

As Introduced

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H. B. No. 174

Representatives Cross, Lanese

**Cosponsors: Representatives LaRe, Riedel, Gross, Stewart, Stein, Carfagna, Ray,
Schmidt**

A BILL

To amend sections 5703.21, 5747.01, and 5747.10 and 1
to enact section 122.851 of the Revised Code to 2
authorize an income tax deduction for capital 3
gains received by investors in certain Ohio- 4
based venture capital operating companies. 5

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

Section 1. That sections 5703.21, 5747.01, and 5747.10 be 6
amended and section 122.851 of the Revised Code be enacted to 7
read as follows: 8

Sec. 122.851. (A) As used in this section: 9

(1) "Venture capital operating company" has the same 10
meaning as in 29 C.F.R. 2510.3-101. 11

(2) "Ohio venture capital operating company" means a 12
venture capital operating company certified by the director of 13
development services as having met the requirements prescribed 14
by division (B) of this section. A venture capital operating 15
company is an Ohio venture capital operating company only for so 16
long as the certification is valid. 17

(3) "Ohio business" means a business that, in either the 18
calendar year in which a capital gain from the business is 19
recognized by the Ohio venture capital operating company or its 20
direct or indirect investors or the calendar year in which the 21
Ohio venture capital operating company distributes an equity 22
interest or security in the business, has its headquarters in 23
this state and employs more than one-half of the total number of 24
its full-time equivalent employees in this state. For the 25
purpose of this section, an employee is employed in this state 26
if the business is required to withhold income tax under section 27
5747.06 of the Revised Code for fifty per cent or more of the 28
compensation paid to the employee in either the calendar year in 29
which the Ohio venture capital operating company or its direct 30
or indirect investors recognize a capital gain from the business 31
or the calendar year in which the Ohio venture capital operating 32
company distributes an equity interest or security in the 33
business, as applicable. 34

(4) "Qualifying interest" means a direct or indirect 35
ownership interest acquired through an investment of cash or 36
cash equivalent made in, or the provision of services to, a 37
venture capital operating company during the period for which it 38
was certified as an Ohio venture capital operating company. 39

(B) (1) A venture capital operating company may apply to 40
the director of development services for certification as an 41
Ohio venture capital operating company if it manages, or has 42
capital commitments of, at least fifty million dollars in active 43
assets and at least two-thirds of its managing and general 44
partners are residents of Ohio under division (I) of section 45
5747.01 of the Revised Code. The director, in consultation with 46
the tax commissioner, shall prescribe the form and manner of the 47
application and the information or documentation required to be 48

submitted with the application. 49

(2) The director shall review and make a determination 50
with respect to each application submitted under this division 51
within sixty days of receipt. The director shall grant 52
certification to any applicant that meets the criteria 53
prescribed by this division. The director shall decline 54
certification of any applicant that does not meet such criteria. 55
The director shall notify the applicant and the tax commissioner 56
of the director's determination in writing. 57

(C) (1) Certification as an Ohio venture capital operating 58
company is valid for as long as the company continues to qualify 59
as a venture capital operating company and meets the criteria 60
prescribed by division (B) (1) of this section. 61

(2) A company that no longer qualifies as a venture 62
capital operating company or no longer meets the criteria 63
prescribed by division (B) (1) of this section shall notify the 64
director within thirty days of the date the company ceases to 65
qualify. 66

(3) Upon receiving such a notification or upon otherwise 67
discovering that an Ohio venture capital operating company no 68
longer qualifies for certification, the director shall issue a 69
written notice of revocation to the venture capital operating 70
company and the tax commissioner. The notice shall state the 71
effective date of the revocation, which shall be the date the 72
company ceased to qualify for certification as an Ohio venture 73
capital operating company. 74

(4) An Ohio venture capital operating company receiving 75
such a notice may contest the director's decision to revoke its 76
certification or the effective date of that revocation by 77

submitting additional information or documentation to the 78
director and requesting reconsideration in writing within thirty 79
days of the notice of revocation based on that information or 80
documentation. The director shall review and evaluate any such 81
requests within thirty days of receipt. The director shall 82
notify the company and tax commissioner in writing of the 83
director's decision on the request, which shall not be subject 84
to appeal or further review. 85

(D) (1) On or after the first day of January and on or 86
before the first day of February of each year, a company that is 87
certified as an Ohio venture capital operating company shall 88
provide the following information, on forms prescribed by the 89
director of development services, to the director and the tax 90
commissioner: 91

(a) The name, social security or federal employer 92
identification number, and ownership percentage of each person 93
with a qualifying interest in the company; 94

(b) The amount of capital gains generated during the 95
portion of the previous calendar year during which the company 96
was certified as an Ohio venture capital operating company; 97

(c) A description of the company's investments that 98
generated the capital gains described in division (D) (1) (b) of 99
this section, including the date of sale and whether the 100
investment was in an Ohio business; 101

(d) The amount of, and basis in, any equity interests or 102
securities distributed to each investor, arranged by entity, 103
while the company was certified as an Ohio venture capital 104
operating company and whether the entity is an Ohio business; 105

(e) Any other information the director, in consultation 106

with the tax commissioner, considers relevant and necessary to 107
administer the deduction allowed under division (A) (33) of 108
section 5747.01 of the Revised Code. 109

(2) The director shall review the information submitted 110
under division (D) (1) of this section by an Ohio venture capital 111
operating company within sixty days of receipt. If the company 112
generated capital gains that qualify for the deduction allowed 113
under division (A) (33) of section 5747.01 of the Revised Code or 114
distributed equity interests or securities that, when sold, will 115
qualify for the deduction once income is recognized from its 116
disposition, the director shall issue a certificate to the 117
company. The certificate shall include a unique number and the 118
following information: 119

(a) The total amount of capital gains generated during the 120
portion of the year during which the company was certified as an 121
Ohio venture capital operating company; 122

(b) The portion of the capital gains attributable to the 123
company's investments in Ohio businesses; and 124

(c) The total amount of, and basis in, any equity 125
interests or securities distributed during the portion of the 126
year during which the company was certified as an Ohio venture 127
capital operating company; 128

(d) The portion of the distributed equity interests or 129
securities attributable to the company's investments in Ohio 130
businesses; 131

(e) The portion of the amounts described in divisions (D) 132
(2) (a) and (b) of this section attributable to each individual 133
with a qualifying interest in the company; 134

(f) Any other information the director or tax commissioner 135

considers necessary for the administration of the deduction 136
allowed under division (A) (33) of section 5747.01 of the Revised 137
Code. 138

(E) An Ohio venture capital operating company shall 139
provide each person with a qualifying interest in the company 140
with a copy of the certificate issued under division (D) of this 141
section and any other documentation necessary to compute the 142
adjustments under division (A) (33) of section 5747.01 of the 143
Revised Code. A pass-through entity that receives a certificate 144
issued under this division from an Ohio venture capital 145
operating company shall provide its investors with a copy of the 146
certificate and any other documentation necessary to compute the 147
adjustments under division (A) (33) of section 5747.01 of the 148
Revised Code. 149

A taxpayer claiming a deduction under division (A) (33) (a) 150
of section 5747.01 of the Revised Code shall provide, upon 151
request of the tax commissioner, a copy of that certificate. The 152
taxpayer shall retain a copy of the certificate for four years 153
from the later of the final filing date of the return on which 154
the deduction was claimed or the date the return on which the 155
deduction was claimed is filed. 156

(F) The director of development services, in consultation 157
with the tax commissioner, may adopt rules in accordance with 158
Chapter 119. of the Revised Code as are necessary to administer 159
this section. 160

Sec. 5703.21. (A) Except as provided in divisions (B) and 161
(C) of this section, no agent of the department of taxation, 162
except in the agent's report to the department or when called on 163
to testify in any court or proceeding, shall divulge any 164
information acquired by the agent as to the transactions, 165

property, or business of any person while acting or claiming to 166
act under orders of the department. Whoever violates this 167
provision shall thereafter be disqualified from acting as an 168
officer or employee or in any other capacity under appointment 169
or employment of the department. 170

(B) (1) For purposes of an audit pursuant to section 117.15 171
of the Revised Code, or an audit of the department pursuant to 172
Chapter 117. of the Revised Code, or an audit, pursuant to that 173
chapter, the objective of which is to express an opinion on a 174
financial report or statement prepared or issued pursuant to 175
division (A) (7) or (9) of section 126.21 of the Revised Code, 176
the officers and employees of the auditor of state charged with 177
conducting the audit shall have access to and the right to 178
examine any state tax returns and state tax return information 179
in the possession of the department to the extent that the 180
access and examination are necessary for purposes of the audit. 181
Any information acquired as the result of that access and 182
examination shall not be divulged for any purpose other than as 183
required for the audit or unless the officers and employees are 184
required to testify in a court or proceeding under compulsion of 185
legal process. Whoever violates this provision shall thereafter 186
be disqualified from acting as an officer or employee or in any 187
other capacity under appointment or employment of the auditor of 188
state. 189

(2) For purposes of an internal audit pursuant to section 190
126.45 of the Revised Code, the officers and employees of the 191
office of internal audit in the office of budget and management 192
charged with directing the internal audit shall have access to 193
and the right to examine any state tax returns and state tax 194
return information in the possession of the department to the 195
extent that the access and examination are necessary for 196

purposes of the internal audit. Any information acquired as the 197
result of that access and examination shall not be divulged for 198
any purpose other than as required for the internal audit or 199
unless the officers and employees are required to testify in a 200
court or proceeding under compulsion of legal process. Whoever 201
violates this provision shall thereafter be disqualified from 202
acting as an officer or employee or in any other capacity under 203
appointment or employment of the office of internal audit. 204

(3) As provided by section 6103(d) (2) of the Internal 205
Revenue Code, any federal tax returns or federal tax information 206
that the department has acquired from the internal revenue 207
service, through federal and state statutory authority, may be 208
disclosed to the auditor of state or the office of internal 209
audit solely for purposes of an audit of the department. 210

(4) For purposes of Chapter 3739. of the Revised Code, an 211
agent of the department of taxation may share information with 212
the division of state fire marshal that the agent finds during 213
the course of an investigation. 214

(C) Division (A) of this section does not prohibit any of 215
the following: 216

(1) Divulging information contained in applications, 217
complaints, and related documents filed with the department 218
under section 5715.27 of the Revised Code or in applications 219
filed with the department under section 5715.39 of the Revised 220
Code; 221

(2) Providing information to the office of child support 222
within the department of job and family services pursuant to 223
section 3125.43 of the Revised Code; 224

(3) Disclosing to the motor vehicle repair board any 225

information in the possession of the department that is	226
necessary for the board to verify the existence of an	227
applicant's valid vendor's license and current state tax	228
identification number under section 4775.07 of the Revised Code;	229
(4) Providing information to the administrator of workers'	230
compensation pursuant to sections 4123.271 and 4123.591 of the	231
Revised Code;	232
(5) Providing to the attorney general information the	233
department obtains under division (J) of section 1346.01 of the	234
Revised Code;	235
(6) Permitting properly authorized officers, employees, or	236
agents of a municipal corporation from inspecting reports or	237
information pursuant to section 718.84 of the Revised Code or	238
rules adopted under section 5745.16 of the Revised Code;	239
(7) Providing information regarding the name, account	240
number, or business address of a holder of a vendor's license	241
issued pursuant to section 5739.17 of the Revised Code, a holder	242
of a direct payment permit issued pursuant to section 5739.031	243
of the Revised Code, or a seller having a use tax account	244
maintained pursuant to section 5741.17 of the Revised Code, or	245
information regarding the active or inactive status of a	246
vendor's license, direct payment permit, or seller's use tax	247
account;	248
(8) Releasing invoices or invoice information furnished	249
under section 4301.433 of the Revised Code pursuant to that	250
section;	251
(9) Providing to a county auditor notices or documents	252
concerning or affecting the taxable value of property in the	253
county auditor's county. Unless authorized by law to disclose	254

documents so provided, the county auditor shall not disclose	255
such documents;	256
(10) Providing to a county auditor sales or use tax return	257
or audit information under section 333.06 of the Revised Code;	258
(11) Subject to section 4301.441 of the Revised Code,	259
disclosing to the appropriate state agency information in the	260
possession of the department of taxation that is necessary to	261
verify a permit holder's gallonage or noncompliance with taxes	262
levied under Chapter 4301. or 4305. of the Revised Code;	263
(12) Disclosing to the department of natural resources	264
information in the possession of the department of taxation that	265
is necessary for the department of taxation to verify the	266
taxpayer's compliance with section 5749.02 of the Revised Code	267
or to allow the department of natural resources to enforce	268
Chapter 1509. of the Revised Code;	269
(13) Disclosing to the department of job and family	270
services, industrial commission, and bureau of workers'	271
compensation information in the possession of the department of	272
taxation solely for the purpose of identifying employers that	273
misclassify employees as independent contractors or that fail to	274
properly report and pay employer tax liabilities. The department	275
of taxation shall disclose only such information that is	276
necessary to verify employer compliance with law administered by	277
those agencies.	278
(14) Disclosing to the Ohio casino control commission	279
information in the possession of the department of taxation that	280
is necessary to verify a casino operator's compliance with	281
section 5747.063 or 5753.02 of the Revised Code and sections	282
related thereto;	283

(15) Disclosing to the state lottery commission 284
information in the possession of the department of taxation that 285
is necessary to verify a lottery sales agent's compliance with 286
section 5747.064 of the Revised Code. 287

(16) Disclosing to the development services agency 288
information in the possession of the department of taxation that 289
is necessary to ensure compliance with the laws of this state 290
governing taxation and to verify information reported to the 291
development services agency for the purpose of evaluating 292
potential tax credits, deductions, grants, or loans. Such 293
information shall not include information received from the 294
internal revenue service the disclosure of which is prohibited 295
by section 6103 of the Internal Revenue Code. No officer, 296
employee, or agent of the development services agency shall 297
disclose any information provided to the development services 298
agency by the department of taxation under division (C) (16) of 299
this section except when disclosure of the information is 300
necessary for, and made solely for the purpose of facilitating, 301
the evaluation of potential tax credits, deductions, grants, or 302
loans. 303

(17) Disclosing to the department of insurance information 304
in the possession of the department of taxation that is 305
necessary to ensure a taxpayer's compliance with the 306
requirements with any tax credit administered by the development 307
services agency and claimed by the taxpayer against any tax 308
administered by the superintendent of insurance. No officer, 309
employee, or agent of the department of insurance shall disclose 310
any information provided to the department of insurance by the 311
department of taxation under division (C) (17) of this section. 312

(18) Disclosing to the division of liquor control 313

information in the possession of the department of taxation that 314
is necessary for the division and department to comply with the 315
requirements of sections 4303.26 and 4303.271 of the Revised 316
Code. 317

(19) Disclosing to the department of education, upon that 318
department's request, information in the possession of the 319
department of taxation that is necessary only to verify whether 320
the family income of a student applying for or receiving a 321
scholarship under the educational choice scholarship pilot 322
program is equal to, less than, or greater than the income 323
thresholds prescribed by section 3310.02 or 3310.032 of the 324
Revised Code. The department of education shall provide 325
sufficient information about the student and the student's 326
family to enable the department of taxation to make the 327
verification. 328

Sec. 5747.01. Except as otherwise expressly provided or 329
clearly appearing from the context, any term used in this 330
chapter that is not otherwise defined in this section has the 331
same meaning as when used in a comparable context in the laws of 332
the United States relating to federal income taxes or if not 333
used in a comparable context in those laws, has the same meaning 334
as in section 5733.40 of the Revised Code. Any reference in this 335
chapter to the Internal Revenue Code includes other laws of the 336
United States relating to federal income taxes. 337

As used in this chapter: 338

(A) "Adjusted gross income" or "Ohio adjusted gross 339
income" means federal adjusted gross income, as defined and used 340
in the Internal Revenue Code, adjusted as provided in this 341
section: 342

(1) Add interest or dividends on obligations or securities	343
of any state or of any political subdivision or authority of any	344
state, other than this state and its subdivisions and	345
authorities.	346
(2) Add interest or dividends on obligations of any	347
authority, commission, instrumentality, territory, or possession	348
of the United States to the extent that the interest or	349
dividends are exempt from federal income taxes but not from	350
state income taxes.	351
(3) Deduct interest or dividends on obligations of the	352
United States and its territories and possessions or of any	353
authority, commission, or instrumentality of the United States	354
to the extent that the interest or dividends are included in	355
federal adjusted gross income but exempt from state income taxes	356
under the laws of the United States.	357
(4) Deduct disability and survivor's benefits to the	358
extent included in federal adjusted gross income.	359
(5) Deduct benefits under Title II of the Social Security	360
Act and tier 1 railroad retirement benefits to the extent	361
included in federal adjusted gross income under section 86 of	362
the Internal Revenue Code.	363
(6) Deduct the amount of wages and salaries, if any, not	364
otherwise allowable as a deduction but that would have been	365
allowable as a deduction in computing federal adjusted gross	366
income for the taxable year, had the targeted jobs credit	367
allowed and determined under sections 38, 51, and 52 of the	368
Internal Revenue Code not been in effect.	369
(7) Deduct any interest or interest equivalent on public	370
obligations and purchase obligations to the extent that the	371

interest or interest equivalent is included in federal adjusted 372
gross income. 373

(8) Add any loss or deduct any gain resulting from the 374
sale, exchange, or other disposition of public obligations to 375
the extent that the loss has been deducted or the gain has been 376
included in computing federal adjusted gross income. 377

(9) Deduct or add amounts, as provided under section 378
5747.70 of the Revised Code, related to contributions to 379
variable college savings program accounts made or tuition units 380
purchased pursuant to Chapter 3334. of the Revised Code. 381

(10) (a) Deduct, to the extent not otherwise allowable as a 382
deduction or exclusion in computing federal or Ohio adjusted 383
gross income for the taxable year, the amount the taxpayer paid 384
during the taxable year for medical care insurance and qualified 385
long-term care insurance for the taxpayer, the taxpayer's 386
spouse, and dependents. No deduction for medical care insurance 387
under division (A) (10) (a) of this section shall be allowed 388
either to any taxpayer who is eligible to participate in any 389
subsidized health plan maintained by any employer of the 390
taxpayer or of the taxpayer's spouse, or to any taxpayer who is 391
entitled to, or on application would be entitled to, benefits 392
under part A of Title XVIII of the "Social Security Act," 49 393
Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of 394
division (A) (10) (a) of this section, "subsidized health plan" 395
means a health plan for which the employer pays any portion of 396
the plan's cost. The deduction allowed under division (A) (10) (a) 397
of this section shall be the net of any related premium refunds, 398
related premium reimbursements, or related insurance premium 399
dividends received during the taxable year. 400

(b) Deduct, to the extent not otherwise deducted or 401

excluded in computing federal or Ohio adjusted gross income 402
during the taxable year, the amount the taxpayer paid during the 403
taxable year, not compensated for by any insurance or otherwise, 404
for medical care of the taxpayer, the taxpayer's spouse, and 405
dependents, to the extent the expenses exceed seven and one-half 406
per cent of the taxpayer's federal adjusted gross income. 407

(c) For purposes of division (A)(10) of this section, 408
"medical care" has the meaning given in section 213 of the 409
Internal Revenue Code, subject to the special rules, 410
limitations, and exclusions set forth therein, and "qualified 411
long-term care" has the same meaning given in section 7702B(c) 412
of the Internal Revenue Code. Solely for purposes of division 413
(A)(10)(a) of this section, "dependent" includes a person who 414
otherwise would be a "qualifying relative" and thus a 415
"dependent" under section 152 of the Internal Revenue Code but 416
for the fact that the person fails to meet the income and 417
support limitations under section 152(d)(1)(B) and (C) of the 418
Internal Revenue Code. 419

(11)(a) Deduct any amount included in federal adjusted 420
gross income solely because the amount represents a 421
reimbursement or refund of expenses that in any year the 422
taxpayer had deducted as an itemized deduction pursuant to 423
section 63 of the Internal Revenue Code and applicable United 424
States department of the treasury regulations. The deduction 425
otherwise allowed under division (A)(11)(a) of this section 426
shall be reduced to the extent the reimbursement is attributable 427
to an amount the taxpayer deducted under this section in any 428
taxable year. 429

(b) Add any amount not otherwise included in Ohio adjusted 430
gross income for any taxable year to the extent that the amount 431

is attributable to the recovery during the taxable year of any 432
amount deducted or excluded in computing federal or Ohio 433
adjusted gross income in any taxable year. 434

(12) Deduct any portion of the deduction described in 435
section 1341(a)(2) of the Internal Revenue Code, for repaying 436
previously reported income received under a claim of right, that 437
meets both of the following requirements: 438

(a) It is allowable for repayment of an item that was 439
included in the taxpayer's adjusted gross income for a prior 440
taxable year and did not qualify for a credit under division (A) 441
or (B) of section 5747.05 of the Revised Code for that year; 442

(b) It does not otherwise reduce the taxpayer's adjusted 443
gross income for the current or any other taxable year. 444

(13) Deduct an amount equal to the deposits made to, and 445
net investment earnings of, a medical savings account during the 446
taxable year, in accordance with section 3924.66 of the Revised 447
Code. The deduction allowed by division (A)(13) of this section 448
does not apply to medical savings account deposits and earnings 449
otherwise deducted or excluded for the current or any other 450
taxable year from the taxpayer's federal adjusted gross income. 451

(14)(a) Add an amount equal to the funds withdrawn from a 452
medical savings account during the taxable year, and the net 453
investment earnings on those funds, when the funds withdrawn 454
were used for any purpose other than to reimburse an account 455
holder for, or to pay, eligible medical expenses, in accordance 456
with section 3924.66 of the Revised Code; 457

(b) Add the amounts distributed from a medical savings 458
account under division (A)(2) of section 3924.68 of the Revised 459
Code during the taxable year. 460

(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, in the tax commissioner's opinion, is necessary to establish the amount deducted under division (A)(16) of this section.

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

(ii) Subject to divisions (A)(17)(a)(iii), (iv), and (v) of this section, add five-sixths of the amount of qualifying section 179 depreciation expense, including the taxpayer's

proportionate or distributive share of the amount of qualifying 490
section 179 depreciation expense allowed to any pass-through 491
entity in which the taxpayer has a direct or indirect ownership 492
interest. 493

(iii) Subject to division (A) (17) (a) (v) of this section, 494
for taxable years beginning in 2012 or thereafter, if the 495
increase in income taxes withheld by the taxpayer is equal to or 496
greater than ten per cent of income taxes withheld by the 497
taxpayer during the taxpayer's immediately preceding taxable 498
year, "two-thirds" shall be substituted for "five-sixths" for 499
the purpose of divisions (A) (17) (a) (i) and (ii) of this section. 500

(iv) Subject to division (A) (17) (a) (v) of this section, 501
for taxable years beginning in 2012 or thereafter, a taxpayer is 502
not required to add an amount under division (A) (17) of this 503
section if the increase in income taxes withheld by the taxpayer 504
and by any pass-through entity in which the taxpayer has a 505
direct or indirect ownership interest is equal to or greater 506
than the sum of (I) the amount of qualifying section 179 507
depreciation expense and (II) the amount of depreciation expense 508
allowed to the taxpayer by subsection (k) of section 168 of the 509
Internal Revenue Code, and including the taxpayer's 510
proportionate or distributive shares of such amounts allowed to 511
any such pass-through entities. 512

(v) If a taxpayer directly or indirectly incurs a net 513
operating loss for the taxable year for federal income tax 514
purposes, to the extent such loss resulted from depreciation 515
expense allowed by subsection (k) of section 168 of the Internal 516
Revenue Code and by qualifying section 179 depreciation expense, 517
"the entire" shall be substituted for "five-sixths of the" for 518
the purpose of divisions (A) (17) (a) (i) and (ii) of this section. 519

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.

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

(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.

(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.

(e) For the purposes of divisions (A) (17) and (18) of this section:

(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.

(ii) "Increase in income taxes withheld" means the amount

by which the amount of income taxes withheld by an employer 549
during the employer's current taxable year exceeds the amount of 550
income taxes withheld by that employer during the employer's 551
immediately preceding taxable year. 552

(iii) "Qualifying section 179 depreciation expense" means 553
the difference between (I) the amount of depreciation expense 554
directly or indirectly allowed to a taxpayer under section 179 555
of the Internal Revised Code, and (II) the amount of 556
depreciation expense directly or indirectly allowed to the 557
taxpayer under section 179 of the Internal Revenue Code as that 558
section existed on December 31, 2002. 559

(18) (a) If the taxpayer was required to add an amount 560
under division (A) (17) (a) of this section for a taxable year, 561
deduct one of the following: 562

(i) One-fifth of the amount so added for each of the five 563
succeeding taxable years if the amount so added was five-sixths 564
of qualifying section 179 depreciation expense or depreciation 565
expense allowed by subsection (k) of section 168 of the Internal 566
Revenue Code; 567

(ii) One-half of the amount so added for each of the two 568
succeeding taxable years if the amount so added was two-thirds 569
of such depreciation expense; 570

(iii) One-sixth of the amount so added for each of the six 571
succeeding taxable years if the entire amount of such 572
depreciation expense was so added. 573

(b) If the amount deducted under division (A) (18) (a) of 574
this section is attributable to an add-back allocated under 575
division (A) (17) (c) of this section, the amount deducted shall 576
be situated to the same location. Otherwise, the add-back shall 577

be apportioned using the apportionment factors for the taxable 578
year in which the deduction is taken, subject to one or more of 579
the four alternative methods of apportionment enumerated in 580
section 5747.21 of the Revised Code. 581

(c) No deduction is available under division (A) (18) (a) of 582
this section with regard to any depreciation allowed by section 583
168(k) of the Internal Revenue Code and by the qualifying 584
section 179 depreciation expense amount to the extent that such 585
depreciation results in or increases a federal net operating 586
loss carryback or carryforward. If no such deduction is 587
available for a taxable year, the taxpayer may carry forward the 588
amount not deducted in such taxable year to the next taxable 589
year and add that amount to any deduction otherwise available 590
under division (A) (18) (a) of this section for that next taxable 591
year. The carryforward of amounts not so deducted shall continue 592
until the entire addition required by division (A) (17) (a) of 593
this section has been deducted. 594

(19) Deduct, to the extent not otherwise deducted or 595
excluded in computing federal or Ohio adjusted gross income for 596
the taxable year, the amount the taxpayer received during the 597
taxable year as reimbursement for life insurance premiums under 598
section 5919.31 of the Revised Code. 599

(20) Deduct, to the extent not otherwise deducted or 600
excluded in computing federal or Ohio adjusted gross income for 601
the taxable year, the amount the taxpayer received during the 602
taxable year as a death benefit paid by the adjutant general 603
under section 5919.33 of the Revised Code. 604

(21) Deduct, to the extent included in federal adjusted 605
gross income and not otherwise allowable as a deduction or 606
exclusion in computing federal or Ohio adjusted gross income for 607

the taxable year, military pay and allowances received by the 608
taxpayer during the taxable year for active duty service in the 609
United States army, air force, navy, marine corps, or coast 610
guard or reserve components thereof or the national guard. The 611
deduction may not be claimed for military pay and allowances 612
received by the taxpayer while the taxpayer is stationed in this 613
state. 614

(22) Deduct, to the extent not otherwise allowable as a 615
deduction or exclusion in computing federal or Ohio adjusted 616
gross income for the taxable year and not otherwise compensated 617
for by any other source, the amount of qualified organ donation 618
expenses incurred by the taxpayer during the taxable year, not 619
to exceed ten thousand dollars. A taxpayer may deduct qualified 620
organ donation expenses only once for all taxable years 621
beginning with taxable years beginning in 2007. 622

For the purposes of division (A) (22) of this section: 623

(a) "Human organ" means all or any portion of a human 624
liver, pancreas, kidney, intestine, or lung, and any portion of 625
human bone marrow. 626

(b) "Qualified organ donation expenses" means travel 627
expenses, lodging expenses, and wages and salary forgone by a 628
taxpayer in connection with the taxpayer's donation, while 629
living, of one or more of the taxpayer's human organs to another 630
human being. 631

(23) Deduct, to the extent not otherwise deducted or 632
excluded in computing federal or Ohio adjusted gross income for 633
the taxable year, amounts received by the taxpayer as retired 634
personnel pay for service in the uniformed services or reserve 635
components thereof, or the national guard, or received by the 636

surviving spouse or former spouse of such a taxpayer under the 637
survivor benefit plan on account of such a taxpayer's death. If 638
the taxpayer receives income on account of retirement paid under 639
the federal civil service retirement system or federal employees 640
retirement system, or under any successor retirement program 641
enacted by the congress of the United States that is established 642
and maintained for retired employees of the United States 643
government, and such retirement income is based, in whole or in 644
part, on credit for the taxpayer's uniformed service, the 645
deduction allowed under this division shall include only that 646
portion of such retirement income that is attributable to the 647
taxpayer's uniformed service, to the extent that portion of such 648
retirement income is otherwise included in federal adjusted 649
gross income and is not otherwise deducted under this section. 650
Any amount deducted under division (A) (23) of this section is 651
not included in a taxpayer's adjusted gross income for the 652
purposes of section 5747.055 of the Revised Code. No amount may 653
be deducted under division (A) (23) of this section on the basis 654
of which a credit was claimed under section 5747.055 of the 655
Revised Code. 656

(24) Deduct, to the extent not otherwise deducted or 657
excluded in computing federal or Ohio adjusted gross income for 658
the taxable year, the amount the taxpayer received during the 659
taxable year from the military injury relief fund created in 660
section 5902.05 of the Revised Code. 661

(25) Deduct, to the extent not otherwise deducted or 662
excluded in computing federal or Ohio adjusted gross income for 663
the taxable year, the amount the taxpayer received as a veterans 664
bonus during the taxable year from the Ohio department of 665
veterans services as authorized by Section 2r of Article VIII, 666
Ohio Constitution. 667

(26) Deduct, to the extent not otherwise deducted or 668
excluded in computing federal or Ohio adjusted gross income for 669
the taxable year, any income derived from a transfer agreement 670
or from the enterprise transferred under that agreement under 671
section 4313.02 of the Revised Code. 672

(27) Deduct, to the extent not otherwise deducted or 673
excluded in computing federal or Ohio adjusted gross income for 674
the taxable year, Ohio college opportunity or federal Pell grant 675
amounts received by the taxpayer or the taxpayer's spouse or 676
dependent pursuant to section 3333.122 of the Revised Code or 20 677
U.S.C. 1070a, et seq., and used to pay room or board furnished 678
by the educational institution for which the grant was awarded 679
at the institution's facilities, including meal plans 680
administered by the institution. For the purposes of this 681
division, receipt of a grant includes the distribution of a 682
grant directly to an educational institution and the crediting 683
of the grant to the enrollee's account with the institution. 684

(28) Deduct from the portion of an individual's federal 685
adjusted gross income that is business income, to the extent not 686
otherwise deducted or excluded in computing federal adjusted 687
gross income for the taxable year, one hundred twenty-five 688
thousand dollars for each spouse if spouses file separate 689
returns under section 5747.08 of the Revised Code or two hundred 690
fifty thousand dollars for all other individuals. 691

(29) Deduct, as provided under section 5747.78 of the 692
Revised Code, contributions to ABLE savings accounts made in 693
accordance with sections 113.50 to 113.56 of the Revised Code. 694

(30) (a) Deduct, to the extent not otherwise deducted or 695
excluded in computing federal or Ohio adjusted gross income 696
during the taxable year, all of the following: 697

(i) Compensation paid to a qualifying employee described 698
in division (A) (14) (a) of section 5703.94 of the Revised Code to 699
the extent such compensation is for disaster work conducted in 700
this state during a disaster response period pursuant to a 701
qualifying solicitation received by the employee's employer; 702

(ii) Compensation paid to a qualifying employee described 703
in division (A) (14) (b) of section 5703.94 of the Revised Code to 704
the extent such compensation is for disaster work conducted in 705
this state by the employee during the disaster response period 706
on critical infrastructure owned or used by the employee's 707
employer; 708

(iii) Income received by an out-of-state disaster business 709
for disaster work conducted in this state during a disaster 710
response period, or, if the out-of-state disaster business is a 711
pass-through entity, a taxpayer's distributive share of the 712
pass-through entity's income from the business conducting 713
disaster work in this state during a disaster response period, 714
if, in either case, the disaster work is conducted pursuant to a 715
qualifying solicitation received by the business. 716

(b) All terms used in division (A) (30) of this section 717
have the same meanings as in section 5703.94 of the Revised 718
Code. 719

(31) For a taxpayer who is a qualifying Ohio educator, 720
deduct, to the extent not otherwise deducted or excluded in 721
computing federal or Ohio adjusted gross income for the taxable 722
year, the lesser of two hundred fifty dollars or the amount of 723
expenses described in subsections (a) (2) (D) (i) and (ii) of 724
section 62 of the Internal Revenue Code paid or incurred by the 725
taxpayer during the taxpayer's taxable year in excess of the 726
amount the taxpayer is authorized to deduct for that taxable 727

year under subsection (a) (2) (D) of that section. 728

~~(34)~~(32) Deduct, to the extent not otherwise deducted or 729
excluded in computing federal or Ohio adjusted gross income for 730
the taxable year, amounts received by the taxpayer as a 731
disability severance payment, computed under 10 U.S.C. 1212, 732
following discharge or release under honorable conditions from 733
the armed forces, as defined by 10 U.S.C. 101. 734

(33) (a) Deduct, to the extent not otherwise deducted or 735
excluded in computing federal or Ohio adjusted gross income for 736
the taxable year: 737

(i) One hundred per cent of the capital gain received by 738
the taxpayer from a qualifying interest in an Ohio venture 739
capital operating company attributable to the company's 740
investments in Ohio businesses during the period for which the 741
company was an Ohio venture operating company; and 742

(ii) Fifty per cent of the capital gain received by the 743
taxpayer from a qualifying interest in an Ohio venture capital 744
operating company attributable to the company's investments in 745
all other businesses during the period for which the company was 746
an Ohio venture operating company. 747

(b) Add amounts previously deducted by the taxpayer under 748
division (A) (33) (a) of this section if the director of 749
development services certifies to the tax commissioner that the 750
requirements for the deduction were not met. 751

(c) All terms used in division (A) (33) of this section 752
have the same meanings as in section 122.851 of the Revised 753
Code. 754

(d) To the extent a capital gain described in division (A) 755
(33) (a) of this section is business income, the taxpayer shall 756

apply that division before applying division (A) (28) of this 757
section. 758

(B) "Business income" means income, including gain or 759
loss, arising from transactions, activities, and sources in the 760
regular course of a trade or business and includes income, gain, 761
or loss from real property, tangible property, and intangible 762
property if the acquisition, rental, management, and disposition 763
of the property constitute integral parts of the regular course 764
of a trade or business operation. "Business income" includes 765
income, including gain or loss, from a partial or complete 766
liquidation of a business, including, but not limited to, gain 767
or loss from the sale or other disposition of goodwill. 768

(C) "Nonbusiness income" means all income other than 769
business income and may include, but is not limited to, 770
compensation, rents and royalties from real or tangible personal 771
property, capital gains, interest, dividends and distributions, 772
patent or copyright royalties, or lottery winnings, prizes, and 773
awards. 774

(D) "Compensation" means any form of remuneration paid to 775
an employee for personal services. 776

(E) "Fiduciary" means a guardian, trustee, executor, 777
administrator, receiver, conservator, or any other person acting 778
in any fiduciary capacity for any individual, trust, or estate. 779

(F) "Fiscal year" means an accounting period of twelve 780
months ending on the last day of any month other than December. 781

(G) "Individual" means any natural person. 782

(H) "Internal Revenue Code" means the "Internal Revenue 783
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 784

(I) "Resident" means any of the following:	785
(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;	786 787
(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.	788 789 790 791
(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.	792 793 794
For the purposes of division (I) (3) of this section:	795
(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:	796 797 798 799 800 801
(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;	802 803 804 805
(ii) A person who was domiciled in this state for the purposes of this chapter when the person directly or indirectly transferred assets to an irrevocable trust, but only if at least one of the trust's qualifying beneficiaries is domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year;	806 807 808 809 810 811
(iii) A person who was domiciled in this state for the	812

purposes of this chapter when the trust document or instrument 813
or part of the trust document or instrument became irrevocable, 814
but only if at least one of the trust's qualifying beneficiaries 815
is a resident domiciled in this state for the purposes of this 816
chapter during all or some portion of the trust's current 817
taxable year. If a trust document or instrument became 818
irrevocable upon the death of a person who at the time of death 819
was domiciled in this state for purposes of this chapter, that 820
person is a person described in division (I) (3) (a) (iii) of this 821
section. 822

(b) A trust is irrevocable to the extent that the 823
transferor is not considered to be the owner of the net assets 824
of the trust under sections 671 to 678 of the Internal Revenue 825
Code. 826

(c) With respect to a trust other than a charitable lead 827
trust, "qualifying beneficiary" has the same meaning as 828
"potential current beneficiary" as defined in section 1361(e) (2) 829
of the Internal Revenue Code, and with respect to a charitable 830
lead trust "qualifying beneficiary" is any current, future, or 831
contingent beneficiary, but with respect to any trust 832
"qualifying beneficiary" excludes a person or a governmental 833
entity or instrumentality to any of which a contribution would 834
qualify for the charitable deduction under section 170 of the 835
Internal Revenue Code. 836

(d) For the purposes of division (I) (3) (a) of this 837
section, the extent to which a trust consists directly or 838
indirectly, in whole or in part, of assets, net of any related 839
liabilities, that were transferred directly or indirectly, in 840
whole or part, to the trust by any of the sources enumerated in 841
that division shall be ascertained by multiplying the fair 842

market value of the trust's assets, net of related liabilities, 843
by the qualifying ratio, which shall be computed as follows: 844

(i) The first time the trust receives assets, the 845
numerator of the qualifying ratio is the fair market value of 846
those assets at that time, net of any related liabilities, from 847
sources enumerated in division (I) (3) (a) of this section. The 848
denominator of the qualifying ratio is the fair market value of 849
all the trust's assets at that time, net of any related 850
liabilities. 851

(ii) Each subsequent time the trust receives assets, a 852
revised qualifying ratio shall be computed. The numerator of the 853
revised qualifying ratio is the sum of (1) the fair market value 854
of the trust's assets immediately prior to the subsequent 855
transfer, net of any related liabilities, multiplied by the 856
qualifying ratio last computed without regard to the subsequent 857
transfer, and (2) the fair market value of the subsequently 858
transferred assets at the time transferred, net of any related 859
liabilities, from sources enumerated in division (I) (3) (a) of 860
this section. The denominator of the revised qualifying ratio is 861
the fair market value of all the trust's assets immediately 862
after the subsequent transfer, net of any related liabilities. 863

(iii) Whether a transfer to the trust is by or from any of 864
the sources enumerated in division (I) (3) (a) of this section 865
shall be ascertained without regard to the domicile of the 866
trust's beneficiaries. 867

(e) For the purposes of division (I) (3) (a) (i) of this 868
section: 869

(i) A trust is described in division (I) (3) (e) (i) of this 870
section if the trust is a testamentary trust and the testator of 871

that testamentary trust was domiciled in this state at the time 872
of the testator's death for purposes of the taxes levied under 873
Chapter 5731. of the Revised Code. 874

(ii) A trust is described in division (I)(3)(e)(ii) of 875
this section if the transfer is a qualifying transfer described 876
in any of divisions (I)(3)(f)(i) to (vi) of this section, the 877
trust is an irrevocable inter vivos trust, and at least one of 878
the trust's qualifying beneficiaries is domiciled in this state 879
for purposes of this chapter during all or some portion of the 880
trust's current taxable year. 881

(f) For the purposes of division (I)(3)(e)(ii) of this 882
section, a "qualifying transfer" is a transfer of assets, net of 883
any related liabilities, directly or indirectly to a trust, if 884
the transfer is described in any of the following: 885

(i) The transfer is made to a trust, created by the 886
decedent before the decedent's death and while the decedent was 887
domiciled in this state for the purposes of this chapter, and, 888
prior to the death of the decedent, the trust became irrevocable 889
while the decedent was domiciled in this state for the purposes 890
of this chapter. 891

(ii) The transfer is made to a trust to which the 892
decedent, prior to the decedent's death, had directly or 893
indirectly transferred assets, net of any related liabilities, 894
while the decedent was domiciled in this state for the purposes 895
of this chapter, and prior to the death of the decedent the 896
trust became irrevocable while the decedent was domiciled in 897
this state for the purposes of this chapter. 898

(iii) The transfer is made on account of a contractual 899
relationship existing directly or indirectly between the 900

transferor and either the decedent or the estate of the decedent 901
at any time prior to the date of the decedent's death, and the 902
decedent was domiciled in this state at the time of death for 903
purposes of the taxes levied under Chapter 5731. of the Revised 904
Code. 905

(iv) The transfer is made to a trust on account of a 906
contractual relationship existing directly or indirectly between 907
the transferor and another person who at the time of the 908
decedent's death was domiciled in this state for purposes of 909
this chapter. 910

(v) The transfer is made to a trust on account of the will 911
of a testator who was domiciled in this state at the time of the 912
testator's death for purposes of the taxes levied under Chapter 913
5731. of the Revised Code. 914

(vi) The transfer is made to a trust created by or caused 915
to be created by a court, and the trust was directly or 916
indirectly created in connection with or as a result of the 917
death of an individual who, for purposes of the taxes levied 918
under Chapter 5731. of the Revised Code, was domiciled in this 919
state at the time of the individual's death. 920

(g) The tax commissioner may adopt rules to ascertain the 921
part of a trust residing in this state. 922

(J) "Nonresident" means an individual or estate that is 923
not a resident. An individual who is a resident for only part of 924
a taxable year is a nonresident for the remainder of that 925
taxable year. 926

(K) "Pass-through entity" has the same meaning as in 927
section 5733.04 of the Revised Code. 928

(L) "Return" means the notifications and reports required 929

to be filed pursuant to this chapter for the purpose of 930
reporting the tax due and includes declarations of estimated tax 931
when so required. 932

(M) "Taxable year" means the calendar year or the 933
taxpayer's fiscal year ending during the calendar year, or 934
fractional part thereof, upon which the adjusted gross income is 935
calculated pursuant to this chapter. 936

(N) "Taxpayer" means any person subject to the tax imposed 937
by section 5747.02 of the Revised Code or any pass-through 938
entity that makes the election under division (D) of section 939
5747.08 of the Revised Code. 940

(O) "Dependents" means one of the following: 941

(1) For taxable years beginning on or after January 1, 942
2018, and before January 1, 2026, dependents as defined in the 943
Internal Revenue Code; 944

(2) For all other taxable years, dependents as defined in 945
the Internal Revenue Code and as claimed in the taxpayer's 946
federal income tax return for the taxable year or which the 947
taxpayer would have been permitted to claim had the taxpayer 948
filed a federal income tax return. 949

(P) "Principal county of employment" means, in the case of 950
a nonresident, the county within the state in which a taxpayer 951
performs services for an employer or, if those services are 952
performed in more than one county, the county in which the major 953
portion of the services are performed. 954

(Q) As used in sections 5747.50 to 5747.55 of the Revised 955
Code: 956

(1) "Subdivision" means any county, municipal corporation, 957

park district, or township. 958

(2) "Essential local government purposes" includes all 959
functions that any subdivision is required by general law to 960
exercise, including like functions that are exercised under a 961
charter adopted pursuant to the Ohio Constitution. 962

(R) "Overpayment" means any amount already paid that 963
exceeds the figure determined to be the correct amount of the 964
tax. 965

(S) "Taxable income" or "Ohio taxable income" applies only 966
to estates and trusts, and means federal taxable income, as 967
defined and used in the Internal Revenue Code, adjusted as 968
follows: 969

(1) Add interest or dividends, net of ordinary, necessary, 970
and reasonable expenses not deducted in computing federal 971
taxable income, on obligations or securities of any state or of 972
any political subdivision or authority of any state, other than 973
this state and its subdivisions and authorities, but only to the 974
extent that such net amount is not otherwise includible in Ohio 975
taxable income and is described in either division (S) (1) (a) or 976
(b) of this section: 977

(a) The net amount is not attributable to the S portion of 978
an electing small business trust and has not been distributed to 979
beneficiaries for the taxable year; 980

(b) The net amount is attributable to the S portion of an 981
electing small business trust for the taxable year. 982

(2) Add interest or dividends, net of ordinary, necessary, 983
and reasonable expenses not deducted in computing federal 984
taxable income, on obligations of any authority, commission, 985
instrumentality, territory, or possession of the United States 986

to the extent that the interest or dividends are exempt from 987
federal income taxes but not from state income taxes, but only 988
to the extent that such net amount is not otherwise includible 989
in Ohio taxable income and is described in either division (S) 990
(1) (a) or (b) of this section; 991

(3) Add the amount of personal exemption allowed to the 992
estate pursuant to section 642(b) of the Internal Revenue Code; 993

(4) Deduct interest or dividends, net of related expenses 994
deducted in computing federal taxable income, on obligations of 995
the United States and its territories and possessions or of any 996
authority, commission, or instrumentality of the United States 997
to the extent that the interest or dividends are exempt from 998
state taxes under the laws of the United States, but only to the 999
extent that such amount is included in federal taxable income 1000
and is described in either division (S) (1) (a) or (b) of this 1001
section; 1002

(5) Deduct the amount of wages and salaries, if any, not 1003
otherwise allowable as a deduction but that would have been 1004
allowable as a deduction in computing federal taxable income for 1005
the taxable year, had the targeted jobs credit allowed under 1006
sections 38, 51, and 52 of the Internal Revenue Code not been in 1007
effect, but only to the extent such amount relates either to 1008
income included in federal taxable income for the taxable year 1009
or to income of the S portion of an electing small business 1010
trust for the taxable year; 1011

(6) Deduct any interest or interest equivalent, net of 1012
related expenses deducted in computing federal taxable income, 1013
on public obligations and purchase obligations, but only to the 1014
extent that such net amount relates either to income included in 1015
federal taxable income for the taxable year or to income of the 1016

S portion of an electing small business trust for the taxable 1017
year; 1018

(7) Add any loss or deduct any gain resulting from sale, 1019
exchange, or other disposition of public obligations to the 1020
extent that such loss has been deducted or such gain has been 1021
included in computing either federal taxable income or income of 1022
the S portion of an electing small business trust for the 1023
taxable year; 1024

(8) Except in the case of the final return of an estate, 1025
add any amount deducted by the taxpayer on both its Ohio estate 1026
tax return pursuant to section 5731.14 of the Revised Code, and 1027
on its federal income tax return in determining federal taxable 1028
income; 1029

(9) (a) Deduct any amount included in federal taxable 1030
income solely because the amount represents a reimbursement or 1031
refund of expenses that in a previous year the decedent had 1032
deducted as an itemized deduction pursuant to section 63 of the 1033
Internal Revenue Code and applicable treasury regulations. The 1034
deduction otherwise allowed under division (S) (9) (a) of this 1035
section shall be reduced to the extent the reimbursement is 1036
attributable to an amount the taxpayer or decedent deducted 1037
under this section in any taxable year. 1038

(b) Add any amount not otherwise included in Ohio taxable 1039
income for any taxable year to the extent that the amount is 1040
attributable to the recovery during the taxable year of any 1041
amount deducted or excluded in computing federal or Ohio taxable 1042
income in any taxable year, but only to the extent such amount 1043
has not been distributed to beneficiaries for the taxable year. 1044

(10) Deduct any portion of the deduction described in 1045

section 1341(a)(2) of the Internal Revenue Code, for repaying 1046
previously reported income received under a claim of right, that 1047
meets both of the following requirements: 1048

(a) It is allowable for repayment of an item that was 1049
included in the taxpayer's taxable income or the decedent's 1050
adjusted gross income for a prior taxable year and did not 1051
qualify for a credit under division (A) or (B) of section 1052
5747.05 of the Revised Code for that year. 1053

(b) It does not otherwise reduce the taxpayer's taxable 1054
income or the decedent's adjusted gross income for the current 1055
or any other taxable year. 1056

(11) Add any amount claimed as a credit under section 1057
5747.059 of the Revised Code to the extent that the amount 1058
satisfies either of the following: 1059

(a) The amount was deducted or excluded from the 1060
computation of the taxpayer's federal taxable income as required 1061
to be reported for the taxpayer's taxable year under the 1062
Internal Revenue Code; 1063

(b) The amount resulted in a reduction in the taxpayer's 1064
federal taxable income as required to be reported for any of the 1065
taxpayer's taxable years under the Internal Revenue Code. 1066

(12) Deduct any amount, net of related expenses deducted 1067
in computing federal taxable income, that a trust is required to 1068
report as farm income on its federal income tax return, but only 1069
if the assets of the trust include at least ten acres of land 1070
satisfying the definition of "land devoted exclusively to 1071
agricultural use" under section 5713.30 of the Revised Code, 1072
regardless of whether the land is valued for tax purposes as 1073
such land under sections 5713.30 to 5713.38 of the Revised Code. 1074

If the trust is a pass-through entity investor, section 5747.231 1075
of the Revised Code applies in ascertaining if the trust is 1076
eligible to claim the deduction provided by division (S) (12) of 1077
this section in connection with the pass-through entity's farm 1078
income. 1079

Except for farm income attributable to the S portion of an 1080
electing small business trust, the deduction provided by 1081
division (S) (12) of this section is allowed only to the extent 1082
that the trust has not distributed such farm income. 1083

(13) Add the net amount of income described in section 1084
641(c) of the Internal Revenue Code to the extent that amount is 1085
not included in federal taxable income. 1086

(14) Add or deduct the amount the taxpayer would be 1087
required to add or deduct under division (A) (17) or (18) of this 1088
section if the taxpayer's Ohio taxable income were computed in 1089
the same manner as an individual's Ohio adjusted gross income is 1090
computed under this section. 1091

(T) "School district income" and "school district income 1092
tax" have the same meanings as in section 5748.01 of the Revised 1093
Code. 1094

(U) As used in divisions (A) (7), (A) (8), (S) (6), and (S) 1095
(7) of this section, "public obligations," "purchase 1096
obligations," and "interest or interest equivalent" have the 1097
same meanings as in section 5709.76 of the Revised Code. 1098

(V) "Limited liability company" means any limited 1099
liability company formed under Chapter 1705. or 1706. of the 1100
Revised Code or under the laws of any other state. 1101

(W) "Pass-through entity investor" means any person who, 1102
during any portion of a taxable year of a pass-through entity, 1103

is a partner, member, shareholder, or equity investor in that 1104
pass-through entity. 1105

(X) "Banking day" has the same meaning as in section 1106
1304.01 of the Revised Code. 1107

(Y) "Month" means a calendar month. 1108

(Z) "Quarter" means the first three months, the second 1109
three months, the third three months, or the last three months 1110
of the taxpayer's taxable year. 1111

(AA) (1) "Modified business income" means the business 1112
income included in a trust's Ohio taxable income after such 1113
taxable income is first reduced by the qualifying trust amount, 1114
if any. 1115

(2) "Qualifying trust amount" of a trust means capital 1116
gains and losses from the sale, exchange, or other disposition 1117
of equity or ownership interests in, or debt obligations of, a 1118
qualifying investee to the extent included in the trust's Ohio 1119
taxable income, but only if the following requirements are 1120
satisfied: 1121

(a) The book value of the qualifying investee's physical 1122
assets in this state and everywhere, as of the last day of the 1123
qualifying investee's fiscal or calendar year ending immediately 1124
prior to the date on which the trust recognizes the gain or 1125
loss, is available to the trust. 1126

(b) The requirements of section 5747.011 of the Revised 1127
Code are satisfied for the trust's taxable year in which the 1128
trust recognizes the gain or loss. 1129

Any gain or loss that is not a qualifying trust amount is 1130
modified business income, qualifying investment income, or 1131

modified nonbusiness income, as the case may be. 1132

(3) "Modified nonbusiness income" means a trust's Ohio 1133
taxable income other than modified business income, other than 1134
the qualifying trust amount, and other than qualifying 1135
investment income, as defined in section 5747.012 of the Revised 1136
Code, to the extent such qualifying investment income is not 1137
otherwise part of modified business income. 1138

(4) "Modified Ohio taxable income" applies only to trusts, 1139
and means the sum of the amounts described in divisions (AA) (4) 1140
(a) to (c) of this section: 1141

(a) The fraction, calculated under section 5747.013, and 1142
applying section 5747.231 of the Revised Code, multiplied by the 1143
sum of the following amounts: 1144

(i) The trust's modified business income; 1145

(ii) The trust's qualifying investment income, as defined 1146
in section 5747.012 of the Revised Code, but only to the extent 1147
the qualifying investment income does not otherwise constitute 1148
modified business income and does not otherwise constitute a 1149
qualifying trust amount. 1150

(b) The qualifying trust amount multiplied by a fraction, 1151
the numerator of which is the sum of the book value of the 1152
qualifying investee's physical assets in this state on the last 1153
day of the qualifying investee's fiscal or calendar year ending 1154
immediately prior to the day on which the trust recognizes the 1155
qualifying trust amount, and the denominator of which is the sum 1156
of the book value of the qualifying investee's total physical 1157
assets everywhere on the last day of the qualifying investee's 1158
fiscal or calendar year ending immediately prior to the day on 1159
which the trust recognizes the qualifying trust amount. If, for 1160

a taxable year, the trust recognizes a qualifying trust amount 1161
with respect to more than one qualifying investee, the amount 1162
described in division (AA) (4) (b) of this section shall equal the 1163
sum of the products so computed for each such qualifying 1164
investee. 1165

(c) (i) With respect to a trust or portion of a trust that 1166
is a resident as ascertained in accordance with division (I) (3) 1167
(d) of this section, its modified nonbusiness income. 1168

(ii) With respect to a trust or portion of a trust that is 1169
not a resident as ascertained in accordance with division (I) (3) 1170
(d) of this section, the amount of its modified nonbusiness 1171
income satisfying the descriptions in divisions (B) (2) to (5) of 1172
section 5747.20 of the Revised Code, except as otherwise 1173
provided in division (AA) (4) (c) (ii) of this section. With 1174
respect to a trust or portion of a trust that is not a resident 1175
as ascertained in accordance with division (I) (3) (d) of this 1176
section, the trust's portion of modified nonbusiness income 1177
recognized from the sale, exchange, or other disposition of a 1178
debt interest in or equity interest in a section 5747.212 1179
entity, as defined in section 5747.212 of the Revised Code, 1180
without regard to division (A) of that section, shall not be 1181
allocated to this state in accordance with section 5747.20 of 1182
the Revised Code but shall be apportioned to this state in 1183
accordance with division (B) of section 5747.212 of the Revised 1184
Code without regard to division (A) of that section. 1185

If the allocation and apportionment of a trust's income 1186
under divisions (AA) (4) (a) and (c) of this section do not fairly 1187
represent the modified Ohio taxable income of the trust in this 1188
state, the alternative methods described in division (C) of 1189
section 5747.21 of the Revised Code may be applied in the manner 1190

and to the same extent provided in that section. 1191

(5) (a) Except as set forth in division (AA) (5) (b) of this 1192
section, "qualifying investee" means a person in which a trust 1193
has an equity or ownership interest, or a person or unit of 1194
government the debt obligations of either of which are owned by 1195
a trust. For the purposes of division (AA) (2) (a) of this section 1196
and for the purpose of computing the fraction described in 1197
division (AA) (4) (b) of this section, all of the following apply: 1198

(i) If the qualifying investee is a member of a qualifying 1199
controlled group on the last day of the qualifying investee's 1200
fiscal or calendar year ending immediately prior to the date on 1201
which the trust recognizes the gain or loss, then "qualifying 1202
investee" includes all persons in the qualifying controlled 1203
group on such last day. 1204

(ii) If the qualifying investee, or if the qualifying 1205
investee and any members of the qualifying controlled group of 1206
which the qualifying investee is a member on the last day of the 1207
qualifying investee's fiscal or calendar year ending immediately 1208
prior to the date on which the trust recognizes the gain or 1209
loss, separately or cumulatively own, directly or indirectly, on 1210
the last day of the qualifying investee's fiscal or calendar 1211
year ending immediately prior to the date on which the trust 1212
recognizes the qualifying trust amount, more than fifty per cent 1213
of the equity of a pass-through entity, then the qualifying 1214
investee and the other members are deemed to own the 1215
proportionate share of the pass-through entity's physical assets 1216
which the pass-through entity directly or indirectly owns on the 1217
last day of the pass-through entity's calendar or fiscal year 1218
ending within or with the last day of the qualifying investee's 1219
fiscal or calendar year ending immediately prior to the date on 1220

which the trust recognizes the qualifying trust amount. 1221

(iii) For the purposes of division (AA) (5) (a) (iii) of this 1222
section, "upper level pass-through entity" means a pass-through 1223
entity directly or indirectly owning any equity of another pass- 1224
through entity, and "lower level pass-through entity" means that 1225
other pass-through entity. 1226

An upper level pass-through entity, whether or not it is 1227
also a qualifying investee, is deemed to own, on the last day of 1228
the upper level pass-through entity's calendar or fiscal year, 1229
the proportionate share of the lower level pass-through entity's 1230
physical assets that the lower level pass-through entity 1231
directly or indirectly owns on the last day of the lower level 1232
pass-through entity's calendar or fiscal year ending within or 1233
with the last day of the upper level pass-through entity's 1234
fiscal or calendar year. If the upper level pass-through entity 1235
directly and indirectly owns less than fifty per cent of the 1236
equity of the lower level pass-through entity on each day of the 1237
upper level pass-through entity's calendar or fiscal year in 1238
which or with which ends the calendar or fiscal year of the 1239
lower level pass-through entity and if, based upon clear and 1240
convincing evidence, complete information about the location and 1241
cost of the physical assets of the lower pass-through entity is 1242
not available to the upper level pass-through entity, then 1243
solely for purposes of ascertaining if a gain or loss 1244
constitutes a qualifying trust amount, the upper level pass- 1245
through entity shall be deemed as owning no equity of the lower 1246
level pass-through entity for each day during the upper level 1247
pass-through entity's calendar or fiscal year in which or with 1248
which ends the lower level pass-through entity's calendar or 1249
fiscal year. Nothing in division (AA) (5) (a) (iii) of this section 1250
shall be construed to provide for any deduction or exclusion in 1251

computing any trust's Ohio taxable income.	1252
(b) With respect to a trust that is not a resident for the taxable year and with respect to a part of a trust that is not a resident for the taxable year, "qualifying investee" for that taxable year does not include a C corporation if both of the following apply:	1253
	1254
	1255
	1256
	1257
(i) During the taxable year the trust or part of the trust recognizes a gain or loss from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, the C corporation.	1258
	1259
	1260
	1261
(ii) Such gain or loss constitutes nonbusiness income.	1262
(6) "Available" means information is such that a person is able to learn of the information by the due date plus extensions, if any, for filing the return for the taxable year in which the trust recognizes the gain or loss.	1263
	1264
	1265
	1266
(BB) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code.	1267
	1268
(CC) "Related member" has the same meaning as in section 5733.042 of the Revised Code.	1269
	1270
(DD) (1) For the purposes of division (DD) of this section:	1271
(a) "Qualifying person" means any person other than a qualifying corporation.	1272
	1273
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	1274
	1275
	1276
(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue	1277
	1278

Code for its taxable year ending within, or on the last day of, 1279
the investor's taxable year; 1280

(ii) A subsidiary that is wholly owned by any corporation 1281
that has made an election under subchapter S, chapter one, 1282
subtitle A of the Internal Revenue Code for its taxable year 1283
ending within, or on the last day of, the investor's taxable 1284
year. 1285

(2) For the purposes of this chapter, unless expressly 1286
stated otherwise, no qualifying person indirectly owns any asset 1287
directly or indirectly owned by any qualifying corporation. 1288

(EE) For purposes of this chapter and Chapter 5751. of the 1289
Revised Code: 1290

(1) "Trust" does not include a qualified pre-income tax 1291
trust. 1292

(2) A "qualified pre-income tax trust" is any pre-income 1293
tax trust that makes a qualifying pre-income tax trust election 1294
as described in division (EE)(3) of this section. 1295

(3) A "qualifying pre-income tax trust election" is an 1296
election by a pre-income tax trust to subject to the tax imposed 1297
by section 5751.02 of the Revised Code the pre-income tax trust 1298
and all pass-through entities of which the trust owns or 1299
controls, directly, indirectly, or constructively through 1300
related interests, five per cent or more of the ownership or 1301
equity interests. The trustee shall notify the tax commissioner 1302
in writing of the election on or before April 15, 2006. The 1303
election, if timely made, shall be effective on and after 1304
January 1, 2006, and shall apply for all tax periods and tax 1305
years until revoked by the trustee of the trust. 1306

(4) A "pre-income tax trust" is a trust that satisfies all 1307

of the following requirements: 1308

(a) The document or instrument creating the trust was 1309
executed by the grantor before January 1, 1972; 1310

(b) The trust became irrevocable upon the creation of the 1311
trust; and 1312

(c) The grantor was domiciled in this state at the time 1313
the trust was created. 1314

(FF) "Uniformed services" has the same meaning as in 10 1315
U.S.C. 101. 1316

(GG) "Taxable business income" means the amount by which 1317
an individual's business income that is included in federal 1318
adjusted gross income exceeds the amount of business income the 1319
individual is authorized to deduct under division (A) (31) of 1320
this section for the taxable year. 1321

(HH) "Employer" does not include a franchisor with respect 1322
to the franchisor's relationship with a franchisee or an 1323
employee of a franchisee, unless the franchisor agrees to assume 1324
that role in writing or a court of competent jurisdiction 1325
determines that the franchisor exercises a type or degree of 1326
control over the franchisee or the franchisee's employees that 1327
is not customarily exercised by a franchisor for the purpose of 1328
protecting the franchisor's trademark, brand, or both. For 1329
purposes of this division, "franchisor" and "franchisee" have 1330
the same meanings as in 16 C.F.R. 436.1. 1331

(II) "Modified adjusted gross income" means Ohio adjusted 1332
gross income plus any amount deducted under division (A) (28) of 1333
this section for the taxable year. 1334

(JJ) "Qualifying Ohio educator" means an individual who, 1335

for a taxable year, qualifies as an eligible educator, as that 1336
term is defined in section 62 of the Internal Revenue Code, and 1337
who holds a certificate, license, or permit described in Chapter 1338
3319. or section 3301.071 of the Revised Code. 1339

Sec. 5747.10. (A) As used in this section: 1340

(1) "Audited partnership" means a partnership subject to 1341
an examination by the internal revenue service pursuant to 1342
subchapter C, chapter 63, subtitle F of the Internal Revenue 1343
Code resulting in a federal adjustment. 1344

(2) (a) "Direct investor" means a partner or other investor 1345
that holds a direct interest in a pass-through entity. 1346

(b) "Indirect investor" means a partner or other investor 1347
that holds an interest in a pass-through entity that itself 1348
holds an interest, directly or through another indirect partner 1349
or other investor, in a pass-through entity. 1350

(3) "Exempt partner" means a partner that is neither a 1351
pass-through entity nor a person subject to the tax imposed by 1352
section 5747.02 of the Revised Code. 1353

(4) "Federal adjustment" means a change to an item or 1354
amount required to be determined under the Internal Revenue Code 1355
that directly or indirectly affects a taxpayer's aggregate tax 1356
liability under section 5747.02 or Chapter 5748. of the Revised 1357
Code and that results from an action or examination by the 1358
internal revenue service, or from the filing of an amended 1359
federal tax return, a claim for a federal tax refund, or an 1360
administrative adjustment request filed by a partnership under 1361
section 6227 of the Internal Revenue Code. 1362

(5) "Federal adjustments return" means the form or other 1363
document prescribed by the tax commissioner for use by a 1364

taxpayer in reporting final federal adjustments. 1365

(6) "State partnership representative" means either of the 1366
following: 1367

(a) The person who served as the partnership's 1368
representative for federal income tax purposes, pursuant to 1369
section 6223(a) of the Internal Revenue Code, during the 1370
corresponding federal partnership audit; 1371

(b) The person designated, on a form prescribed by the tax 1372
commissioner, to serve as the partnership's representative 1373
during the state partnership audit. The commissioner may 1374
establish reasonable qualifications and procedures for a person 1375
to be designated as a state partnership representative under 1376
this division. 1377

(7) A federal adjustment is "final" or "agreed to or 1378
finally determined for federal income tax purposes" on any of 1379
the following: 1380

(a) The day after which the period for appeal of a federal 1381
assessment has expired; 1382

(b) The date on a refund check issued by the internal 1383
revenue service; or 1384

(c) For agreements required to be signed by the internal 1385
revenue service and the taxpayer or audited partnership, the 1386
date on which the last party signed the agreement. 1387

(B) (1) If any of the facts, figures, computations, or 1388
attachments required in a taxpayer's annual return to determine 1389
the tax charged by this chapter or Chapter 5748. of the Revised 1390
Code must be altered as the result of a final federal 1391
adjustment, and the federal adjustment is not required to be 1392

reported under division (C) of this section, the taxpayer shall 1393
file an amended return with the tax commissioner in such form as 1394
the commissioner requires. The amended return shall be filed not 1395
later than ninety days after the federal adjustment has been 1396
agreed to or finally determined for federal income tax purposes. 1397

(2) "One hundred eighty" shall be substituted for "ninety" 1398
in divisions (B)(1) and (E)(1) of this section if, for any 1399
taxable year, the final federal adjustment results from taxes 1400
paid by the taxpayer on an amount described in division ~~(A)(34)~~ 1401
(A)(32) of section 5747.01 of the Revised Code. 1402

(C) Except for adjustments required to be reported for 1403
federal purposes pursuant to section 6225(a)(2) of the Internal 1404
Revenue Code and adjustments that are taken into account on a 1405
federal amended return or similar report filed pursuant to 1406
section 6225(c)(2) of the Internal Revenue Code, partnerships 1407
and partners shall report final federal adjustments and make 1408
payments as required under division (C) of this section. 1409

(1) With respect to an action required or permitted to be 1410
taken by a partnership under this section, and any petition for 1411
reassessment or appeal to the board of tax appeals or any court 1412
with respect to such an action, the state partnership 1413
representative shall have the sole authority to act on behalf of 1414
the audited partnership, and the partnership's direct and 1415
indirect investors shall be bound by those actions. 1416

(2) Unless an audited partnership makes the election under 1417
division (C)(3) of this section: 1418

(a) The audited partnership, through its state partnership 1419
representative, shall do all of the following within ninety days 1420
after the federal adjustment is final: 1421

(i) File a federal adjustments return with the tax commissioner, including a copy of the notifications provided under division (C) (2) (a) (ii) of this section;

(ii) Notify each of its direct investors, on a form prescribed by the commissioner, of the investor's distributive share of the final federal adjustments;

(iii) File an amended tax return on behalf of its nonresident direct investors and pay any additional tax that would have been due under sections 5733.41 and 5747.41, or division (D) of section 5747.08, of the Revised Code with respect to those direct investors had the final federal adjustments been reported properly on the original filing.

(b) Each direct investor that is subject to the tax imposed by section 5747.02 of the Revised Code shall file an original or amended tax return to include the investor's distributive share of the adjustments reported to the direct investor under division (C) (2) (a) of this section, and pay any additional tax due, within ninety days after the audited partnership files its federal adjustments return with the commissioner.

(c) (i) Each direct and indirect investor of an audited partnership that is a pass-through entity and all investors in such a pass-through entity that are subject to the filing and payment requirements of Chapters 5733. and 5747. of the Revised Code are subject to the reporting and payment requirements of division (C) (2) or, upon a timely election, division (C) (3) of this section.

(ii) Such direct and indirect investors shall make the required returns and payments within ninety days after the

deadline for filing and furnishing statements under section 1451
6226(b) (4) of the Internal Revenue Code and applicable treasury 1452
regulations. 1453

(3) If an audited partnership makes the election under 1454
this division, the audited partnership, through its state 1455
partnership representative, shall do all of the following within 1456
ninety days after all federal adjustments are final: 1457

(a) File a federal adjustments return with the tax 1458
commissioner indicating the partnership has made the election 1459
under division (C) (3) of this section; 1460

(b) Pay the amount of combined additional tax due under 1461
division (D) (2) of this section, calculated by multiplying the 1462
highest rate of tax set forth in section 5747.02 of the Revised 1463
Code by the sum of the following: 1464

(i) The distributive shares of the final federal 1465
adjustments that are allocable or apportionable to this state of 1466
each investor who is a nonresident taxpayer or pass-through 1467
entity; 1468

(ii) The distributive share of the final federal 1469
adjustments for each investor who is a resident taxpayer. 1470

(c) Notify each of its direct investors, on a form 1471
prescribed by the commissioner, of the investor's distributive 1472
share of the final federal adjustments and the amount paid on 1473
their behalf pursuant to division (C) (3) (b) of this section. 1474

(4) (a) A direct investor of an audited partnership is not 1475
required to file an amended return or pay tax otherwise due 1476
under section 5747.02 of the Revised Code if the audited 1477
partnership properly reports and pays the tax under division (C) 1478
(3) of this section. 1479

(b) (i) Nothing in division (C) of this section precludes a 1480
direct or indirect investor in the audited partnership from 1481
filing a return to report the investor's share of the final 1482
federal adjustments. Such an investor who files a return and 1483
reports the income related to the final federal adjustments is 1484
entitled to a refundable credit for taxes paid by the audited 1485
partnership under division (C) (3) (b) of this section. The credit 1486
shall be computed and claimed in the same manner as the credit 1487
allowed under division (I) of section 5747.08 of the Revised 1488
Code. 1489

(ii) Notwithstanding division (C) (4) (b) (i) of this 1490
section, an exempt partner, whether a direct or indirect 1491
investor, may file an application for refund of its 1492
proportionate share of the amounts erroneously paid by the 1493
audited partnership pursuant to division (C) (3) (b) of this 1494
section on the exempt partner's behalf. 1495

(5) Upon request by an audited partnership, the tax 1496
commissioner may agree, in writing, to allow an alternative 1497
method of reporting and payment than required by ~~divisions~~ 1498
division (C) (2) or (3) of this section. The request must be 1499
submitted to the commissioner in writing before the applicable 1500
deadline for filing a return under division (C) (2) (a) or (3) of 1501
this section. The commissioner's decision on whether to enter 1502
into an agreement under this division is not subject to further 1503
administrative review or appeal. 1504

(6) Nothing in division (C) of this section precludes 1505
either of the following: 1506

(a) A resident taxpayer from filing a return to claim the 1507
credit under division (B) of section 5747.05 or division (D) (2) 1508
of section 5747.02 of the Revised Code based upon any amounts 1509

paid by the audited partnership on such investor's behalf to 1510
another state. 1511

(b) The tax commissioner from issuing an assessment under 1512
this chapter against any direct or indirect investor for taxes 1513
due from the investor if an audited partnership, or direct and 1514
indirect investor of an audited partnership that is a pass- 1515
through entity, fails to timely file any return or remit any 1516
payment required by this section or underreports income or 1517
underpays tax on behalf of an indirect investor who is a 1518
resident taxpayer. 1519

(D) In the case of an underpayment, and unless otherwise 1520
agreed to in writing by the tax commissioner: 1521

(1) The taxpayer's amended return shall be accompanied by 1522
payment of any combined additional tax due together with 1523
interest thereon. An amended return required by this section is 1524
a return subject to assessment under section 5747.13 of the 1525
Revised Code for the purpose of assessing any additional tax due 1526
under this section, together with any applicable penalty and 1527
interest. It shall not reopen those facts, figures, 1528
computations, or attachments from a previously filed return no 1529
longer subject to assessment that are not affected, either 1530
directly or indirectly, by the final federal adjustment to the 1531
taxpayer's federal income tax return. 1532

(2) The audited partnership's federal adjustments return 1533
shall be accompanied by payment of any combined additional tax 1534
due together with interest thereon. The federal adjustments 1535
return required by this section is a return subject to 1536
assessment under section 5747.13 of the Revised Code for the 1537
purpose of assessing any additional tax due under this section, 1538
together with any applicable penalty and interest. It shall not 1539

reopen those facts, figures, computations, or attachments from a 1540
previously filed return no longer subject to assessment that are 1541
not affected, either directly or indirectly, by the final 1542
federal adjustment. 1543

(3) The tax commissioner may accept estimated payments of 1544
the tax arising from pending federal adjustments before the date 1545
for filing a federal adjustments return. The commissioner may 1546
adopt rules for the payment of such estimated taxes. 1547

(E) In the case of an overpayment, and unless otherwise 1548
agreed to in writing by the tax commissioner: 1549

(1) A taxpayer may file an application for refund under 1550
this division within the ninety-day period prescribed for filing 1551
the amended return even if it is filed beyond the period 1552
prescribed in section 5747.11 of the Revised Code if it 1553
otherwise conforms to the requirements of such section. An 1554
application filed under this division shall claim refund of 1555
overpayments resulting from alterations to only those facts, 1556
figures, computations, or attachments required in the taxpayer's 1557
annual return that are affected, either directly or indirectly, 1558
by the final federal adjustment to the taxpayer's federal income 1559
tax return unless it is also filed within the time prescribed in 1560
section 5747.11 of the Revised Code. It shall not reopen those 1561
facts, figures, computations, or attachments that are not 1562
affected, either directly or indirectly, by the adjustment to 1563
the taxpayer's federal income tax return. 1564

(2) (a) Except as otherwise provided in division (E) (2) (b) 1565
of this section, an audited partnership may file an application 1566
for a refund under this division within the ninety-day period 1567
prescribed for filing the federal adjustments return, even if it 1568
is filed beyond the period prescribed by section 5747.11 of the 1569

Revised Code, if it otherwise conforms to the requirements of 1570
that section. An application filed under this division may claim 1571
a refund of overpayments resulting only from final federal 1572
adjustments unless it is also filed within the time prescribed 1573
by section 5747.11 of the Revised Code. It shall not reopen 1574
those facts, figures, computations, or attachments that are not 1575
affected, either directly or indirectly, by the federal 1576
adjustment. 1577

(b) An audited partnership may not file an application for 1578
refund under division (E) of this section based on final federal 1579
adjustments described in section 6225(a)(2) of the Internal 1580
Revenue Code. 1581

(3) Any refund granted to a pass-through entity filing an 1582
application for refund under division (E) of this section shall 1583
be reduced by amounts previously claimed as a credit under 1584
section 5747.059 or division (I) of section 5747.08 of the 1585
Revised Code by the pass-through entity's direct or indirect 1586
investors. 1587

(F) Excluding the deadline in division (C)(2)(c)(ii) of 1588
this section, an audited partnership, or a direct or indirect 1589
investor of an audited partnership that is a pass-through 1590
entity, may automatically extend the deadline for reporting, 1591
payments, and refunds under this section by sixty days if the 1592
entity has ten thousand or more direct investors and notifies 1593
the commissioner of such extension, in writing, before the 1594
unextended deadline. 1595

Section 2. That existing sections 5703.21, 5747.01, and 1596
5747.10 of the Revised Code are hereby repealed. 1597

Section 3. Section 5747.01 of the Revised Code is 1598

presented in this act as a composite of the section as amended 1599
by H.B. 18, H.B. 197, S.B. 26, and S.B. 276 all of the 133rd 1600
General Assembly. The General Assembly, applying the principle 1601
stated in division (B) of section 1.52 of the Revised Code that 1602
amendments are to be harmonized if reasonably capable of 1603
simultaneous operation, finds that the composite is the 1604
resulting version of the section in effect prior to the 1605
effective date of the section as presented in this act. 1606