first three months, the second	289
three months, the third three months, or the last three months	290
of a qualifying entity's qualifying taxable year.	291
(P) "Related member" has the same meaning as in division	292
(A) (6) of section 5733.042 of the Revised Code without regard to	293
division (B) of that section. However, for the purposes of	294
divisions (A) (3) and (4) of this section only, "related member"	295
has the same meaning as in division (A) (6) of section 5733.042	296
of the Revised Code without regard to division (B) of that	297
section, but shall be applied by substituting "forty per cent"	298
for "twenty per cent" wherever "twenty per cent" appears in	299
division (A) of that section.	300
(Q) "Return" or "report" means the notifications and	301
reports required to be filed pursuant to sections 5747.42 to	302
5747.45 of the Revised Code for the purpose of reporting the tax	303
imposed under section 5733.41 or 5747.41 of the Revised Code,	304
and included declarations of estimated tax when so required.	305
(R) "Qualifying taxable year" means the calendar year or	306
the qualifying entity's fiscal year ending during the calendar	307
year, or fractional part thereof, for which the adjusted	308
qualifying amount is calculated pursuant to sections 5733.40 and	309
5733.41 or sections 5747.40 to 5747.453 of the Revised Code.	310
Sec. 5747.01. Except as otherwise expressly provided or	311
clearly appearing from the context, any term used in this	312
chapter that is not otherwise defined in this section has the	313
same meaning as when used in a comparable context in the laws of	314
the United States relating to federal income taxes or if not	315
used in a comparable context in those laws, has the same meaning	316

as in section 5733.40 of the Revised Code. Any reference in this 317
chapter to the Internal Revenue Code includes other laws of the 318
United States relating to federal income taxes. 319

As used in this chapter: 320

(A) "Adjusted gross income" or "Ohio adjusted gross 321
income" means federal adjusted gross income, as defined and used 322
in the Internal Revenue Code, adjusted as provided in this 323
section: 324

(1) Add interest or dividends on obligations or securities 325
of any state or of any political subdivision or authority of any 326
state, other than this state and its subdivisions and 327
authorities. 328

(2) Add interest or dividends on obligations of any 329
authority, commission, instrumentality, territory, or possession 330
of the United States to the extent that the interest or 331
dividends are exempt from federal income taxes but not from 332
state income taxes. 333

(3) Deduct interest or dividends on obligations of the 334
United States and its territories and possessions or of any 335
authority, commission, or instrumentality of the United States 336
to the extent that the interest or dividends are included in 337
federal adjusted gross income but exempt from state income taxes 338
under the laws of the United States. 339

(4) Deduct disability and survivor's benefits to the 340
extent included in federal adjusted gross income. 341

(5) Deduct the following, to the extent not otherwise 342
deducted or excluded in computing federal or Ohio adjusted gross 343
income: 344

(a) Benefits under Title II of the Social Security Act and tier 1 railroad retirement;	345 346
(b) Railroad retirement benefits, other than tier 1 railroad retirement benefits, to the extent such amounts are exempt from state taxation under federal law.	347 348 349
(6) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal adjusted gross income for the taxable year, had the work opportunity tax credit allowed and determined under sections 38, 51, and 52 of the Internal Revenue Code not been in effect.	350 351 352 353 354 355
(7) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent that the interest or interest equivalent is included in federal adjusted gross income.	356 357 358 359
(8) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of public obligations to the extent that the loss has been deducted or the gain has been included in computing federal adjusted gross income.	360 361 362 363
(9) Deduct or add amounts, as provided under section 5747.70 of the Revised Code, related to contributions made to or tuition units purchased under a qualified tuition program established pursuant to section 529 of the Internal Revenue Code.	364 365 366 367 368
(10) (a) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer paid during the taxable year for medical care insurance and qualified long-term care insurance for the taxpayer, the taxpayer's	369 370 371 372 373

spouse, and dependents. No deduction for medical care insurance 374
under division (A) (10) (a) of this section shall be allowed 375
either to any taxpayer who is eligible to participate in any 376
subsidized health plan maintained by any employer of the 377
taxpayer or of the taxpayer's spouse, or to any taxpayer who is 378
entitled to, or on application would be entitled to, benefits 379
under part A of Title XVIII of the "Social Security Act," 49 380
Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of 381
division (A) (10) (a) of this section, "subsidized health plan" 382
means a health plan for which the employer pays any portion of 383
the plan's cost. The deduction allowed under division (A) (10) (a) 384
of this section shall be the net of any related premium refunds, 385
related premium reimbursements, or related insurance premium 386
dividends received during the taxable year. 387

(b) Deduct, to the extent not otherwise deducted or 388
excluded in computing federal or Ohio adjusted gross income 389
during the taxable year, the amount the taxpayer paid during the 390
taxable year, not compensated for by any insurance or otherwise, 391
for medical care of the taxpayer, the taxpayer's spouse, and 392
dependents, to the extent the expenses exceed seven and one-half 393
per cent of the taxpayer's federal adjusted gross income. 394

(c) For purposes of division (A) (10) of this section, 395
"medical care" has the meaning given in section 213 of the 396
Internal Revenue Code, subject to the special rules, 397
limitations, and exclusions set forth therein, and "qualified 398
long-term care" has the same meaning given in section 7702B(c) 399
of the Internal Revenue Code. Solely for purposes of division 400
(A) (10) (a) of this section, "dependent" includes a person who 401
otherwise would be a "qualifying relative" and thus a 402
"dependent" under section 152 of the Internal Revenue Code but 403
for the fact that the person fails to meet the income and 404

support limitations under section 152(d)(1)(B) and (C) of the Internal Revenue Code.

(11) (a) Deduct any amount included in federal adjusted gross income solely because the amount represents a reimbursement or refund of expenses that in any year the taxpayer had deducted as an itemized deduction pursuant to 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 investment earnings on those funds, when the funds withdrawn were used for any purpose other than to reimburse an account holder for, or to pay, eligible medical expenses, in accordance with section 3924.66 of the Revised Code;

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

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

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

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

(16) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of job and family services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax

commissioner, the taxpayer shall provide any information that, 463
in the tax commissioner's opinion, is necessary to establish the 464
amount deducted under division (A) (16) of this section. 465

~~(17) (a) (i) Subject to divisions (A) (17) (a) (iii), (iv), and 466
(v) of this section, add five sixths of the amount of 467
depreciation expense allowed by subsection (k) of section 168 of 468
the Internal Revenue Code, including the taxpayer's 469
proportionate or distributive share of the amount of 470
depreciation expense allowed by that subsection to a pass 471
through entity in which the taxpayer has a direct or indirect 472
ownership interest. 473~~

~~(ii) Subject to divisions (A) (17) (a) (iii), (iv), and (v) 474
of this section, add five sixths of the amount of qualifying 475
section 179 depreciation expense, including the taxpayer's 476
proportionate or distributive share of the amount of qualifying 477
section 179 depreciation expense allowed to any pass through 478
entity in which the taxpayer has a direct or indirect ownership 479
interest. 480~~

~~(iii) Subject to division (A) (17) (a) (v) of this section, 481
for taxable years beginning in 2012 or thereafter, if the 482
increase in income taxes withheld by the taxpayer is equal to or 483
greater than ten per cent of income taxes withheld by the 484
taxpayer during the taxpayer's immediately preceding taxable 485
year, "two thirds" shall be substituted for "five sixths" for 486
the purpose of divisions (A) (17) (a) (i) and (ii) of this section. 487~~

~~(iv) Subject to division (A) (17) (a) (v) of this section, 488
for taxable years beginning in 2012 or thereafter, a taxpayer is 489
not required to add an amount under division (A) (17) of this 490
section if the increase in income taxes withheld by the taxpayer 491
and by any pass through entity in which the taxpayer has a 492~~

~~direct or indirect ownership interest is equal to or greater— 493~~
~~than the sum of (I) the amount of qualifying section 179— 494~~
~~depreciation expense and (II) the amount of depreciation expense— 495~~
~~allowed to the taxpayer by subsection (k) of section 168 of the— 496~~
~~Internal Revenue Code, and including the taxpayer's— 497~~
~~proportionate or distributive shares of such amounts allowed to— 498~~
~~any such pass through entities.— 499~~

~~(v) If a taxpayer directly or indirectly incurs a net— 500~~
~~operating loss for the taxable year for federal income tax— 501~~
~~purposes, to the extent such loss resulted from depreciation— 502~~
~~expense allowed by subsection (k) of section 168 of the Internal— 503~~
~~Revenue Code and by qualifying section 179 depreciation expense,— 504~~
~~"the entire" shall be substituted for "five sixths of the" for— 505~~
~~the purpose of divisions (A) (17) (a) (i) and (ii) of this section.— 506~~

~~The tax commissioner, under procedures established by the— 507~~
~~commissioner, may waive the add backs related to a pass through— 508~~
~~entity if the taxpayer owns, directly or indirectly, less than— 509~~
~~five per cent of the pass through entity.— 510~~

~~(b) Nothing in division (A) (17) of this section shall be— 511~~
~~construed to adjust or modify the adjusted basis of any asset.— 512~~

~~(c) To the extent the add back required under division (A)— 513~~
~~(17) (a) of this section is attributable to property generating— 514~~
~~nonbusiness income or loss allocated under section 5747.20 of— 515~~
~~the Revised Code, the add back shall be situated to the same— 516~~
~~location as the nonbusiness income or loss generated by the— 517~~
~~property for the purpose of determining the credit under— 518~~
~~division (A) of section 5747.05 of the Revised Code. Otherwise,— 519~~
~~the add back shall be apportioned, subject to one or more of the— 520~~
~~four alternative methods of apportionment enumerated in section— 521~~
~~5747.21 of the Revised Code.— 522~~

~~(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 Internal Revenue Code and by the qualifying section 179 depreciation expense amount.~~ 523
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~~(e) For the purposes of divisions (A) (17) and (18) of this section:~~ 530
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~~(i) "Income taxes withheld" means the total amount withheld and remitted under sections 5747.06 and 5747.07 of the Revised Code by an employer during the employer's taxable year.~~ 532
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~~(ii) "Increase in income taxes withheld" means the amount by which the amount of income taxes withheld by an employer during the employer's current taxable year exceeds the amount of income taxes withheld by that employer during the employer's immediately preceding taxable year.~~ 535
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~~(iii) "Qualifying section 179 depreciation expense" means the difference between (I) the amount of depreciation expense directly or indirectly allowed to a taxpayer under section 179 of the Internal Revised Code, and (II) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code as that section existed on December 31, 2002.~~ 540
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(17) Deduct, to the extent 546
included in federal adjusted gross income, income attributable 547
to loan repayments on behalf of the taxpayer under the rural 548
practice incentive program under section 3333.135 of the Revised 549
Code. 550

(18) (a) If, in computing the taxpayer's Ohio adjusted 551

gross income for a taxable year beginning before January 1, 552
2023, the taxpayer was required to add ~~an amount~~back a 553
depreciation expense allowed under ~~division (A) (17) (a) of this~~ 554
~~section for a taxable year~~subsection (k) of section 168 or 555
section 179 of the Internal Revenue Code, deduct one of the 556
following: 557

(i) One-fifth of the amount so added for each of the five 558
succeeding taxable years if the amount so added was five-sixths 559
of qualifying section 179 depreciation expense or depreciation 560
expense allowed by subsection (k) of section 168 of the Internal 561
Revenue Code; 562

(ii) One-half of the amount so added for each of the two 563
succeeding taxable years if the amount so added was two-thirds 564
of such depreciation expense; 565

(iii) One-sixth of the amount so added for each of the six 566
succeeding taxable years if the entire amount of such 567
depreciation expense was so added. 568

(b) If the amount deducted under division (A) (18) (a) of 569
this section is attributable to an add-back ~~allocated under~~ 570
~~division (A) (17) (c) of this section~~that is attributable to 571
property generating nonbusiness income or loss allocated under 572
section 5747.20 of the Revised Code, the amount deducted shall 573
be situated to the same location as the add-back. Otherwise, the 574
add-back shall be apportioned using the apportionment factors 575
for the taxable year in which the deduction is taken, subject to 576
one or more of the four alternative methods of apportionment 577
enumerated in section 5747.21 of the Revised Code. 578

(c) No deduction is available under division (A) (18) (a) of 579
this section with regard to any depreciation allowed by section 580

168(k) of the Internal Revenue Code and by the qualifying 581
section 179 depreciation expense amount to the extent that such 582
depreciation results in or increases a federal net operating 583
loss carryback or carryforward. If no such deduction is 584
available for a taxable year, the taxpayer may carry forward the 585
amount not deducted in such taxable year to the next taxable 586
year and add that amount to any deduction otherwise available 587
under division (A)(18)(a) of this section for that next taxable 588
year. The carryforward of amounts not so deducted shall continue 589
until the entire ~~addition required by division (A)(17)(a) of~~ 590
~~this section~~ amount added back for taxable years beginning 591
before January 1, 2023, has been deducted. 592

(d) Notwithstanding division (A)(18)(a) or (c) of this 593
section, for taxable years beginning in 2023 or thereafter, a 594
taxpayer that was required to add back a depreciation expense in 595
computing the taxpayer's Ohio adjusted gross income for a 596
taxable year beginning before January 1, 2023, may elect to 597
deduct the entire amount so added, less any amount already 598
deducted under this section in any preceding taxable year with 599
respect to that depreciation expense. The taxpayer shall make 600
the election on the annual return filed for the first taxable 601
year beginning after January 1, 2023, for which the taxpayer 602
files a return, and the election shall be irrevocable after the 603
due date plus extensions, if any, for filing that return. 604

(e) Nothing in division (A)(18) of this section shall be 605
construed to allow a taxpayer to deduct any amount that, under 606
this section as it existed before the effective date of H.B. 116 607
of the 135th general assembly, the taxpayer would not have been 608
eligible to deduct for a taxable year beginning on or after 609
January 1, 2023. 610

(f) As used in division (A) (18) of this section, 611
"qualifying section 179 depreciation expense" means the 612
difference between (I) the amount of depreciation expense 613
directly or indirectly allowed to a taxpayer under section 179 614
of the Internal Revenue Code, and (II) the amount of 615
depreciation expense directly or indirectly allowed to the 616
taxpayer under section 179 of the Internal Revenue Code as that 617
section existed on December 31, 2002. 618

(19) Deduct, to the extent not otherwise deducted or 619
excluded in computing federal or Ohio adjusted gross income for 620
the taxable year, the amount the taxpayer received during the 621
taxable year as reimbursement for life insurance premiums under 622
section 5919.31 of the Revised Code. 623

(20) Deduct, to the extent not otherwise deducted or 624
excluded in computing federal or Ohio adjusted gross income for 625
the taxable year, the amount the taxpayer received during the 626
taxable year as a death benefit paid by the adjutant general 627
under section 5919.33 of the Revised Code. 628

(21) Deduct, to the extent included in federal adjusted 629
gross income and not otherwise allowable as a deduction or 630
exclusion in computing federal or Ohio adjusted gross income for 631
the taxable year, military pay and allowances received by the 632
taxpayer during the taxable year for active duty service in the 633
United States army, air force, navy, marine corps, or coast 634
guard or reserve components thereof or the national guard. The 635
deduction may not be claimed for military pay and allowances 636
received by the taxpayer while the taxpayer is stationed in this 637
state. 638

(22) Deduct, to the extent not otherwise allowable as a 639
deduction or exclusion in computing federal or Ohio adjusted 640

gross income for the taxable year and not otherwise compensated 641
for by any other source, the amount of qualified organ donation 642
expenses incurred by the taxpayer during the taxable year, not 643
to exceed ten thousand dollars. A taxpayer may deduct qualified 644
organ donation expenses only once for all taxable years 645
beginning with taxable years beginning in 2007. 646

For the purposes of division (A) (22) of this section: 647

(a) "Human organ" means all or any portion of a human 648
liver, pancreas, kidney, intestine, or lung, and any portion of 649
human bone marrow. 650

(b) "Qualified organ donation expenses" means travel 651
expenses, lodging expenses, and wages and salary forgone by a 652
taxpayer in connection with the taxpayer's donation, while 653
living, of one or more of the taxpayer's human organs to another 654
human being. 655

(23) Deduct, to the extent not otherwise deducted or 656
excluded in computing federal or Ohio adjusted gross income for 657
the taxable year, amounts received by the taxpayer as retired 658
personnel pay for service in the uniformed services or reserve 659
components thereof, or the national guard, or received by the 660
surviving spouse or former spouse of such a taxpayer under the 661
survivor benefit plan on account of such a taxpayer's death. If 662
the taxpayer receives income on account of retirement paid under 663
the federal civil service retirement system or federal employees 664
retirement system, or under any successor retirement program 665
enacted by the congress of the United States that is established 666
and maintained for retired employees of the United States 667
government, and such retirement income is based, in whole or in 668
part, on credit for the taxpayer's uniformed service, the 669
deduction allowed under this division shall include only that 670

portion of such retirement income that is attributable to the 671
taxpayer's uniformed service, to the extent that portion of such 672
retirement income is otherwise included in federal adjusted 673
gross income and is not otherwise deducted under this section. 674
Any amount deducted under division (A) (23) of this section is 675
not included in a taxpayer's adjusted gross income for the 676
purposes of section 5747.055 of the Revised Code. No amount may 677
be deducted under division (A) (23) of this section on the basis 678
of which a credit was claimed under section 5747.055 of the 679
Revised Code. 680

(24) Deduct, to the extent not otherwise deducted or 681
excluded in computing federal or Ohio adjusted gross income for 682
the taxable year, the amount the taxpayer received during the 683
taxable year from the military injury relief fund created in 684
section 5902.05 of the Revised Code. 685

(25) Deduct, to the extent not otherwise deducted or 686
excluded in computing federal or Ohio adjusted gross income for 687
the taxable year, the amount the taxpayer received as a veterans 688
bonus during the taxable year from the Ohio department of 689
veterans services as authorized by Section 2r of Article VIII, 690
Ohio Constitution. 691

(26) Deduct, to the extent not otherwise deducted or 692
excluded in computing federal or Ohio adjusted gross income for 693
the taxable year, any income derived from a transfer agreement 694
or from the enterprise transferred under that agreement under 695
section 4313.02 of the Revised Code. 696

(27) Deduct, to the extent not otherwise deducted or 697
excluded in computing federal or Ohio adjusted gross income for 698
the taxable year, Ohio college opportunity or federal Pell grant 699
amounts received by the taxpayer or the taxpayer's spouse or 700

dependent pursuant to section 3333.122 of the Revised Code or 20 701
U.S.C. 1070a, et seq., and used to pay room or board furnished 702
by the educational institution for which the grant was awarded 703
at the institution's facilities, including meal plans 704
administered by the institution. For the purposes of this 705
division, receipt of a grant includes the distribution of a 706
grant directly to an educational institution and the crediting 707
of the grant to the enrollee's account with the institution. 708

(28) Deduct from the portion of an individual's federal 709
adjusted gross income that is business income, to the extent not 710
otherwise deducted or excluded in computing federal adjusted 711
gross income for the taxable year, one hundred twenty-five 712
thousand dollars for each spouse if spouses file separate 713
returns under section 5747.08 of the Revised Code or two hundred 714
fifty thousand dollars for all other individuals. 715

(29) Deduct, as provided under section 5747.78 of the 716
Revised Code, contributions to ABLE savings accounts made in 717
accordance with sections 113.50 to 113.56 of the Revised Code. 718

(30) (a) Deduct, to the extent not otherwise deducted or 719
excluded in computing federal or Ohio adjusted gross income 720
during the taxable year, all of the following: 721

(i) Compensation paid to a qualifying employee described 722
in division (A) (14) (a) of section 5703.94 of the Revised Code to 723
the extent such compensation is for disaster work conducted in 724
this state during a disaster response period pursuant to a 725
qualifying solicitation received by the employee's employer; 726

(ii) Compensation paid to a qualifying employee described 727
in division (A) (14) (b) of section 5703.94 of the Revised Code to 728
the extent such compensation is for disaster work conducted in 729

this state by the employee during the disaster response period 730
on critical infrastructure owned or used by the employee's 731
employer; 732

(iii) Income received by an out-of-state disaster business 733
for disaster work conducted in this state during a disaster 734
response period, or, if the out-of-state disaster business is a 735
pass-through entity, a taxpayer's distributive share of the 736
pass-through entity's income from the business conducting 737
disaster work in this state during a disaster response period, 738
if, in either case, the disaster work is conducted pursuant to a 739
qualifying solicitation received by the business. 740

(b) All terms used in division (A) (30) of this section 741
have the same meanings as in section 5703.94 of the Revised 742
Code. 743

(31) For a taxpayer who is a qualifying Ohio educator, 744
deduct, to the extent not otherwise deducted or excluded in 745
computing federal or Ohio adjusted gross income for the taxable 746
year, the lesser of two hundred fifty dollars or the amount of 747
expenses described in subsections (a) (2) (D) (i) and (ii) of 748
section 62 of the Internal Revenue Code paid or incurred by the 749
taxpayer during the taxpayer's taxable year in excess of the 750
amount the taxpayer is authorized to deduct for that taxable 751
year under subsection (a) (2) (D) of that section. 752

(32) Deduct, to the extent not otherwise deducted or 753
excluded in computing federal or Ohio adjusted gross income for 754
the taxable year, amounts received by the taxpayer as a 755
disability severance payment, computed under 10 U.S.C. 1212, 756
following discharge or release under honorable conditions from 757
the armed forces, as defined by 10 U.S.C. 101. 758

(33) Deduct, to the extent not otherwise deducted or 759
excluded in computing federal adjusted gross income or Ohio 760
adjusted gross income, amounts not subject to tax due to an 761
agreement entered into under division (A) (2) of section 5747.05 762
of the Revised Code. 763

(34) Deduct amounts as provided under section 5747.79 of 764
the Revised Code related to the taxpayer's qualifying capital 765
gains and deductible payroll. 766

To the extent a qualifying capital gain described under 767
division (A) (34) of this section is business income, the 768
taxpayer shall deduct those gains under this division before 769
deducting any such gains under division (A) (28) of this section. 770

(35) (a) For taxable years beginning in or after 2026, 771
deduct, to the extent not otherwise deducted or excluded in 772
computing federal or Ohio adjusted gross income for the taxable 773
year: 774

(i) One hundred per cent of the capital gain received by 775
the taxpayer in the taxable year from a qualifying interest in 776
an Ohio venture capital operating company attributable to the 777
company's investments in Ohio businesses during the period for 778
which the company was an Ohio venture operating company; and 779

(ii) Fifty per cent of the capital gain received by the 780
taxpayer in the taxable year from a qualifying interest in an 781
Ohio venture capital operating company attributable to the 782
company's investments in all other businesses during the period 783
for which the company was an Ohio venture operating company. 784

(b) Add amounts previously deducted by the taxpayer under 785
division (A) (35) (a) of this section if the director of 786
development certifies to the tax commissioner that the 787

requirements for the deduction were not met.	788
(c) All terms used in division (A) (35) of this section	789
have the same meanings as in section 122.851 of the Revised	790
Code.	791
(d) To the extent a capital gain described in division (A)	792
(35) (a) of this section is business income, the taxpayer shall	793
apply that division before applying division (A) (28) of this	794
section.	795
(36) Add, to the extent not otherwise included in	796
computing federal or Ohio adjusted gross income for any taxable	797
year, the taxpayer's proportionate share of the amount of the	798
tax levied under section 5747.38 of the Revised Code and paid by	799
an electing pass-through entity for the taxable year.	800
(37) Deduct, to the extent not otherwise deducted or	801
excluded in computing federal or Ohio adjusted gross income for	802
the taxable year, amounts delivered to a qualifying institution	803
pursuant to section 3333.128 of the Revised Code for the benefit	804
of the taxpayer or the taxpayer's spouse or dependent.	805
(38) Deduct, to the extent not otherwise deducted or	806
excluded in computing federal or Ohio adjusted gross income for	807
the taxable year, amounts received under the Ohio adoption grant	808
program pursuant to section 5101.191 of the Revised Code.	809
(39) Deduct, to the extent included in federal adjusted	810
gross income, income attributable to loan repayments on behalf	811
of the taxpayer under the rural practice incentive program under	812
section 3333.135 of the Revised Code.	813
(B) "Business income" means income, including gain or	814
loss, arising from transactions, activities, and sources in the	815
regular course of a trade or business and includes income, gain,	816

or loss from real property, tangible property, and intangible 817
property if the acquisition, rental, management, and disposition 818
of the property constitute integral parts of the regular course 819
of a trade or business operation. "Business income" includes 820
income, including gain or loss, from a partial or complete 821
liquidation of a business, including, but not limited to, gain 822
or loss from the sale or other disposition of goodwill or the 823
sale of an equity or ownership interest in a business. 824

As used in this division, the "sale of an equity or 825
ownership interest in a business" means sales to which either or 826
both of the following apply: 827

(1) The sale is treated for federal income tax purposes as 828
the sale of assets. 829

(2) The seller materially participated, as described in 26 830
C.F.R. 1.469-5T, in the activities of the business during the 831
taxable year in which the sale occurs or during any of the five 832
preceding taxable years. 833

(C) "Nonbusiness income" means all income other than 834
business income and may include, but is not limited to, 835
compensation, rents and royalties from real or tangible personal 836
property, capital gains, interest, dividends and distributions, 837
patent or copyright royalties, or lottery winnings, prizes, and 838
awards. 839

(D) "Compensation" means any form of remuneration paid to 840
an employee for personal services. 841

(E) "Fiduciary" means a guardian, trustee, executor, 842
administrator, receiver, conservator, or any other person acting 843
in any fiduciary capacity for any individual, trust, or estate. 844

(F) "Fiscal year" means an accounting period of twelve 845

months ending on the last day of any month other than December.	846
(G) "Individual" means any natural person.	847
(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	848 849
(I) "Resident" means any of the following:	850
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	851 852
(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code are not controlling for purposes of division (I) (2) of this section.	853 854 855 856
(3) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part.	857 858 859
For the purposes of division (I) (3) of this section:	860
(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I) (3) (d) of this section, that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred, or caused to be transferred, directly or indirectly, to the trust by any of the following:	861 862 863 864 865 866
(i) A person, a court, or a governmental entity or instrumentality on account of the death of a decedent, but only if the trust is described in division (I) (3) (e) (i) or (ii) of this section;	867 868 869 870
(ii) A person who was domiciled in this state for the purposes of this chapter when the person directly or indirectly	871 872

transferred assets to an irrevocable trust, but only if at least 873
one of the trust's qualifying beneficiaries is domiciled in this 874
state for the purposes of this chapter during all or some 875
portion of the trust's current taxable year; 876

(iii) A person who was domiciled in this state for the 877
purposes of this chapter when the trust document or instrument 878
or part of the trust document or instrument became irrevocable, 879
but only if at least one of the trust's qualifying beneficiaries 880
is a resident domiciled in this state for the purposes of this 881
chapter during all or some portion of the trust's current 882
taxable year. If a trust document or instrument became 883
irrevocable upon the death of a person who at the time of death 884
was domiciled in this state for purposes of this chapter, that 885
person is a person described in division (I) (3) (a) (iii) of this 886
section. 887

(b) A trust is irrevocable to the extent that the 888
transferor is not considered to be the owner of the net assets 889
of the trust under sections 671 to 678 of the Internal Revenue 890
Code. 891

(c) With respect to a trust other than a charitable lead 892
trust, "qualifying beneficiary" has the same meaning as 893
"potential current beneficiary" as defined in section 1361(e) (2) 894
of the Internal Revenue Code, and with respect to a charitable 895
lead trust "qualifying beneficiary" is any current, future, or 896
contingent beneficiary, but with respect to any trust 897
"qualifying beneficiary" excludes a person or a governmental 898
entity or instrumentality to any of which a contribution would 899
qualify for the charitable deduction under section 170 of the 900
Internal Revenue Code. 901

(d) For the purposes of division (I) (3) (a) of this 902

section, the extent to which a trust consists directly or 903
indirectly, in whole or in part, of assets, net of any related 904
liabilities, that were transferred directly or indirectly, in 905
whole or part, to the trust by any of the sources enumerated in 906
that division shall be ascertained by multiplying the fair 907
market value of the trust's assets, net of related liabilities, 908
by the qualifying ratio, which shall be computed as follows: 909

(i) The first time the trust receives assets, the 910
numerator of the qualifying ratio is the fair market value of 911
those assets at that time, net of any related liabilities, from 912
sources enumerated in division (I) (3) (a) of this section. The 913
denominator of the qualifying ratio is the fair market value of 914
all the trust's assets at that time, net of any related 915
liabilities. 916

(ii) Each subsequent time the trust receives assets, a 917
revised qualifying ratio shall be computed. The numerator of the 918
revised qualifying ratio is the sum of (1) the fair market value 919
of the trust's assets immediately prior to the subsequent 920
transfer, net of any related liabilities, multiplied by the 921
qualifying ratio last computed without regard to the subsequent 922
transfer, and (2) the fair market value of the subsequently 923
transferred assets at the time transferred, net of any related 924
liabilities, from sources enumerated in division (I) (3) (a) of 925
this section. The denominator of the revised qualifying ratio is 926
the fair market value of all the trust's assets immediately 927
after the subsequent transfer, net of any related liabilities. 928

(iii) Whether a transfer to the trust is by or from any of 929
the sources enumerated in division (I) (3) (a) of this section 930
shall be ascertained without regard to the domicile of the 931
trust's beneficiaries. 932

(e) For the purposes of division (I) (3) (a) (i) of this section:	933 934
(i) A trust is described in division (I) (3) (e) (i) of this section if the trust is a testamentary trust and the testator of that testamentary trust was domiciled in this state at the time of the testator's death for purposes of the taxes levied under Chapter 5731. of the Revised Code.	935 936 937 938 939
(ii) A trust is described in division (I) (3) (e) (ii) of this section if the transfer is a qualifying transfer described in any of divisions (I) (3) (f) (i) to (vi) of this section, the trust is an irrevocable inter vivos trust, and at least one of the trust's qualifying beneficiaries is domiciled in this state for purposes of this chapter during all or some portion of the trust's current taxable year.	940 941 942 943 944 945 946
(f) For the purposes of division (I) (3) (e) (ii) of this section, a "qualifying transfer" is a transfer of assets, net of any related liabilities, directly or indirectly to a trust, if the transfer is described in any of the following:	947 948 949 950
(i) The transfer is made to a trust, created by the decedent before the decedent's death and while the decedent was domiciled in this state for the purposes of this chapter, and, prior to the death of the decedent, the trust became irrevocable while the decedent was domiciled in this state for the purposes of this chapter.	951 952 953 954 955 956
(ii) The transfer is made to a trust to which the decedent, prior to the decedent's death, had directly or indirectly transferred assets, net of any related liabilities, while the decedent was domiciled in this state for the purposes of this chapter, and prior to the death of the decedent the	957 958 959 960 961

trust became irrevocable while the decedent was domiciled in 962
this state for the purposes of this chapter. 963

(iii) The transfer is made on account of a contractual 964
relationship existing directly or indirectly between the 965
transferor and either the decedent or the estate of the decedent 966
at any time prior to the date of the decedent's death, and the 967
decedent was domiciled in this state at the time of death for 968
purposes of the taxes levied under Chapter 5731. of the Revised 969
Code. 970

(iv) The transfer is made to a trust on account of a 971
contractual relationship existing directly or indirectly between 972
the transferor and another person who at the time of the 973
decedent's death was domiciled in this state for purposes of 974
this chapter. 975

(v) The transfer is made to a trust on account of the will 976
of a testator who was domiciled in this state at the time of the 977
testator's death for purposes of the taxes levied under Chapter 978
5731. of the Revised Code. 979

(vi) The transfer is made to a trust created by or caused 980
to be created by a court, and the trust was directly or 981
indirectly created in connection with or as a result of the 982
death of an individual who, for purposes of the taxes levied 983
under Chapter 5731. of the Revised Code, was domiciled in this 984
state at the time of the individual's death. 985

(g) The tax commissioner may adopt rules to ascertain the 986
part of a trust residing in this state. 987

(J) "Nonresident" means an individual or estate that is 988
not a resident. An individual who is a resident for only part of 989
a taxable year is a nonresident for the remainder of that 990

taxable year.	991
(K) "Pass-through entity" has the same meaning as in	992
section 5733.04 of the Revised Code.	993
(L) "Return" means the notifications and reports required	994
to be filed pursuant to this chapter for the purpose of	995
reporting the tax due and includes declarations of estimated tax	996
when so required.	997
(M) "Taxable year" means the calendar year or the	998
taxpayer's fiscal year ending during the calendar year, or	999
fractional part thereof, upon which the adjusted gross income is	1000
calculated pursuant to this chapter.	1001
(N) "Taxpayer" means any person subject to the tax imposed	1002
by section 5747.02 of the Revised Code or any pass-through	1003
entity that makes the election under division (D) of section	1004
5747.08 of the Revised Code.	1005
(O) "Dependents" means one of the following:	1006
(1) For taxable years beginning on or after January 1,	1007
2018, and before January 1, 2026, dependents as defined in the	1008
Internal Revenue Code;	1009
(2) For all other taxable years, dependents as defined in	1010
the Internal Revenue Code and as claimed in the taxpayer's	1011
federal income tax return for the taxable year or which the	1012
taxpayer would have been permitted to claim had the taxpayer	1013
filed a federal income tax return.	1014
(P) "Principal county of employment" means, in the case of	1015
a nonresident, the county within the state in which a taxpayer	1016
performs services for an employer or, if those services are	1017
performed in more than one county, the county in which the major	1018

portion of the services are performed. 1019

(Q) As used in sections 5747.50 to 5747.55 of the Revised 1020
Code: 1021

(1) "Subdivision" means any county, municipal corporation, 1022
park district, or township. 1023

(2) "Essential local government purposes" includes all 1024
functions that any subdivision is required by general law to 1025
exercise, including like functions that are exercised under a 1026
charter adopted pursuant to the Ohio Constitution. 1027

(R) "Overpayment" means any amount already paid that 1028
exceeds the figure determined to be the correct amount of the 1029
tax. 1030

(S) "Taxable income" or "Ohio taxable income" applies only 1031
to estates and trusts, and means federal taxable income, as 1032
defined and used in the Internal Revenue Code, adjusted as 1033
follows: 1034

(1) Add interest or dividends, net of ordinary, necessary, 1035
and reasonable expenses not deducted in computing federal 1036
taxable income, on obligations or securities of any state or of 1037
any political subdivision or authority of any state, other than 1038
this state and its subdivisions and authorities, but only to the 1039
extent that such net amount is not otherwise includible in Ohio 1040
taxable income and is described in either division (S)(1)(a) or 1041
(b) of this section: 1042

(a) The net amount is not attributable to the S portion of 1043
an electing small business trust and has not been distributed to 1044
beneficiaries for the taxable year; 1045

(b) The net amount is attributable to the S portion of an 1046

electing small business trust for the taxable year. 1047

(2) Add interest or dividends, net of ordinary, necessary, 1048
and reasonable expenses not deducted in computing federal 1049
taxable income, on obligations of any authority, commission, 1050
instrumentality, territory, or possession of the United States 1051
to the extent that the interest or dividends are exempt from 1052
federal income taxes but not from state income taxes, but only 1053
to the extent that such net amount is not otherwise includible 1054
in Ohio taxable income and is described in either division (S) 1055
(1) (a) or (b) of this section; 1056

(3) Add the amount of personal exemption allowed to the 1057
estate pursuant to section 642(b) of the Internal Revenue Code; 1058

(4) Deduct interest or dividends, net of related expenses 1059
deducted in computing federal taxable income, on obligations of 1060
the United States and its territories and possessions or of any 1061
authority, commission, or instrumentality of the United States 1062
to the extent that the interest or dividends are exempt from 1063
state taxes under the laws of the United States, but only to the 1064
extent that such amount is included in federal taxable income 1065
and is described in either division (S) (1) (a) or (b) of this 1066
section; 1067

(5) Deduct the amount of wages and salaries, if any, not 1068
otherwise allowable as a deduction but that would have been 1069
allowable as a deduction in computing federal taxable income for 1070
the taxable year, had the work opportunity tax credit allowed 1071
under sections 38, 51, and 52 of the Internal Revenue Code not 1072
been in effect, but only to the extent such amount relates 1073
either to income included in federal taxable income for the 1074
taxable year or to income of the S portion of an electing small 1075
business trust for the taxable year; 1076

(6) Deduct any interest or interest equivalent, net of 1077
related expenses deducted in computing federal taxable income, 1078
on public obligations and purchase obligations, but only to the 1079
extent that such net amount relates either to income included in 1080
federal taxable income for the taxable year or to income of the 1081
S portion of an electing small business trust for the taxable 1082
year; 1083

(7) Add any loss or deduct any gain resulting from sale, 1084
exchange, or other disposition of public obligations to the 1085
extent that such loss has been deducted or such gain has been 1086
included in computing either federal taxable income or income of 1087
the S portion of an electing small business trust for the 1088
taxable year; 1089

(8) Except in the case of the final return of an estate, 1090
add any amount deducted by the taxpayer on both its Ohio estate 1091
tax return pursuant to section 5731.14 of the Revised Code, and 1092
on its federal income tax return in determining federal taxable 1093
income; 1094

(9) (a) Deduct any amount included in federal taxable 1095
income solely because the amount represents a reimbursement or 1096
refund of expenses that in a previous year the decedent had 1097
deducted as an itemized deduction pursuant to section 63 of the 1098
Internal Revenue Code and applicable treasury regulations. The 1099
deduction otherwise allowed under division (S) (9) (a) of this 1100
section shall be reduced to the extent the reimbursement is 1101
attributable to an amount the taxpayer or decedent deducted 1102
under this section in any taxable year. 1103

(b) Add any amount not otherwise included in Ohio taxable 1104
income for any taxable year to the extent that the amount is 1105
attributable to the recovery during the taxable year of any 1106

amount deducted or excluded in computing federal or Ohio taxable 1107
income in any taxable year, but only to the extent such amount 1108
has not been distributed to beneficiaries for the taxable year. 1109

(10) Deduct any portion of the deduction described in 1110
section 1341(a)(2) of the Internal Revenue Code, for repaying 1111
previously reported income received under a claim of right, that 1112
meets both of the following requirements: 1113

(a) It is allowable for repayment of an item that was 1114
included in the taxpayer's taxable income or the decedent's 1115
adjusted gross income for a prior taxable year and did not 1116
qualify for a credit under division (A) or (B) of section 1117
5747.05 of the Revised Code for that year. 1118

(b) It does not otherwise reduce the taxpayer's taxable 1119
income or the decedent's adjusted gross income for the current 1120
or any other taxable year. 1121

(11) Add any amount claimed as a credit under section 1122
5747.059 of the Revised Code to the extent that the amount 1123
satisfies either of the following: 1124

(a) The amount was deducted or excluded from the 1125
computation of the taxpayer's federal taxable income as required 1126
to be reported for the taxpayer's taxable year under the 1127
Internal Revenue Code; 1128

(b) The amount resulted in a reduction in the taxpayer's 1129
federal taxable income as required to be reported for any of the 1130
taxpayer's taxable years under the Internal Revenue Code. 1131

(12) Deduct any amount, net of related expenses deducted 1132
in computing federal taxable income, that a trust is required to 1133
report as farm income on its federal income tax return, but only 1134
if the assets of the trust include at least ten acres of land 1135

satisfying the definition of "land devoted exclusively to 1136
agricultural use" under section 5713.30 of the Revised Code, 1137
regardless of whether the land is valued for tax purposes as 1138
such land under sections 5713.30 to 5713.38 of the Revised Code. 1139
If the trust is a pass-through entity investor, section 5747.231 1140
of the Revised Code applies in ascertaining if the trust is 1141
eligible to claim the deduction provided by division (S)(12) of 1142
this section in connection with the pass-through entity's farm 1143
income. 1144

Except for farm income attributable to the S portion of an 1145
electing small business trust, the deduction provided by 1146
division (S)(12) of this section is allowed only to the extent 1147
that the trust has not distributed such farm income. 1148

(13) Add the net amount of income described in section 1149
641(c) of the Internal Revenue Code to the extent that amount is 1150
not included in federal taxable income. 1151

(14) ~~Add or deduct~~ Deduct the amount the taxpayer would be 1152
required to ~~add or deduct~~ under division ~~(A)(17) or (18)~~ (A)(18) 1153
of this section if the taxpayer's Ohio taxable income were 1154
computed in the same manner as an individual's Ohio adjusted 1155
gross income is computed under this section. 1156

(15) Add, to the extent not otherwise included in 1157
computing taxable income or Ohio taxable income for any taxable 1158
year, the taxpayer's proportionate share of the amount of the 1159
tax levied under section 5747.38 of the Revised Code and paid by 1160
an electing pass-through entity for the taxable year. 1161

(T) "School district income" and "school district income 1162
tax" have the same meanings as in section 5748.01 of the Revised 1163
Code. 1164

(U) As used in divisions (A) (7), (A) (8), (S) (6), and (S) 1165
(7) of this section, "public obligations," "purchase 1166
obligations," and "interest or interest equivalent" have the 1167
same meanings as in section 5709.76 of the Revised Code. 1168

(V) "Limited liability company" means any limited 1169
liability company formed under former Chapter 1705. ~~or of the~~ 1170
Revised Code as that chapter existed prior to February 11, 2022, 1171
Chapter 1706. of the Revised Code, ~~or under~~ the laws of any 1172
other state. 1173

(W) "Pass-through entity investor" means any person who, 1174
during any portion of a taxable year of a pass-through entity, 1175
is a partner, member, shareholder, or equity investor in that 1176
pass-through entity. 1177

(X) "Banking day" has the same meaning as in section 1178
1304.01 of the Revised Code. 1179

(Y) "Month" means a calendar month. 1180

(Z) "Quarter" means the first three months, the second 1181
three months, the third three months, or the last three months 1182
of the taxpayer's taxable year. 1183

(AA) (1) "Modified business income" means the business 1184
income included in a trust's Ohio taxable income after such 1185
taxable income is first reduced by the qualifying trust amount, 1186
if any. 1187

(2) "Qualifying trust amount" of a trust means capital 1188
gains and losses from the sale, exchange, or other disposition 1189
of equity or ownership interests in, or debt obligations of, a 1190
qualifying investee to the extent included in the trust's Ohio 1191
taxable income, but only if the following requirements are 1192
satisfied: 1193

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

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

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

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

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

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

(i) The trust's modified business income;

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

(b) The qualifying trust amount multiplied by a fraction, 1223
the numerator of which is the sum of the book value of the 1224
qualifying investee's physical assets in this state on the last 1225
day of the qualifying investee's fiscal or calendar year ending 1226
immediately prior to the day on which the trust recognizes the 1227
qualifying trust amount, and the denominator of which is the sum 1228
of the book value of the qualifying investee's total physical 1229
assets everywhere on the last day of the qualifying investee's 1230
fiscal or calendar year ending immediately prior to the day on 1231
which the trust recognizes the qualifying trust amount. If, for 1232
a taxable year, the trust recognizes a qualifying trust amount 1233
with respect to more than one qualifying investee, the amount 1234
described in division (AA) (4) (b) of this section shall equal the 1235
sum of the products so computed for each such qualifying 1236
investee. 1237

(c) (i) With respect to a trust or portion of a trust that 1238
is a resident as ascertained in accordance with division (I) (3) 1239
(d) of this section, its modified nonbusiness income. 1240

(ii) With respect to a trust or portion of a trust that is 1241
not a resident as ascertained in accordance with division (I) (3) 1242
(d) of this section, the amount of its modified nonbusiness 1243
income satisfying the descriptions in divisions (B) (2) to (5) of 1244
section 5747.20 of the Revised Code, except as otherwise 1245
provided in division (AA) (4) (c) (ii) of this section. With 1246
respect to a trust or portion of a trust that is not a resident 1247
as ascertained in accordance with division (I) (3) (d) of this 1248
section, the trust's portion of modified nonbusiness income 1249
recognized from the sale, exchange, or other disposition of a 1250
debt interest in or equity interest in a section 5747.212 1251
entity, as defined in section 5747.212 of the Revised Code, 1252
without regard to division (A) of that section, shall not be 1253

allocated to this state in accordance with section 5747.20 of 1254
the Revised Code but shall be apportioned to this state in 1255
accordance with division (B) of section 5747.212 of the Revised 1256
Code without regard to division (A) of that section. 1257

If the allocation and apportionment of a trust's income 1258
under divisions (AA) (4) (a) and (c) of this section do not fairly 1259
represent the modified Ohio taxable income of the trust in this 1260
state, the alternative methods described in division (C) of 1261
section 5747.21 of the Revised Code may be applied in the manner 1262
and to the same extent provided in that section. 1263

(5) (a) Except as set forth in division (AA) (5) (b) of this 1264
section, "qualifying investee" means a person in which a trust 1265
has an equity or ownership interest, or a person or unit of 1266
government the debt obligations of either of which are owned by 1267
a trust. For the purposes of division (AA) (2) (a) of this section 1268
and for the purpose of computing the fraction described in 1269
division (AA) (4) (b) of this section, all of the following apply: 1270

(i) If the qualifying investee is a member of a qualifying 1271
controlled group on the last day of the qualifying investee's 1272
fiscal or calendar year ending immediately prior to the date on 1273
which the trust recognizes the gain or loss, then "qualifying 1274
investee" includes all persons in the qualifying controlled 1275
group on such last day. 1276

(ii) If the qualifying investee, or if the qualifying 1277
investee and any members of the qualifying controlled group of 1278
which the qualifying investee is a member on the last day of the 1279
qualifying investee's fiscal or calendar year ending immediately 1280
prior to the date on which the trust recognizes the gain or 1281
loss, separately or cumulatively own, directly or indirectly, on 1282
the last day of the qualifying investee's fiscal or calendar 1283

year ending immediately prior to the date on which the trust 1284
recognizes the qualifying trust amount, more than fifty per cent 1285
of the equity of a pass-through entity, then the qualifying 1286
investee and the other members are deemed to own the 1287
proportionate share of the pass-through entity's physical assets 1288
which the pass-through entity directly or indirectly owns on the 1289
last day of the pass-through entity's calendar or fiscal year 1290
ending within or with the last day of the qualifying investee's 1291
fiscal or calendar year ending immediately prior to the date on 1292
which the trust recognizes the qualifying trust amount. 1293

(iii) For the purposes of division (AA) (5) (a) (iii) of this 1294
section, "upper level pass-through entity" means a pass-through 1295
entity directly or indirectly owning any equity of another pass- 1296
through entity, and "lower level pass-through entity" means that 1297
other pass-through entity. 1298

An upper level pass-through entity, whether or not it is 1299
also a qualifying investee, is deemed to own, on the last day of 1300
the upper level pass-through entity's calendar or fiscal year, 1301
the proportionate share of the lower level pass-through entity's 1302
physical assets that the lower level pass-through entity 1303
directly or indirectly owns on the last day of the lower level 1304
pass-through entity's calendar or fiscal year ending within or 1305
with the last day of the upper level pass-through entity's 1306
fiscal or calendar year. If the upper level pass-through entity 1307
directly and indirectly owns less than fifty per cent of the 1308
equity of the lower level pass-through entity on each day of the 1309
upper level pass-through entity's calendar or fiscal year in 1310
which or with which ends the calendar or fiscal year of the 1311
lower level pass-through entity and if, based upon clear and 1312
convincing evidence, complete information about the location and 1313
cost of the physical assets of the lower pass-through entity is 1314

not available to the upper level pass-through entity, then 1315
solely for purposes of ascertaining if a gain or loss 1316
constitutes a qualifying trust amount, the upper level pass- 1317
through entity shall be deemed as owning no equity of the lower 1318
level pass-through entity for each day during the upper level 1319
pass-through entity's calendar or fiscal year in which or with 1320
which ends the lower level pass-through entity's calendar or 1321
fiscal year. Nothing in division (AA) (5) (a) (iii) of this section 1322
shall be construed to provide for any deduction or exclusion in 1323
computing any trust's Ohio taxable income. 1324

(b) With respect to a trust that is not a resident for the 1325
taxable year and with respect to a part of a trust that is not a 1326
resident for the taxable year, "qualifying investee" for that 1327
taxable year does not include a C corporation if both of the 1328
following apply: 1329

(i) During the taxable year the trust or part of the trust 1330
recognizes a gain or loss from the sale, exchange, or other 1331
disposition of equity or ownership interests in, or debt 1332
obligations of, the C corporation. 1333

(ii) Such gain or loss constitutes nonbusiness income. 1334

(6) "Available" means information is such that a person is 1335
able to learn of the information by the due date plus 1336
extensions, if any, for filing the return for the taxable year 1337
in which the trust recognizes the gain or loss. 1338

(BB) "Qualifying controlled group" has the same meaning as 1339
in section 5733.04 of the Revised Code. 1340

(CC) "Related member" has the same meaning as in section 1341
5733.042 of the Revised Code. 1342

(DD) (1) For the purposes of division (DD) of this section: 1343

(a) "Qualifying person" means any person other than a qualifying corporation.	1344 1345
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	1346 1347 1348
(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year;	1349 1350 1351 1352
(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.	1353 1354 1355 1356 1357
(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.	1358 1359 1360
(EE) For purposes of this chapter and Chapter 5751. of the Revised Code:	1361 1362
(1) "Trust" does not include a qualified pre-income tax trust.	1363 1364
(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.	1365 1366 1367
(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	1368 1369 1370 1371

controls, directly, indirectly, or constructively through 1372
related interests, five per cent or more of the ownership or 1373
equity interests. The trustee shall notify the tax commissioner 1374
in writing of the election on or before April 15, 2006. The 1375
election, if timely made, shall be effective on and after 1376
January 1, 2006, and shall apply for all tax periods and tax 1377
years until revoked by the trustee of the trust. 1378

(4) A "pre-income tax trust" is a trust that satisfies all 1379
of the following requirements: 1380

(a) The document or instrument creating the trust was 1381
executed by the grantor before January 1, 1972; 1382

(b) The trust became irrevocable upon the creation of the 1383
trust; and 1384

(c) The grantor was domiciled in this state at the time 1385
the trust was created. 1386

(FF) "Uniformed services" has the same meaning as in 10 1387
U.S.C. 101. 1388

(GG) "Taxable business income" means the amount by which 1389
an individual's business income that is included in federal 1390
adjusted gross income exceeds the amount of business income the 1391
individual is authorized to deduct under division (A) (28) of 1392
this section for the taxable year. 1393

(HH) "Employer" does not include a franchisor with respect 1394
to the franchisor's relationship with a franchisee or an 1395
employee of a franchisee, unless the franchisor agrees to assume 1396
that role in writing or a court of competent jurisdiction 1397
determines that the franchisor exercises a type or degree of 1398
control over the franchisee or the franchisee's employees that 1399
is not customarily exercised by a franchisor for the purpose of 1400

protecting the franchisor's trademark, brand, or both. For 1401
purposes of this division, "franchisor" and "franchisee" have 1402
the same meanings as in 16 C.F.R. 436.1. 1403

(II) "Modified adjusted gross income" means Ohio adjusted 1404
gross income plus any amount deducted under divisions (A) (28) 1405
and (34) of this section for the taxable year. 1406

(JJ) "Qualifying Ohio educator" means an individual who, 1407
for a taxable year, qualifies as an eligible educator, as that 1408
term is defined in section 62 of the Internal Revenue Code, and 1409
who holds a certificate, license, or permit described in Chapter 1410
3319. or section 3301.071 of the Revised Code. 1411

Section 2. That existing sections 5733.40 and 5747.01 of 1412
the Revised Code are hereby repealed. 1413

Section 3. Section 5747.01 of the Revised Code is 1414
presented in this act as a composite of the section as amended 1415
by H.B. 45, H.B. 110, H.B. 150, H.B. 515, S.B. 33, and S.B. 246, 1416
all of the 134th General Assembly. The General Assembly, 1417
applying the principle stated in division (B) of section 1.52 of 1418
the Revised Code that amendments are to be harmonized and 1419
reconciled if reasonably capable of simultaneous operation, 1420
finds that the composite is the resulting version of the section 1421
in effect prior to the effective date of the section as 1422
presented in this act. 1423