

# AN ACT

To amend sections 5733.04, 5733.41, 5747.01, 5747.03, 5747.08, 5747.11, 5747.13, 5747.132, 5747.14, 5747.15, 5747.41, 5747.42, 5747.43, 5747.44, 5747.45, 5747.451, 5747.453, and 5747.98 and to enact sections 5747.38 and 5747.39 of the Revised Code to levy a tax on a pass-through entity's income apportioned to Ohio and to authorize a refundable income tax credit for an owner for such tax paid.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 5733.04, 5733.41, 5747.01, 5747.03, 5747.08, 5747.11, 5747.13, 5747.132, 5747.14, 5747.15, 5747.41, 5747.42, 5747.43, 5747.44, 5747.45, 5747.451, 5747.453, and 5747.98 be amended and sections 5747.38 and 5747.39 of the Revised Code be enacted to read as follows:

Sec. 5733.04. As used in this chapter:

(A) "Issued and outstanding shares of stock" applies to nonprofit corporations, as provided in section 5733.01 of the Revised Code, and includes, but is not limited to, membership certificates and other instruments evidencing ownership of an interest in such nonprofit corporations, and with respect to a financial institution that does not have capital stock, "issued and outstanding shares of stock" includes, but is not limited to, ownership interests of depositors in the capital employed in such an institution.

(B) "Taxpayer" means a corporation subject to the tax imposed by section 5733.06 of the Revised Code.

(C) "Resident" means a corporation organized under the laws of this state.

(D) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(E) "Taxable year" means the period prescribed by division (A) of section 5733.031 of the Revised Code upon the net income of which the value of the taxpayer's issued and outstanding shares of stock is determined under division (B) of section 5733.05 of the Revised Code or the period prescribed by division (A) of section 5733.031 of the Revised Code that immediately precedes the date as of which the total value of the corporation is determined under division (A) or (C) of section 5733.05 of the Revised Code.

(F) "Tax year" means the calendar year in and for which the tax imposed by section 5733.06 of the Revised Code is required to be paid.

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

(H) "Federal income tax" means the income tax imposed by the Internal Revenue Code.

(I) Except as provided in section 5733.058 of the Revised Code, "net income" means the taxpayer's taxable income before operating loss deduction and special deductions, as required to be reported for the taxpayer's taxable year under the Internal Revenue Code, subject to the following adjustments:

(1)(a) Deduct any net operating loss incurred in any taxable years ending in 1971 or thereafter, but exclusive of any net operating loss incurred in taxable years ending prior to January 1, 1971. This deduction shall not be allowed in any tax year commencing before December 31, 1973, but shall be carried over and allowed in tax years commencing after December 31, 1973, until fully utilized in the next succeeding taxable year or years in which the taxpayer has net income, but in no case for more than the designated carryover period as described in division (I)(1)(b) of this section. The amount of such net operating loss, as determined under the allocation and apportionment provisions of section 5733.051 and division (B) of section 5733.05 of the Revised Code for the year in which the net operating loss occurs, shall be deducted from net income, as determined under the allocation and apportionment provisions of section 5733.051 and division (B) of section 5733.05 of the Revised Code, to the extent necessary to reduce net income to zero with the remaining unused portion of the deduction, if any, carried forward to the remaining years of the designated carryover period as described in division (I)(1)(b) of this section, or until fully utilized, whichever occurs first.

(b) For losses incurred in taxable years ending on or before December 31, 1981, the designated carryover period shall be the five consecutive taxable years after the taxable year in which the net operating loss occurred. For losses incurred in taxable years ending on or after January 1, 1982, and beginning before August 6, 1997, the designated carryover period shall be the fifteen consecutive taxable years after the taxable year in which the net operating loss occurs. For losses incurred in taxable years beginning on or after August 6, 1997, the designated carryover period shall be the twenty consecutive taxable years after the taxable year in which the net operating loss occurs.

(c) The tax commissioner may require a taxpayer to furnish any information necessary to support a claim for deduction under division (I)(1)(a) of this section and no deduction shall be allowed unless the information is furnished.

(2) Deduct any amount included in net income by application of section 78 or 951 of the Internal Revenue Code, amounts received for royalties, technical or other services derived from sources outside the United States, and dividends received from a subsidiary, associate, or affiliated corporation that neither transacts any substantial portion of its business nor regularly maintains any substantial portion of its assets within the United States. For purposes of determining net foreign source income deductible under division (I)(2) of this section, the amount of gross income from all such sources other than dividend income and income derived by application of section 78 or 951 of the Internal Revenue Code shall be reduced by:

(a) The amount of any reimbursed expenses for personal services performed by employees of the taxpayer for the subsidiary, associate, or affiliated corporation;

(b) Ten per cent of the amount of royalty income and technical assistance fees;

(c) Fifteen per cent of the amount of all other income.

The amounts described in divisions (I)(2)(a) to (c) of this section are deemed to be the expenses attributable to the production of deductible foreign source income unless the taxpayer shows, by clear and convincing evidence, less actual expenses, or the tax commissioner shows, by

clear and convincing evidence, more actual expenses.

(3) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of a capital asset, or an asset described in section 1231 of the Internal Revenue Code, to the extent that such loss or gain occurred prior to the first taxable year on which the tax provided for in section 5733.06 of the Revised Code is computed on the corporation's net income. For purposes of division (I)(3) of this section, the amount of the prior loss or gain shall be measured by the difference between the original cost or other basis of the asset and the fair market value as of the beginning of the first taxable year on which the tax provided for in section 5733.06 of the Revised Code is computed on the corporation's net income. At the option of the taxpayer, the amount of the prior loss or gain may be a percentage of the gain or loss, which percentage shall be determined by multiplying the gain or loss by a fraction, the numerator of which is the number of months from the acquisition of the asset to the beginning of the first taxable year on which the fee provided in section 5733.06 of the Revised Code is computed on the corporation's net income, and the denominator of which is the number of months from the acquisition of the asset to the sale, exchange, or other disposition of the asset. The adjustments described in this division do not apply to any gain or loss where the gain or loss is recognized by a qualifying taxpayer, as defined in section 5733.0510 of the Revised Code, with respect to a qualifying taxable event, as defined in that section.

(4) Deduct the dividend received deduction provided by section 243 of the Internal Revenue Code.

(5) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent included in federal taxable income. As used in divisions (I)(5) and (6) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.

(6) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of public obligations to the extent included in federal taxable income.

(7) To the extent not otherwise allowed, deduct any dividends or distributions received by a taxpayer from a public utility, excluding an electric company and a combined company, and, for tax years 2005 and thereafter, a telephone company, if the taxpayer owns at least eighty per cent of the issued and outstanding common stock of the public utility. As used in division (I)(7) of this section, "public utility" means a public utility as defined in Chapter 5727. of the Revised Code, whether or not the public utility is doing business in the state.

(8) To the extent not otherwise allowed, deduct any dividends received by a taxpayer from an insurance company, if the taxpayer owns at least eighty per cent of the issued and outstanding common stock of the insurance company. As used in division (I)(8) of this section, "insurance company" means an insurance company that is taxable under Chapter 5725. or 5729. of the Revised Code.

(9) Deduct expenditures for modifying existing buildings or structures to meet American national standards institute standard A-117.1-1961 (R-1971), as amended; provided, that no deduction shall be allowed to the extent that such deduction is not permitted under federal law or under rules of the tax commissioner. Those deductions as are allowed may be taken over a period of five years. The tax commissioner shall adopt rules under Chapter 119. of the Revised Code establishing reasonable limitations on the extent that expenditures for modifying existing buildings or

structures are attributable to the purpose of making the buildings or structures accessible to and usable by physically handicapped persons.

(10) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income before operating loss deduction and special deductions for the taxable year, had the targeted jobs credit allowed and determined under sections 38, 51, and 52 of the Internal Revenue Code not been in effect.

(11) Deduct net interest income on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent the laws of the United States prohibit inclusion of the net interest for purposes of determining the value of the taxpayer's issued and outstanding shares of stock under division (B) of section 5733.05 of the Revised Code. As used in division (I)(11) of this section, "net interest" means interest net of any expenses taken on the federal income tax return that would not have been allowed under section 265 of the Internal Revenue Code if the interest were exempt from federal income tax.

(12)(a) Except as set forth in division (I)(12)(d) of this section, to the extent not included in computing the taxpayer's federal taxable income before operating loss deduction and special deductions, add gains and deduct losses from direct or indirect sales, exchanges, or other dispositions, made by a related entity who is not a taxpayer, of the taxpayer's indirect, beneficial, or constructive investment in the stock or debt of another entity, unless the gain or loss has been included in computing the federal taxable income before operating loss deduction and special deductions of another taxpayer with a more closely related investment in the stock or debt of the other entity. The amount of gain added or loss deducted shall not exceed the product obtained by multiplying such gain or loss by the taxpayer's proportionate share, directly, indirectly, beneficially, or constructively, of the outstanding stock of the related entity immediately prior to the direct or indirect sale, exchange, or other disposition.

(b) Except as set forth in division (I)(12)(e) of this section, to the extent not included in computing the taxpayer's federal taxable income before operating loss deduction and special deductions, add gains and deduct losses from direct or indirect sales, exchanges, or other dispositions made by a related entity who is not a taxpayer, of intangible property other than stock, securities, and debt, if such property was owned, or used in whole or in part, at any time prior to or at the time of the sale, exchange, or disposition by either the taxpayer or by a related entity that was a taxpayer at any time during the related entity's ownership or use of such property, unless the gain or loss has been included in computing the federal taxable income before operating loss deduction and special deductions of another taxpayer with a more closely related ownership or use of such intangible property. The amount of gain added or loss deducted shall not exceed the product obtained by multiplying such gain or loss by the taxpayer's proportionate share, directly, indirectly, beneficially, or constructively, of the outstanding stock of the related entity immediately prior to the direct or indirect sale, exchange, or other disposition.

(c) As used in division (I)(12) of this section, "related entity" means those entities described in divisions (I)(12)(c)(i) to (iii) of this section:

(i) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family

own, directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(ii) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(iii) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (I)(12)(c)(iv) of this section, if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least fifty per cent of the value of the corporation's outstanding stock.

(iv) The attribution rules of section 318 of the Internal Revenue Code apply for purposes of determining whether the ownership requirements in divisions (I)(12)(c)(i) to (iii) of this section have been met.

(d) For purposes of the adjustments required by division (I)(12)(a) of this section, the term "investment in the stock or debt of another entity" means only those investments where the taxpayer and the taxpayer's related entities directly, indirectly, beneficially, or constructively own, in the aggregate, at any time during the twenty-four month period commencing one year prior to the direct or indirect sale, exchange, or other disposition of such investment at least fifty per cent or more of the value of either the outstanding stock or such debt of such other entity.

(e) For purposes of the adjustments required by division (I)(12)(b) of this section, the term "related entity" excludes all of the following:

- (i) Foreign corporations as defined in section 7701 of the Internal Revenue Code;
- (ii) Foreign partnerships as defined in section 7701 of the Internal Revenue Code;
- (iii) Corporations, partnerships, estates, and trusts created or organized in or under the laws of the Commonwealth of Puerto Rico or any possession of the United States;
- (iv) Foreign estates and foreign trusts as defined in section 7701 of the Internal Revenue Code.

The exclusions described in divisions (I)(12)(e)(i) to (iv) of this section do not apply if the corporation, partnership, estate, or trust is described in any one of divisions (C)(1) to (5) of section 5733.042 of the Revised Code.

(f) Nothing in division (I)(12) of this section shall require or permit a taxpayer to add any gains or deduct any losses described in divisions (I)(12)(f)(i) and (ii) of this section:

(i) Gains or losses recognized for federal income tax purposes by an individual, estate, or trust without regard to the attribution rules described in division (I)(12)(c) of this section;

(ii) A related entity's gains or losses described in division (I)(12)(b) of this section if the taxpayer's ownership of or use of such intangible property was limited to a period not exceeding nine months and was attributable to a transaction or a series of transactions executed in accordance with the election or elections made by the taxpayer or a related entity pursuant to section 338 of the Internal Revenue Code.

(13) Any adjustment required by section 5733.042 of the Revised Code.

(14) Add any amount claimed as a credit under section 5733.0611 of the Revised Code to the extent that such amount satisfies either of the following:

(a) It was deducted or excluded from the computation of the corporation's taxable income before operating loss deduction and special deductions as required to be reported for the corporation's taxable year under the Internal Revenue Code;

(b) It resulted in a reduction of the corporation's taxable income before operating loss deduction and special deductions as required to be reported for any of the corporation's taxable years under the Internal Revenue Code.

(15) 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 (I)(15) of this section.

(16) Any adjustment required by section 5733.0510 or 5733.0511 of the Revised Code.

(17)(a)(i) Add five-sixths of the amount of depreciation expense allowed under subsection (k) of section 168 of the Internal Revenue Code, including a person's proportionate or distributive share of the amount of depreciation expense allowed by that subsection to any pass-through entity in which the person has direct or indirect ownership.

(ii) Add five-sixths of the amount of qualifying section 179 depreciation expense, including a person's proportionate or distributive share of the amount of qualifying section 179 depreciation expense allowed to any pass-through entity in which the person has a direct or indirect ownership. For the purposes of this division, "qualifying section 179 depreciation expense" means the difference between (I) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code, and (II) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code as that section existed on December 31, 2002.

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

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

(c) To the extent the add-back is attributable to property generating income or loss allocable under section 5733.051 of the Revised Code, the add-back shall be allocated to the same location as the income or loss generated by that property. Otherwise, the add-back shall be apportioned, subject to division (B)(2)(d) of section 5733.05 of the Revised Code.

(18)(a) If a person is required to make the add-back under division (I)(17)(a) of this section for a tax year, the person shall deduct one-fifth of the amount added back for each of the succeeding five tax years.

(b) If the amount deducted under division (I)(18)(a) of this section is attributable to an add-back allocated under division (I)(17)(c) of this section, the amount deducted shall be allocated to the same location. Otherwise, the amount shall be apportioned using the apportionment factors for the taxable year in which the deduction is taken, subject to division (B)(2)(d) of section 5733.05 of the Revised Code.

(J) Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

(K) "Financial institution" has the meaning given by section 5725.01 of the Revised Code but does not include a production credit association as described in 85 Stat. 597, 12 U.S.C.A. 2091.

(L)(1) A "qualifying holding company" is any corporation satisfying all of the following requirements:

(a) Subject to divisions (L)(2) and (3) of this section, the net book value of the corporation's intangible assets is greater than or equal to ninety per cent of the net book value of all of its assets and at least fifty per cent of the net book value of all of its assets represents direct or indirect investments in the equity of, loans and advances to, and accounts receivable due from related members;

(b) At least ninety per cent of the corporation's gross income for the taxable year is attributable to the following:

(i) The maintenance, management, ownership, acquisition, use, and disposition of its intangible property, its aircraft the use of which is not subject to regulation under 14 C.F.R. part 121 or part 135, and any real property described in division (L)(2)(c) of this section;

(ii) The collection and distribution of income from such property.

(c) The corporation is not a financial institution on the last day of the taxable year ending prior to the first day of the tax year;

(d) The corporation's related members make a good faith and reasonable effort to make timely and fully the adjustments required by division (D) of section 5733.05 of the Revised Code and to pay timely and fully all uncontested taxes, interest, penalties, and other fees and charges imposed under this chapter;

(e) Subject to division (L)(4) of this section, the corporation elects to be treated as a qualifying holding company for the tax year.

A corporation otherwise satisfying divisions (L)(1)(a) to (e) of this section that does not elect to be a qualifying holding company is not a qualifying holding company for the purposes of this chapter.

(2)(a)(i) For purposes of making the ninety per cent computation under division (L)(1)(a) of this section, the net book value of the corporation's assets shall not include the net book value of aircraft or real property described in division (L)(1)(b)(i) of this section.

(ii) For purposes of making the fifty per cent computation under division (L)(1)(a) of this section, the net book value of assets shall include the net book value of aircraft or real property described in division (L)(1)(b)(i) of this section.

(b)(i) As used in division (L) of this section, "intangible asset" includes, but is not limited to, the corporation's direct interest in each pass-through entity only if at all times during the corporation's taxable year ending prior to the first day of the tax year the corporation's and the corporation's related members' combined direct and indirect interests in the capital or profits of such pass-through entity do not exceed fifty per cent. If the corporation's interest in the pass-through entity is an intangible asset for that taxable year, then the distributive share of any income from the pass-

through entity shall be income from an intangible asset for that taxable year.

(ii) If a corporation's and the corporation's related members' combined direct and indirect interests in the capital or profits of a pass-through entity exceed fifty per cent at any time during the corporation's taxable year ending prior to the first day of the tax year, "intangible asset" does not include the corporation's direct interest in the pass-through entity, and the corporation shall include in its assets its proportionate share of the assets of any such pass-through entity and shall include in its gross income its distributive share of the gross income of such pass-through entity in the same form as was earned by the pass-through entity.

(iii) A pass-through entity's direct or indirect proportionate share of any other pass-through entity's assets shall be included for the purpose of computing the corporation's proportionate share of the pass-through entity's assets under division (L)(2)(b)(ii) of this section, and such pass-through entity's distributive share of any other pass-through entity's gross income shall be included for purposes of computing the corporation's distributive share of the pass-through entity's gross income under division (L)(2)(b)(ii) of this section.

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii), (2)(a)(i), and (2)(a)(ii) of this section, real property is described in division (L)(2)(c) of this section only if all of the following conditions are present at all times during the taxable year ending prior to the first day of the tax year:

(i) The real property serves as the headquarters of the corporation's trade or business, or is the place from which the corporation's trade or business is principally managed or directed;

(ii) Not more than ten per cent of the value of the real property and not more than ten per cent of the square footage of the building or buildings that are part of the real property is used, made available, or occupied for the purpose of providing, acquiring, transferring, selling, or disposing of tangible property or services in the normal course of business to persons other than related members, the corporation's employees and their families, and such related members' employees and their families.

(d) As used in division (L) of this section, "related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section.

(3) The percentages described in division (L)(1)(a) of this section shall be equal to the quarterly average of those percentages as calculated during the corporation's taxable year ending prior to the first day of the tax year.

(4) With respect to the election described in division (L)(1)(e) of this section:

(a) The election need not accompany a timely filed report;

(b) The election need not accompany the report; rather, the election may accompany a subsequently filed but timely application for refund and timely amended report, or a subsequently filed but timely petition for reassessment;

(c) The election is not irrevocable;

(d) The election applies only to the tax year specified by the corporation;

(e) The corporation's related members comply with division (L)(1)(d) of this section.

Nothing in division (L)(4) of this section shall be construed to extend any statute of limitations set forth in this chapter.

(M) "Qualifying controlled group" means two or more corporations that satisfy the ownership



and control requirements of division (A) of section 5733.052 of the Revised Code.

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

(O) "Pass-through entity" means ~~a corporation~~ any entity that is eligible to make and that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year under that code, or a partnership, limited liability company, or any other person, other than an individual, trust, or estate, if the partnership, limited liability company, or other person is not classified for federal income tax purposes as an association taxed as a corporation.

(P) "Electric company," "combined company," and "telephone company" have the same meanings as in section 5727.01 of the Revised Code.

(Q) "Business income" means income arising from transactions, activities, and sources in the regular course of a trade or business and includes income from real property, tangible personal property, and intangible personal property if the acquisition, rental, management, and disposition of the property constitute integral parts of the regular course of a trade or business operation. "Business income" includes income, including gain or loss, from a partial or complete liquidation of a business, including, but not limited to, gain or loss from the sale or other disposition of goodwill.

(R) "Nonbusiness income" means all income other than business income.

Sec. 5733.41. The purpose of the tax imposed by this section is to complement and to reinforce the tax imposed under section 5733.06 of the Revised Code.

For the same purposes for which the tax is levied under section 5733.06 of the Revised Code, there is hereby levied a tax on every qualifying pass-through entity having at least one qualifying investor that is not an individual. The tax imposed by this section is imposed on the sum of the adjusted qualifying amounts of the qualifying pass-through entity's qualifying investors, that are neither individuals nor subject to division (G)(2) of section 5733.01 of the Revised Code, at a rate equal to the tax rate imposed on taxable business income under division (A)(4)(a) of section 5747.02 of the Revised Code.

The tax imposed by this section applies only if the qualifying entity has nexus with this state under the Constitution of the United States for any portion of the qualifying entity's qualifying taxable year, and the sum of the qualifying entity's adjusted qualifying amounts exceeds one thousand dollars for the qualifying entity's qualifying taxable year. This section does not apply to a pass-through entity if all of the partners, shareholders, members, or investors of the pass-through entity are taxpayers for the purposes of section 5733.04 of the Revised Code without regard to section 5733.09 of the Revised Code for the entire qualifying taxable year of the pass-through entity.

If, prior to the due date of the return, a qualifying pass-through entity receives from an investor a written representation, under penalties of perjury, that the investor is described in division (I)(1), (2), (6), (7), (8), or (9) of section 5733.40 of the Revised Code for the qualifying pass-through entity's entire qualifying taxable year, the qualifying pass-through entity is not required to withhold or pay the taxes or estimated taxes imposed under this section or sections 5747.41 to 5747.453 of the Revised Code with respect to that investor for that qualifying taxable year, and is not subject to any interest or interest penalties for failure to withhold or pay those taxes or estimated taxes with respect to that investor for that qualifying taxable year.

If, prior to the due date of the return, a qualifying trust receives from a beneficiary of that

trust a written representation, under penalties of perjury, that the beneficiary is a resident taxpayer for the purposes of Chapter 5747. of the Revised Code for the qualifying trust's entire qualifying taxable year, the qualifying trust is not required to withhold or pay the taxes or estimated taxes imposed under this section or sections 5747.41 to 5747.453 of the Revised Code with respect to that beneficiary for that qualifying taxable year, and is not subject to any interest or interest penalties for failure to withhold or pay those taxes or estimated taxes with respect to that beneficiary for that qualifying taxable year.

The tax commissioner may adopt rules for the purpose of the tax levied by this section or section 5747.41 of the Revised Code, including a rule defining "qualifying investor" or "qualifying beneficiary," and a rule requiring or permitting a qualifying entity to combine its income with related members and to pay the tax and estimated tax on a combined basis.

Sections 5747.10 to 5747.19 and 5747.42 to 5747.453 of the Revised Code apply to a qualifying entity subject to the tax imposed under this section.

The levy of the tax under this section does not prevent a municipal corporation or a joint economic development district created under section 715.70, 715.71, or 715.72 of the Revised Code from levying a tax on income.

The tax imposed under this section does not apply to a qualifying pass-through entity that makes an election under division (C) of section 5747.38 of the Revised Code to be subject to the tax levied under that section for the entity's qualifying taxable year.

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

As used in this chapter:

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

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

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

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

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

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

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

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

(6) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal adjusted gross income for the taxable year, had the work opportunity tax credit allowed and determined under sections 38, 51, and 52 of the Internal Revenue Code not been in effect.

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

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

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

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

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

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

(11)(a) Deduct any amount included in federal adjusted gross income solely because the amount represents a reimbursement or refund of expenses that in any year the taxpayer had deducted as an itemized deduction pursuant to section 63 of the Internal Revenue Code and applicable United States department of the treasury regulations. The deduction otherwise allowed under division (A)

(11)(a) of this section shall be reduced to the extent the reimbursement is attributable to an amount the taxpayer deducted under this section in any taxable year.

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

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

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

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

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

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

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

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

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

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

(16) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of job and family services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax commissioner, the taxpayer shall provide any information that, 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 section 179 depreciation expense allowed to any pass-through entity in which the taxpayer has a direct or indirect ownership interest.

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

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

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

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 during the employer's current taxable year exceeds the amount of income taxes withheld by that employer during the employer's immediately preceding taxable year.

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

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

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

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

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

(b) If the amount deducted under division (A)(18)(a) of this section is attributable to an add-back allocated under division (A)(17)(c) of this section, the amount deducted shall be situated to the same location. Otherwise, the add-back shall be apportioned using the apportionment factors for the taxable year in which the deduction is taken, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.

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

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

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

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

(22) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To the extent a qualifying capital gain described under division (A)(34) of this section is



business income, the taxpayer shall deduct those gains under this division before deducting any such gains under division (A)(28) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

(G) "Individual" means any natural person.

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

(I) "Resident" means any of the following:

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

(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.

(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.

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

(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:

(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;

(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;

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

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

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

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

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

all the trust's assets at that time, net of any related liabilities.

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

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

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

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

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

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

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

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

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

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

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

(vi) The transfer is made to a trust created by or caused to be created by a court, and the trust was directly or indirectly created in connection with or as a result of the death of an individual who,

for purposes of the taxes levied under Chapter 5731. of the Revised Code, was domiciled in this state at the time of the individual's death.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not

deducted in computing federal taxable income, on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section;

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

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

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

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

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

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

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

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

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

both of the following requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Y) "Month" means a calendar month.

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

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

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

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

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

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

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

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

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

(i) The trust's modified business income;

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

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

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

(ii) With respect to a trust or portion of a trust that is not a resident as ascertained in accordance with division (I)(3)(d) of this section, the amount of its modified nonbusiness income

satisfying the descriptions in divisions (B)(2) to (5) of section 5747.20 of the Revised Code, except as otherwise provided in division (AA)(4)(c)(ii) of this section. With respect to a trust or portion of a trust that is not a resident as ascertained in accordance with division (I)(3)(d) of this section, the trust's portion of modified nonbusiness income recognized from the sale, exchange, or other disposition of a debt interest in or equity interest in a section 5747.212 entity, as defined in section 5747.212 of the Revised Code, without regard to division (A) of that section, shall not be allocated to this state in accordance with section 5747.20 of the Revised Code but shall be apportioned to this state in accordance with division (B) of section 5747.212 of the Revised Code without regard to division (A) of that section.

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

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

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

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

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

An upper level pass-through entity, whether or not it is also a qualifying investee, is deemed to own, on the last day of the upper level pass-through entity's calendar or fiscal year, the proportionate share of the lower level pass-through entity's physical assets that the lower level pass-through entity directly or indirectly owns on the last day of the lower level pass-through entity's calendar or fiscal year ending within or with the last day of the upper level pass-through entity's fiscal or calendar year. If the upper level pass-through entity directly and indirectly owns less than



fifty per cent of the equity of the lower level pass-through entity on each day of the upper level pass-through entity's calendar or fiscal year in which or with which ends the calendar or fiscal year of the lower level pass-through entity and if, based upon clear and convincing evidence, complete information about the location and cost of the physical assets of the lower pass-through entity is not available to the upper level pass-through entity, then solely for purposes of ascertaining if a gain or loss constitutes a qualifying trust amount, the upper level pass-through entity shall be deemed as owning no equity of the lower level pass-through entity for each day during the upper level pass-through entity's calendar or fiscal year in which or with which ends the lower level pass-through entity's calendar or fiscal year. Nothing in division (AA)(5)(a)(iii) of this section shall be construed to provide for any deduction or exclusion in computing any trust's Ohio taxable income.

(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:

(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.

(ii) Such gain or loss constitutes nonbusiness income.

(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.

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

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

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

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

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

(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year;

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

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

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

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

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

(3) A "qualifying pre-income tax trust election" is an election by a pre-income tax trust to subject to the tax imposed by section 5751.02 of the Revised Code the pre-income tax trust and all pass-through entities of which the trust owns or controls, directly, indirectly, or constructively

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

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

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

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

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

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

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

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

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

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

Sec. 5747.03. (A)(1) All money collected under this chapter arising from the taxes imposed by section 5747.02 ~~or~~, 5747.38, or 5747.41 of the Revised Code shall be credited to the general revenue fund and distributed pursuant to division (F) of section 321.24 and section 323.156 of the Revised Code; to make subsidy payments to institutions of higher education from appropriations to the department of higher education; to support expenditures for programs and services for the mentally ill, persons with developmental disabilities, and the elderly; for primary and secondary education; for medical assistance; and for any other purposes authorized by law, subject to the limitation that at least fifty per cent of the income tax collected by the state from the tax imposed by section 5747.02 of the Revised Code shall be returned pursuant to Section 9 of Article XII, Ohio Constitution.

(2) To ensure that such constitutional requirement is satisfied the tax commissioner shall, on or before the thirtieth day of June of each year, from the best information available to the tax commissioner, determine and certify for each county to the director of budget and management the amount of taxes collected under this chapter from the tax imposed under section 5747.02 of the Revised Code during the preceding calendar year that are required to be returned to the county by Section 9 of Article XII, Ohio Constitution. The director shall provide for payment from the general revenue fund to the county in the amount, if any, that the sum of the amount so certified for that county exceeds the sum of the following:

(a) The sum of the payments from the general revenue fund for the preceding calendar year credited to the county's undivided income tax fund pursuant to division (F) of section 321.24 and section 323.156 of the Revised Code or made directly from the general revenue fund to political subdivisions located in the county;

(b) The sum of the amounts from the general revenue fund distributed in the county during the preceding calendar year for subsidy payments to institutions of higher education from appropriations to the department of higher education; for programs and services for mentally ill persons, persons with developmental disabilities, and elderly persons; for primary and secondary education; and for medical assistance.

(c) In the case of payments made by the director under this division in 2007, the total amount distributed to the county during the preceding calendar year from the local government fund and the local government revenue assistance fund, and, in the case of payments made by the director under this division in subsequent calendar years, the amount distributed to the county from the local government fund;

(d) In the case of payments made by the director under this division, the total amount distributed to the county during the preceding calendar year from the public library fund.

Payments under this division shall be credited to the county's undivided income tax fund, except that, notwithstanding section 5705.14 of the Revised Code, such payments may be transferred by the board of county commissioners to the county general fund by resolution adopted with the affirmative vote of two-thirds of the members thereof.

(B) All payments received in each month from taxes imposed under Chapter 5748. of the Revised Code and any penalties or interest thereon shall be paid into the school district income tax fund, which is hereby created in the state treasury, except that an amount equal to the following portion of such payments shall be paid into the general school district income tax administrative fund, which is hereby created in the state treasury:

(1) One and three-quarters of one per cent of those received in fiscal year 1996;

(2) One and one-half per cent of those received in fiscal year 1997 and thereafter.

Money in the school district income tax administrative fund shall be used by the tax commissioner to defray costs incurred in administering the school district's income tax, including the cost of providing employers with information regarding the rate of tax imposed by any school district. Any moneys remaining in the fund after such use shall be deposited in the school district income tax fund.

All interest earned on moneys in the school district income tax fund shall be credited to the fund.

(C)(1)(a) Within thirty days of the end of each calendar quarter ending on the last day of March, June, September, and December, the director of budget and management shall make a payment from the school district income tax fund to each school district for which school district income tax revenue was received during that quarter. The amount of the payment shall equal the balance in the school district's account at the end of that quarter.

(b) After a school district ceases to levy an income tax, the director of budget and management shall adjust the payments under division (C)(1)(a) of this section to retain sufficient money in the school district's account to pay refunds. For the calendar quarters ending on the last day

of March and December of the calendar year following the last calendar year the tax is levied, the director shall make the payments in the amount required under division (C)(1)(a) of this section. For the calendar quarter ending on the last day of June of the calendar year following the last calendar year the tax is levied, the director shall make a payment equal to nine-tenths of the balance in the account at the end of that quarter. For the calendar quarter ending on the last day of September of the calendar year following the last calendar year the tax is levied, the director shall make no payment. For the second and succeeding calendar years following the last calendar year the tax is levied, the director shall make one payment each year, within thirty days of the last day of June, in an amount equal to the balance in the district's account on the last day of June.

(2) Moneys paid to a school district under this division shall be deposited in its school district income tax fund. All interest earned on moneys in the school district income tax fund shall be apportioned by the tax commissioner pro rata among the school districts in the proportions and at the times the districts are entitled to receive payments under this division.

Sec. 5747.08. An annual return with respect to the tax imposed by section 5747.02 of the Revised Code and each tax imposed under Chapter 5748. of the Revised Code shall be made by every taxpayer for any taxable year for which the taxpayer is liable for the tax imposed by that section or under that chapter, unless the total credits allowed under division (E) of section 5747.05 and divisions (F) and (G) of section 5747.055 of the Revised Code for the year are equal to or exceed the tax imposed by section 5747.02 of the Revised Code, in which case no return shall be required unless the taxpayer is liable for a tax imposed pursuant to Chapter 5748. of the Revised Code.

(A) If an individual is deceased, any return or notice required of that individual under this chapter shall be made and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

(B) If an individual is unable to make a return or notice required by this chapter, the return or notice required of that individual shall be made and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual.

(C) Returns or notices required of an estate or a trust shall be made and filed by the fiduciary of the estate or trust.

(D)(1)(a) Except as otherwise provided in division (D)(1)(b) of this section, any pass-through entity may file a single return on behalf of one or more of the entity's investors other than an investor that is a person subject to the tax imposed under section 5733.06 of the Revised Code. The single return shall set forth the name, address, and social security number or other identifying number of each of those pass-through entity investors and shall indicate the distributive share of each of those pass-through entity investor's income taxable in this state in accordance with sections 5747.20 to 5747.231 of the Revised Code. Such pass-through entity investors for whom the pass-through entity elects to file a single return are not entitled to the exemption or credit provided for by sections 5747.02 and 5747.022 of the Revised Code; shall calculate the tax before business credits at the highest rate of tax set forth in section 5747.02 of the Revised Code for the taxable year for which the return is filed; and are entitled to only their distributive share of the business credits as defined in division (D)(2) of this section. A single check drawn by the pass-through entity shall accompany the return in full payment of the tax due, as shown on the single return, for such investors, other than

investors who are persons subject to the tax imposed under section 5733.06 of the Revised Code.

(b)(i) A pass-through entity shall not include in such a single return any investor that is a trust to the extent that any direct or indirect current, future, or contingent beneficiary of the trust is a person subject to the tax imposed under section 5733.06 of the Revised Code.

(ii) A pass-through entity shall not include in such a single return any investor that is itself a pass-through entity to the extent that any direct or indirect investor in the second pass-through entity is a person subject to the tax imposed under section 5733.06 of the Revised Code.

(c) ~~Nothing~~ Except as provided by division (L) of this section, ~~nothing~~ in division (D) of this section precludes the tax commissioner from requiring such investors to file the return and make the payment of taxes and related interest, penalty, and interest penalty required by this section or section 5747.02, 5747.09, or 5747.15 of the Revised Code. Nothing in division (D) of this section precludes such an investor from filing the annual return under this section, utilizing the refundable credit equal to the investor's proportionate share of the tax paid by the pass-through entity on behalf of the investor under division (I) of this section, and making the payment of taxes imposed under section 5747.02 of the Revised Code. Nothing in division (D) of this section shall be construed to provide to such an investor or pass-through entity any additional deduction or credit, other than the credit provided by division (I) of this section, solely on account of the entity's filing a return in accordance with this section. Such a pass-through entity also shall make the filing and payment of estimated taxes on behalf of the pass-through entity investors other than an investor that is a person subject to the tax imposed under section 5733.06 of the Revised Code.

(2) For the purposes of this section, "business credits" means the credits listed in section 5747.98 of the Revised Code excluding the following credits:

- (a) The retirement income credit under division (B) of section 5747.055 of the Revised Code;
- (b) The senior citizen credit under division (F) of section 5747.055 of the Revised Code;
- (c) The lump sum distribution credit under division (G) of section 5747.055 of the Revised Code;
- (d) The dependent care credit under section 5747.054 of the Revised Code;
- (e) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;
- (f) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;
- (g) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;
- (h) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;
- (i) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;
- (j) The joint filing credit under division (E) of section 5747.05 of the Revised Code;
- (k) The nonresident credit under division (A) of section 5747.05 of the Revised Code;
- (l) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;
- (m) The earned income tax credit under section 5747.71 of the Revised Code;
- (n) The lead abatement credit under section 5747.26 of the Revised Code;

(o) The credit for education expenses under section 5747.72 of the Revised Code;

(p) The credit for tuition paid to a nonchartered nonpublic school under section 5747.75 of the Revised Code.

(3) The election provided for under division (D) of this section applies only to the taxable year for which the election is made by the pass-through entity. Unless the tax commissioner provides otherwise, this election, once made, is binding and irrevocable for the taxable year for which the election is made. Nothing in this division shall be construed to provide for any deduction or credit that would not be allowable if a nonresident pass-through entity investor were to file an annual return.

(4) If a pass-through entity makes the election provided for under division (D) of this section, the pass-through entity shall be liable for any additional taxes, interest, interest penalty, or penalties imposed by this chapter if the tax commissioner finds that the single return does not reflect the correct tax due by the pass-through entity investors covered by that return. Nothing in this division shall be construed to limit or alter the liability, if any, imposed on pass-through entity investors for unpaid or underpaid taxes, interest, interest penalty, or penalties as a result of the pass-through entity's making the election provided for under division (D) of this section. For the purposes of division (D) of this section, "correct tax due" means the tax that would have been paid by the pass-through entity had the single return been filed in a manner reflecting the commissioner's findings. Nothing in division (D) of this section shall be construed to make or hold a pass-through entity liable for tax attributable to a pass-through entity investor's income from a source other than the pass-through entity electing to file the single return.

(E) If a husband and wife file a joint federal income tax return for a taxable year, they shall file a joint return under this section for that taxable year, and their liabilities are joint and several, but, if the federal income tax liability of either spouse is determined on a separate federal income tax return, they shall file separate returns under this section.

If either spouse is not required to file a federal income tax return and either or both are required to file a return pursuant to this chapter, they may elect to file separate or joint returns, and, pursuant to that election, their liabilities are separate or joint and several. If a husband and wife file separate returns pursuant to this chapter, each must claim the taxpayer's own exemption, but not both, as authorized under section 5747.02 of the Revised Code on the taxpayer's own return.

(F) Each return or notice required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's social security number. Each return shall be verified by a declaration under the penalties of perjury. The tax commissioner shall prescribe the form that the signature and declaration shall take.

(G) Each return or notice required to be filed under this section shall be made and filed as required by section 5747.04 of the Revised Code, on or before the fifteenth day of April of each year, on forms that the tax commissioner shall prescribe, together with remittance made payable to the treasurer of state in the combined amount of the state and all school district income taxes shown to be due on the form.

Upon good cause shown, the commissioner may extend the period for filing any notice or return required to be filed under this section and may adopt rules relating to extensions. If the

extension results in an extension of time for the payment of any state or school district income tax liability with respect to which the return is filed, the taxpayer shall pay at the time the tax liability is paid an amount of interest computed at the rate per annum prescribed by section 5703.47 of the Revised Code on that liability from the time that payment is due without extension to the time of actual payment. Except as provided in section 5747.132 of the Revised Code, in addition to all other interest charges and penalties, all taxes imposed under this chapter or Chapter 5748. of the Revised Code and remaining unpaid after they become due, except combined amounts due of one dollar or less, bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code until paid or until the day an assessment is issued under section 5747.13 of the Revised Code, whichever occurs first.

If the commissioner considers it necessary in order to ensure the payment of the tax imposed by section 5747.02 of the Revised Code or any tax imposed under Chapter 5748. of the Revised Code, the commissioner may require returns and payments to be made otherwise than as provided in this section.

To the extent that any provision in this division conflicts with any provision in section 5747.026 of the Revised Code, the provision in that section prevails.

(H) The amounts withheld pursuant to section 5747.06, 5747.062, 5747.063, 5747.064, 5747.065, or 5747.071 of the Revised Code shall be allowed to the ultimate recipient of the income as credits against payment of the appropriate taxes imposed on the ultimate recipient by section 5747.02 and under Chapter 5748. of the Revised Code. As used in this division, "ultimate recipient" means the person who is required to report income from which amounts are withheld pursuant to section 5747.06, 5747.062, 5747.063, 5747.064, 5747.065, or 5747.071 of the Revised Code on the annual return required to be filed under this section.

(I) If a pass-through entity elects to file a single return under division (D) of this section and if any investor is required to file the annual return and make the payment of taxes required by this chapter on account of the investor's other income that is not included in a single return filed by a pass-through entity or any other investor elects to file the annual return, the investor is entitled to a refundable credit equal to the investor's proportionate share of the tax paid by the pass-through entity on behalf of the investor. The investor shall claim the credit for the investor's taxable year in which or with which ends the taxable year of the pass-through entity. Nothing in this chapter shall be construed to allow any credit provided in this chapter to be claimed more than once. For the purpose of computing any interest, penalty, or interest penalty, the investor shall be deemed to have paid the refundable credit provided by this division on the day that the pass-through entity paid the estimated tax or the tax giving rise to the credit.

(J) The tax commissioner shall ensure that each return required to be filed under this section includes a box that the taxpayer may check to authorize a paid tax preparer who prepared the return to communicate with the department of taxation about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the department of taxation to contact the preparer concerning questions that arise during the processing of the return and authorizes the preparer only to provide the department with information that is missing from the return, to contact the department for information about the processing of the return or the status of the taxpayer's refund or payments, and to respond to notices about

mathematical errors, offsets, or return preparation that the taxpayer has received from the department and has shown to the preparer.

(K) The tax commissioner shall permit individual taxpayers to instruct the department of taxation to cause any refund of overpaid taxes to be deposited directly into a checking account, savings account, or an individual retirement account or individual retirement annuity, or preexisting college savings plan or program account offered by the Ohio tuition trust authority under Chapter 3334. of the Revised Code, as designated by the taxpayer, when the taxpayer files the annual return required by this section electronically.

(L) If, for the taxable year, a nonresident or trust that is the owner of an electing pass-through entity, as defined in section 5747.38 of the Revised Code, does not have Ohio adjusted gross income or, in the case of a trust, modified Ohio taxable income other than from one or more electing pass-through entities, the nonresident or trust shall not be required to file an annual return under this section. Nothing in this division precludes such an owner from filing the annual return under this section, utilizing the refundable credit under section 5747.39 of the Revised Code equal to the owner's proportionate share of the tax levied under section 5747.38 of the Revised Code and paid by the electing pass-through entity, and making the payment of taxes imposed under section 5747.02 of the Revised Code.

(M) The tax commissioner may adopt rules to administer this section.

Sec. 5747.11. (A) The tax commissioner shall refund to employers, qualifying entities, electing pass-through entities, or taxpayers subject to a tax imposed under section 5733.41, 5747.02, 5747.38, or 5747.41, or Chapter 5748. of the Revised Code the amount of any overpayment of such tax.

(B) Except as otherwise provided under divisions (D) and (E) of this section, applications for refund shall be filed with the tax commissioner, on the form prescribed by the commissioner, within four years from the date of the illegal, erroneous, or excessive payment of the tax, or within any additional period allowed by division (B)(3)(b) of section 5747.05, division (E) of section 5747.10, division (A) of section 5747.13, or division (C) of section 5747.45 of the Revised Code.

On filing of the refund application, the commissioner shall determine the amount of refund due and, if that amount exceeds one dollar, certify such amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. Payment shall be made as provided in division (C) of section 126.35 of the Revised Code.

(C)(1) Interest shall be allowed and paid at the rate per annum prescribed by section 5703.47 of the Revised Code on amounts refunded with respect to the tax imposed under section 5747.02 or Chapter 5748. of the Revised Code from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety days after the final filing date of the annual return or ninety days after the return is filed, whichever is later, no interest shall be allowed on such overpayment. If the overpayment results from the carryback of a net operating loss or net capital loss to a previous taxable year, the overpayment is deemed not to have been made prior to the filing date, including any extension thereof, for the taxable year in which the net operating loss or net capital loss arises. For purposes of the payment of interest on overpayments, no amount of tax, for any taxable year, shall be treated as having been paid before the date on which the tax return for



that year was due without regard to any extension of time for filing such return.

(2) Interest shall be allowed at the rate per annum prescribed by section 5703.47 of the Revised Code on amounts refunded with respect to the taxes imposed under sections 5733.41 and 5747.41 or under section 5747.38 of the Revised Code. The interest shall run from whichever of the following days is the latest until the day the refund is paid: the day the illegal, erroneous, or excessive payment was made; the ninetieth day after the final day the annual report was required to be filed under section 5747.42 of the Revised Code; or the ninetieth day after the day that report was filed.

(D) "Ninety days" shall be substituted for "four years" in division (B) of this section if the taxpayer satisfies both of the following conditions:

(1) The taxpayer has applied for a refund based in whole or in part upon section 5747.059 of the Revised Code;

(2) The taxpayer asserts that either the imposition or collection of the tax imposed or charged by this chapter or any portion of such tax violates the Constitution of the United States or the Constitution of Ohio.

(E)(1) Division (E)(2) of this section applies only if all of the following conditions are satisfied:

(a) A qualifying entity pays an amount of the tax imposed by section 5733.41 or 5747.41 of the Revised Code;

(b) The taxpayer is a qualifying investor as to that qualifying entity;

(c) The taxpayer did not claim the credit provided for in section 5747.059 of the Revised Code as to the tax described in division (E)(1)(a) of this section;

(d) The four-year period described in division (B) of this section has ended as to the taxable year for which the taxpayer otherwise would have claimed that credit.

(2) A taxpayer shall file an application for refund pursuant to division (E) of this section within one year after the date the payment described in division (E)(1)(a) of this section is made. An application filed under division (E)(2) of this section shall claim refund only of overpayments resulting from the taxpayer's failure to claim the credit described in division (E)(1)(c) of this section. Nothing in division (E) of this section shall be construed to relieve a taxpayer from complying with division (A)(15) of section 5747.01 of the Revised Code.

Sec. 5747.13. (A) If any employer collects the tax imposed by section 5747.02 or under Chapter 5748. of the Revised Code and fails to remit the tax as required by law, or fails to collect the tax, the employer is personally liable for any amount collected that the employer fails to remit, or any amount that the employer fails to collect. If any taxpayer fails to file a return or fails to pay the tax imposed by section 5747.02 or under Chapter 5748. of the Revised Code, the taxpayer is personally liable for the amount of the tax.

If any employer, taxpayer, ~~or~~ qualifying entity, or electing pass-through entity required to file a return under this chapter fails to file the return within the time prescribed, files an incorrect return, fails to remit the full amount of the taxes due for the period covered by the return, or fails to remit any additional tax due as a result of a reduction in the amount of the credit allowed under division (B) of section 5747.05 of the Revised Code together with interest on the additional tax within the time prescribed by that division, the tax commissioner may make an assessment against any person

liable for any deficiency for the period for which the return is or taxes are due, based upon any information in the commissioner's possession.

An assessment issued against either the employer or the taxpayer pursuant to this section shall not be considered an election of remedies or a bar to an assessment against the other for failure to report or pay the same tax. No assessment shall be issued against any person if the tax actually has been paid by another.

No assessment shall be made or issued against an employer, a taxpayer, ~~or a~~ qualifying entity, ~~or an electing pass-through entity~~ more than four years after the final date the return subject to assessment was required to be filed or the date the return was filed, whichever is later. However, the commissioner may assess any balance due as the result of a reduction in the credit allowed under division (B) of section 5747.05 of the Revised Code, including applicable penalty and interest, within four years of the date on which the taxpayer reports a change in either the portion of the taxpayer's adjusted gross income subjected to an income tax or tax measured by income in another state or the District of Columbia, or the amount of liability for an income tax or tax measured by income to another state or the District of Columbia, as required by division (B)(3) of section 5747.05 of the Revised Code. Such time limits may be extended if both the employer, taxpayer, ~~or~~ qualifying entity, ~~or electing pass-through entity~~ and the commissioner consent in writing to the extension or if an agreement waiving or extending the time limits has been entered into pursuant to section 122.171 of the Revised Code. Any such extension shall extend the four-year time limit in division (B) of section 5747.11 of the Revised Code for the same period of time. There shall be no bar or limit to an assessment against an employer for taxes withheld from employees and not remitted to the state, against an employer, a taxpayer, ~~or a~~ qualifying entity, ~~or an electing pass-through entity~~ that fails to file a return subject to assessment as required by this chapter, or against an employer, a taxpayer, ~~or a~~ qualifying entity, ~~or an electing pass-through entity~~ that files a fraudulent return.

The commissioner shall give the party assessed written notice of the assessment in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the party assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment, signed by the party assessed or that party's authorized agent having knowledge of the facts, the assessment becomes final, and the amount of the assessment is due and payable from the party assessed to the commissioner with remittance made payable to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the tax commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the employer's, taxpayer's, ~~or~~ qualifying entity's, ~~or electing pass-through entity's~~ place of business is located or the county in which the party assessed resides. If the party assessed is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment against the party assessed in the amount shown on the entry. The judgment shall be filed by the clerk in one of two loose-leaf books, one entitled "special judgments for state and school district income taxes," and the other entitled "special judgments for qualifying entity and electing pass-through entity taxes." The judgment shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

If the assessment is not paid in its entirety within sixty days after the assessment was issued, the portion of the assessment consisting of tax due shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until it is paid or until it is certified to the attorney general for collection under section 131.02 of the Revised Code, whichever comes first. If the unpaid portion of the assessment is certified to the attorney general for collection, the entire unpaid portion of the assessment shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the date of certification until the date it is paid in its entirety. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) All money collected under this section shall be considered as revenue arising from the taxes imposed by this chapter or Chapter 5733. or 5748. of the Revised Code, as appropriate.

(E) If the party assessed files a petition for reassessment under division (B) of this section, the person, on or before the last day the petition may be filed, shall pay the assessed amount, including assessed interest and assessed penalties, if any of the following conditions exists:

(1) The person files a tax return reporting Ohio adjusted gross income, less the exemptions allowed by section 5747.025 of the Revised Code, in an amount less than one cent, and the reported amount is not based on the computations required under division (A) of section 5747.01 or section 5747.025 of the Revised Code.

(2) The person files a tax return that the tax commissioner determines to be incomplete, false, fraudulent, or frivolous.

(3) The person fails to file a tax return, and the basis for this failure is not either of the following:

(a) An assertion that the person has no nexus with this state;

(b) The computations required under division (A) of section 5747.01 of the Revised Code or the application of credits allowed under this chapter has the result that the person's tax liability is less than one dollar and one cent.

(F) Notwithstanding the fact that a petition for reassessment is pending, the petitioner may pay all or a portion of the assessment that is the subject of the petition. The acceptance of a payment by the treasurer of state does not prejudice any claim for refund upon final determination of the petition.

If upon final determination of the petition an error in the assessment is corrected by the tax commissioner, upon petition so filed or pursuant to a decision of the board of tax appeals or any court to which the determination or decision has been appealed, so that the amount due from the party assessed under the corrected assessment is less than the portion paid, there shall be issued to the petitioner or to the petitioner's assigns or legal representative a refund in the amount of the

overpayment as provided by section 5747.11 of the Revised Code, with interest on that amount as provided by such section, subject to section 5747.12 of the Revised Code.

Sec. 5747.132. (A) As used in this section:

(1) "Qualifying taxpayer" means a taxpayer, an employer, ~~or a qualifying entity~~, or an electing pass-through entity.

(2) "Qualifying refund overpayment" means an amount received by a qualifying taxpayer in excess of a refund or request for payment claimed or made by or on behalf of the qualifying taxpayer on a return, report, or other document filed with the tax commissioner.

(B) A qualifying taxpayer is not liable for any interest or penalty with respect to the repayment of a qualifying refund overpayment if the taxpayer pays the entire amount of the overpayment to the tax commissioner not later than thirty days after the taxpayer receives an assessment for it. If the taxpayer does not pay the entire amount of the overpayment to the commissioner within the time prescribed by this section, interest shall accrue on the amount of the deficiency pursuant to section 5747.13 of the Revised Code from the day the commissioner issues the assessment until the deficiency is paid.

Sec. 5747.14. If the tax commissioner finds that an employer, a qualifying entity, an electing pass-through entity, or a taxpayer liable for any tax imposed under section 5733.41, this chapter, or Chapter 5748. of the Revised Code is about to depart from the state, to remove the employer's, qualifying entity's, electing pass-through entity's, or taxpayer's property therefrom, to conceal the employer's, qualifying entity's, electing pass-through entity's, or taxpayer's self or the employer's, qualifying entity's, electing pass-through entity's, or taxpayer's property, or to do any other act tending to prejudice or render wholly or partly ineffectual proceedings to collect such tax, unless such proceedings are brought without delay, or if the commissioner believes that the collection of the amount due from any employer, qualifying entity, electing pass-through entity, or taxpayer will be jeopardized by delay, the commissioner shall give notice of such findings to such employer, qualifying entity, electing pass-through entity, or taxpayer together with the demand for an immediate return and immediate payment of such tax, with an assessment and penalty, if applicable as provided in section 5747.13 of the Revised Code, whereupon such tax shall become immediately due and payable. In such cases the commissioner may immediately file the commissioner's entry with the clerk of the court of common pleas in the same manner and with the same effect as provided in section 5747.13 of the Revised Code, provided that if such employer, qualifying entity, electing pass-through entity, or taxpayer, within five days from notice of the assessment, furnishes evidence satisfactory to the commissioner, under the rules prescribed by the commissioner, that the employer, qualifying entity, electing pass-through entity, or taxpayer is not in default in making returns or paying or collecting any tax prescribed by this chapter or that the employer, qualifying entity, electing pass-through entity, or taxpayer will duly return and pay, or post bond satisfactory to the commissioner conditioned upon payment of the tax finally determined to be due, such tax shall not be payable prior to the time and manner otherwise fixed for payment under section 5747.13 of the Revised Code, and the person assessed shall be restored to the rights granted the person under such section. Upon satisfaction of the assessment the commissioner shall order the bond canceled, securities released, and judgment vacated.

Sec. 5747.15. (A) In addition to any other penalty imposed by this chapter or Chapter 5703.

of the Revised Code, the following penalties shall apply:

(1) If a taxpayer, a qualifying entity, an electing pass-through entity, or an employer required to file any report or return, including an informational notice, report, or return, under this chapter fails to make and file the report or return within the time prescribed, including any extensions of time granted by the tax commissioner, a penalty may be imposed not exceeding the greater of fifty dollars per month or fraction of a month, not to exceed five hundred dollars, or five per cent per month or fraction of a month, not to exceed fifty per cent, of the sum of the taxes required to be shown on the report or return, for each month or fraction of a month elapsing between the due date, including extensions of the due date, and the date on which filed.

(2) If a taxpayer fails to pay any amount of tax required to be paid under section 5733.41 or Chapters 5747. or 5748. of the Revised Code, except estimated tax under section 5747.09 or 5747.43 of the Revised Code, by the dates prescribed for payment, a penalty may be imposed not exceeding twice the applicable interest charged under division (G) of section 5747.08 of the Revised Code for the delinquent payment.

(3)(a) If an employer fails to pay any amount of tax imposed by section 5747.02 of the Revised Code and required to be paid under this chapter by the dates prescribed for payment, a penalty may be imposed not exceeding the sum of ten per cent of the delinquent payment plus twice the interest charged under division (F)(5) of section 5747.07 of the Revised Code for the delinquent payment.

(b) If a qualifying entity or an electing pass-through entity fails to pay any amount of tax imposed by section 5733.41, 5747.38, or 5747.41 of the Revised Code and required to be paid under this chapter by the dates prescribed for payment, a penalty may be imposed not exceeding the sum of ten per cent of the delinquent payment plus twice the applicable interest charged under division (G) of section 5747.08 of the Revised Code for the delinquent payment.

(4)(a) If an employer withholds from employees the tax imposed by section 5747.02 of the Revised Code and fails to remit the tax withheld to the state as required by this chapter on or before the dates prescribed for payment, a penalty may be imposed not exceeding fifty per cent of the delinquent payment.

(b) If a qualifying entity withholds any amount of tax imposed under section 5747.41 of the Revised Code from an individual's qualifying amount and fails to remit that amount to the state as required by sections 5747.42 to 5747.453 of the Revised Code on or before the dates prescribed for payment, a penalty may be imposed not exceeding fifty per cent of the delinquent payment.

(5) If a taxpayer, a qualifying entity, an electing pass-through entity, or an employer files what purports to be a return required by this chapter that does not contain information upon which the substantial correctness of the return may be judged or contains information that on its face indicates that the return is substantially incorrect, and the filing of the return in that manner is due to a position that is frivolous or a desire that is apparent from the return to delay or impede the administration of the tax levied by section 5733.41, 5747.02, 5747.38, or 5747.41, or Chapter 5748. of the Revised Code, a penalty of up to five hundred dollars may be imposed.

(6) If a taxpayer ~~or~~ a qualifying entity, or an electing pass-through entity makes a fraudulent attempt to evade the reporting or payment of the tax required to be shown on any return required under this chapter, a penalty may be imposed not exceeding the greater of one thousand dollars or

one hundred per cent of the tax required to be shown on the return.

(7) If any person makes a false or fraudulent claim for a refund under this chapter, a penalty may be imposed not exceeding the greater of one thousand dollars or one hundred per cent of the claim. The penalty imposed under division (A)(7) of this section, any refund issued on the claim, and interest on any refund from the date of the refund, may be assessed under section 5747.13 of the Revised Code as tax, penalty, or interest imposed under section 5733.41, 5747.02, 5747.38, or 5747.41 of the Revised Code, without regard to whether the person making the claim is otherwise subject to the provisions of this chapter or Chapter 5733. of the Revised Code, and without regard to any time limitation for the assessment imposed by division (A) of section 5747.13 of the Revised Code.

(B) For purposes of this section, the taxes required to be shown on the return shall be reduced by the amount of any part of the taxes paid on or before the date, including any extensions of the date, prescribed for filing the return.

(C) Any penalty imposed under this section shall be in addition to all other penalties imposed under this section. All or part of any penalty imposed under this section may be abated by the commissioner. All or part of any penalty imposed under this section may be abated by the commissioner if the taxpayer, qualifying entity, electing pass-through entity, or employer shows that the failure to comply with the provisions of this chapter is due to reasonable cause and not willful neglect.

Sec. 5747.38. (A) As used in this section and section 5747.39 of the Revised Code and in other sections of Chapter 5747. of the Revised Code in the context of the tax imposed under this section:

(1) "Electing pass-through entity" means a qualifying pass-through entity that elects to be subject to the tax levied under this section for a taxable year pursuant to division (C) of this section.

(2) "Owner" means a person that is a partner, member, shareholder, or investor in an electing pass-through entity for any portion of the taxable year.

(3) "Income" means the sum of owners' distributive shares of the income, gain, expense, or loss of an electing pass-through entity for the taxable year, as reported for federal income tax purposes.

(4) "Qualifying taxable income" means the sum of the following:

(a) The portion of an electing pass-through entity's income that is business income, subject to the applicable adjustments in divisions (A)(2) to (7) of section 5733.40 of the Revised Code, multiplied by the fraction described in division (B)(1) of that section;

(b) The portion of the electing pass-through entity's income that is nonbusiness income allocated to this state under section 5747.20 of the Revised Code.

(B) For the same purposes for which the tax is levied under section 5747.02 of the Revised Code, a tax is hereby levied on each electing pass-through entity on the entity's qualifying taxable income for the taxable year, at the following rates:

(1) For an electing pass-through entity's taxable year that begins in 2022, five per cent;

(2) For an electing pass-through entity's taxable year that begins in 2023 and in any year thereafter, the rate equal to the tax rate imposed on taxable business income under division (A)(4)(a) of section 5747.02 of the Revised Code applicable to that taxable year.

(C) A pass-through entity that is not a disregarded entity, as defined in section 5733.01 of the Revised Code, may elect to be subject to the tax levied under this section by filing with the tax commissioner a form prescribed by the commissioner making such election on or before the deadline to file the return under section 5747.42 of the Revised Code for the taxable year. Such election applies only to the taxable year for which the election is made and is, once made, irrevocable for that year.

(D) The tax levied under this section shall be calculated without regard to any deductions or credits otherwise permitted to be claimed by an owner of the electing pass-through entity in computing the owner's aggregate tax liability under section 5747.02 of the Revised Code.

(E) The tax levied under this section is intended to comply with the provisions of internal revenue service notice 2020-75 in which such tax paid by an electing pass-through entity is deductible to the entity for federal income tax purposes.

(F) The tax commissioner shall adopt rules to administer the tax levied under this section. Such rules shall include a description of how the adjustments to income under divisions (A)(36) and (S)(15) of section 5747.01 of the Revised Code and the credit under section 5747.39 of the Revised Code apply to direct or indirect owners of an electing pass-through entity based on various ownership structures. Any rule adopted under this section is not a regulatory restriction for the purpose of section 121.95 of the Revised Code.

Sec. 5747.39. There is hereby allowed a refundable credit against a taxpayer's aggregate tax liability under section 5747.02 of the Revised Code for a taxpayer who is an owner of an electing pass-through entity. The credit shall equal the owner's proportionate share of the tax levied under section 5747.38 of the Revised Code remitted by the owner's electing pass-through entity for the taxable year.

The credit shall be claimed for the taxpayer's taxable year that includes the last day of the electing pass-through entity's taxable year for which the tax levied under that section was paid and in the order required under section 5747.98 of the Revised Code. If the credit exceeds the aggregate amount of tax otherwise due, the excess shall be refunded to the taxpayer.

The tax commissioner may request that a taxpayer claiming a credit under this section furnish information as is necessary to support the claim for the credit under this section, and no credit shall be allowed unless the requested information is provided.

Sec. 5747.41. For the same purposes for which the tax is levied under section 5747.02 of the Revised Code, there is hereby levied a withholding tax on every qualifying pass-through entity having at least one qualifying investor who is an individual and on every qualifying trust having at least one qualifying beneficiary who is an individual. The withholding tax imposed by this section is imposed on the sum of the adjusted qualifying amounts of a qualifying pass-through entity's qualifying investors who are individuals and on the sum of the adjusted qualifying amounts of a qualifying trust's qualifying beneficiaries, at a rate equal to the tax rate imposed on taxable business income under division (A)(4)(a) of section 5747.02 of the Revised Code.

The tax imposed by this section applies only if the qualifying entity has nexus with this state under the Constitution of the United States for any portion of the qualifying entity's qualifying taxable year, and the sum of the qualifying entity's adjusted qualifying amounts exceeds one thousand dollars for the qualifying entity's qualifying taxable year.

The tax imposed under this section does not apply to a qualifying pass-through entity that makes an election under division (C) of section 5747.38 of the Revised Code to be subject to the tax levied under that section for the entity's qualifying taxable year.

Sec. 5747.42. (A) In addition to the other returns required to be filed and other remittances required to be made pursuant to this chapter, every qualifying entity or electing pass-through entity that is subject to the tax imposed by section 5733.41, 5747.38, or 5747.41 of the Revised Code shall file an annual return as follows:

(1) For a qualifying entity, on or before the fifteenth day of the fourth month following the end of the qualifying entity's qualifying taxable year, and;

(2) For an electing pass-through entity, on or before the fifteenth day of April following the end of the entity's taxable year that ends in the preceding calendar year.

Each entity shall also remit to the tax commissioner, with the remittance made payable to the treasurer of state, the amount of the taxes shown to be due on the return, less the amount paid for the taxable year on a declaration of estimated tax report filed by the taxpayer as provided by section 5747.43 of the Revised Code. Remittance shall be made in the form prescribed by the tax commissioner, including electronic funds transfer if required by section 5747.44 of the Revised Code.

A domestic qualifying entity shall not dissolve, and a foreign qualifying entity shall not withdraw or retire from business in this state, without filing the tax returns and paying the taxes charged for the year in which such dissolution or withdrawal occurs.

(B) The tax commissioner shall furnish qualifying entities or electing pass-through entities, upon request, copies of the forms prescribed by the commissioner for the purpose of making the returns required by sections 5747.42 to 5747.453 of the Revised Code.

(C) The annual return required by this section shall be signed by the ~~qualifying applicable~~ entity's trustee or other fiduciary, or president, vice-president, secretary, treasurer, general manager, general partner, superintendent, or managing agent in this state. The annual return shall contain the facts, figures, computations, and attachments that result in the tax charged by section 5733.41, 5747.38, or 5747.41 of the Revised Code. Each ~~qualifying~~ entity also shall file with its annual return all of the following:

(1) ~~The~~ In the case of the tax charged by section 5733.41 or 5747.41 of the Revised Code, the full name and address of each qualifying investor or qualifying beneficiary unless the qualifying entity submits such information in accordance with division (D) of this section;

(2) ~~The~~ In the case of the tax charged by section 5733.41 or 5747.41 of the Revised Code, the social security number, federal employer identification number, or other identifying number of each qualifying investor or qualifying beneficiary, unless the taxpayer submits that information in accordance with division (D) of this section;

(3) In the case of the tax charged by section 5747.38 of the Revised Code, the full name and address and the social security number, federal employer identification number, or other identifying number of each owner of the electing pass-through entity, unless the entity submits such information in accordance with division (D) of this section;

(4) The amount of tax imposed by sections 5733.41 and 5747.41 or by section 5747.38 of the Revised Code, and the amount of the tax paid by the ~~qualifying~~ entity, for the ~~qualifying applicable~~



taxable year covered by the annual return;

~~(4)~~(5) The amount of tax imposed by sections 5733.41 and 5747.41 or by section 5747.38 of the Revised Code that is attributable to each qualifying investor ~~or~~ qualifying beneficiary, or owner, as applicable, unless the ~~qualifying~~ entity submits this information in accordance with division (D) of this section.

(D) On the date the annual return is due, including extensions of time, if any, the ~~qualifying~~ applicable entity may be required by rule to transmit electronically or by magnetic media the information set forth in division (C) of this section. The tax commissioner may adopt rules governing the format for the transmission of such information. The tax commissioner may exempt ~~a qualifying~~ an entity or a class of ~~qualifying~~ entities from the requirements imposed by this division.

(E) Upon good cause shown, the tax commissioner may extend the period for filing any return required to be filed under this section or section 5747.43 or 5747.44 of the Revised Code and for transmitting any information required to be transmitted under those sections. The tax commissioner may adopt rules relating to extensions of time to file and to transmit. At the time ~~a~~ qualifying ~~an~~ entity pays any tax imposed under section 5733.41, ~~5747.38~~, or 5747.41 of the Revised Code or estimated tax as required under section 5747.43 of the Revised Code, the ~~qualifying~~ entity also shall pay interest computed at the rate per annum prescribed by section 5703.47 of the Revised Code on that tax or estimated tax, from the time the tax or estimated tax originally was required to be paid, without consideration of any filing extensions, to the time of actual payment. Nothing in this division shall be construed to abate, modify, or limit the imposition of any penalties imposed for the failure to timely pay taxes under this chapter or Chapter 5733. of the Revised Code without consideration of any filing extensions.

Sec. 5747.43. (A) As used in this section:

(1) "Estimated taxes" means the amount that a qualifying entity or electing pass-through entity estimates to be the sum of its liability under sections 5733.41 and 5747.41 or section 5747.38 of the Revised Code for its current qualifying taxable year or taxable year, as applicable.

(2) "Tax liability" means the total of the taxes and withholding taxes due under sections 5733.41 and 5747.41 of the Revised Code or the tax due under section 5747.38 of the Revised Code for the ~~qualifying~~ applicable taxable year prior to applying any estimated tax payment or refund from another year.

(3) "Taxes paid" includes payments of estimated taxes made under division (C) of this section and tax refunds applied by the qualifying entity or electing pass-through entity in payment of estimated taxes.

(4) "Required installment" means a payment equal to twenty-five per cent of the lesser of the following:

(a) Ninety per cent of the tax liability for the qualifying taxable year;

(b) One hundred per cent of the tax liability shown on the return of a qualifying entity or an electing pass-through entity for the preceding ~~qualifying~~ taxable year.

Division (A)(4)(b) of this section applies only if the ~~qualifying~~ entity filed a return under section 5747.42 of the Revised Code for the preceding ~~qualifying~~ taxable year and if the preceding ~~qualifying~~ taxable year was a twelve-month taxable year.

(B) In addition to the return required to be filed pursuant to section 5747.42 of the Revised

Code, each qualifying entity or electing pass-through entity that is subject to the tax imposed under section 5733.41 and to the withholding tax imposed by section 5747.41 of the Revised Code or that is subject to the tax imposed under section 5747.38 of the Revised Code shall file an estimated tax return and pay a portion of the ~~qualifying~~-entity's tax liability for its ~~qualifying~~-taxable year. The portion of those taxes required to be paid, and the last day prescribed for payment thereof, shall be as prescribed by divisions (B)(1), (2), (3), and (4) of this section:

(1) On or before the fifteenth day of the month following the last day of the first quarter of the ~~qualifying~~-entity's ~~qualifying~~-taxable year, twenty-two and one-half per cent of the ~~qualifying~~-entity's estimated tax liability for that taxable year;

(2) On or before the fifteenth day of the month following the last day of the second quarter of the ~~qualifying~~-entity's ~~qualifying~~-taxable year, forty-five per cent of the ~~qualifying~~-entity's estimated tax liability for that taxable year;

(3) On or before the fifteenth day of the month following the last day of the third quarter of the ~~qualifying~~-entity's ~~qualifying~~-taxable year, sixty-seven and one-half per cent of the ~~qualifying~~-entity's estimated tax liability for that taxable year;

(4) On or before the fifteenth day of the month following the last day of the fourth quarter of the ~~qualifying~~-entity's ~~qualifying~~-taxable year, ninety per cent of the ~~qualifying~~-entity's estimated tax liability for that taxable year.

Payments of estimated taxes shall be made payable to the treasurer of state.

(C) If a payment of estimated taxes is not paid in the full amount required under division (B) of this section, a penalty shall be added to the taxes charged for the qualifying taxable year or taxable year, as applicable, unless the underpayment is due to reasonable cause as described in division (D) of this section. The penalty shall accrue at the rate per annum prescribed by section 5703.47 of the Revised Code upon the amount of underpayment from the day the estimated payment was required to be made to the day the payment is made.

The amount of the underpayment upon which the penalty shall accrue shall be determined as follows:

(1) For the first payment of estimated taxes each year, the required installment less the amount of taxes paid by the date prescribed for that payment;

(2) For the second payment of estimated taxes each year, the required installment less the amount of taxes paid by the date prescribed for that payment;

(3) For the third payment of estimated taxes each year, the required installment less the amount of taxes paid by the date prescribed for that payment;

(4) For the fourth payment of estimated taxes each year, the required installment less the amount of taxes paid by the date prescribed for that payment.

For the purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of a previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.

The penalty imposed under division (C) of this section is in lieu of any other interest charge or penalty imposed for failure to file a declaration of estimated tax report and make estimated payments as required by this section.

(D) An underpayment of estimated taxes determined under division (C) of this section is due to reasonable cause if any of the following apply:

(1) The amount of tax that was paid equals at least ninety per cent of the tax liability for the current ~~qualifying~~-taxable year, determined by annualizing the income received during that year up to the end of the month immediately preceding the month in which the payment is due;

(2) The amount of tax liability that was paid equals at least ninety per cent of the tax liability for the current ~~qualifying~~-taxable year;

(3) The amount of tax liability that was paid equals at least one hundred per cent of the tax liability shown on the return of the ~~qualifying~~-entity for the preceding ~~qualifying~~-taxable year, provided that the immediately preceding ~~qualifying~~-taxable year reflected a period of twelve months and the ~~qualifying~~-entity filed a return under section 5747.42 of the Revised Code for that year.

(E)(1) Divisions (B) and (C) of this section do not apply for a taxable year if either of the following applies to the ~~qualifying~~-entity:

(a) For the immediately preceding taxable year, the entity computes in good faith and in a reasonable manner that the sum of its adjusted qualifying amounts or its qualifying taxable income, as applicable, is ten thousand dollars or less.

(b) For the taxable year the entity computes in good faith and in a reasonable manner that the sum of its adjusted qualifying amounts or its qualifying taxable income, as applicable, is ten thousand dollars or less.

(2) Notwithstanding any other provision of Title LVII of the Revised Code to the contrary, the entity shall establish by a preponderance of the evidence that its computation of the adjusted qualifying amounts or qualifying taxable income, as applicable, for the immediately preceding taxable year and the taxable year was, in fact, made in good faith and in a reasonable manner.

(F) The tax commissioner may waive the requirement for filing a declaration of estimated taxes for any class of qualifying entities if the commissioner finds the waiver is reasonable and proper in view of administrative costs and other factors.

(G) Estimated taxes paid by a qualifying entity or an electing pass-through entity may be applied to satisfy the entity's tax liability under section 5733.41, 5747.38, or 5747.41 of the Revised Code. Nothing in this section authorizes such an entity to apply estimated taxes paid against more than one tax.

Sec. 5747.44. (A) If a qualifying entity's or an electing pass-through entity's total liability for taxes imposed under sections 5733.41 and 5747.41 or under section 5747.38 of the Revised Code exceeds one hundred eighty thousand dollars for the second preceding taxable year or qualifying taxable year, as applicable, the ~~qualifying~~-entity shall make all payments required under sections 5747.42 and 5747.43 or under section 5747.38 of the Revised Code by electronic funds transfer as prescribed by this section and rules adopted by the treasurer of state under section 113.061 of the Revised Code.

The tax commissioner shall notify each qualifying entity and electing pass-through entity required to remit taxes by electronic funds transfer of the entity's obligation to do so, shall maintain an updated list of those entities, and shall provide the list and any additions thereto or deletions therefrom to the treasurer of state. Failure by the tax commissioner to notify ~~a qualifying an~~ entity subject to this section to remit taxes by electronic funds transfer does not relieve the ~~qualifying~~-entity

of its obligation to remit taxes by electronic funds transfer.

(B) Except as otherwise provided in this division, the payment of taxes by electronic funds transfer does not affect a qualifying entity's or an electing pass-through entity's obligation to file the returns required under sections 5747.42 and 5747.43 of the Revised Code. The treasurer of state, in consultation with the tax commissioner, may adopt rules in addition to the rules adopted under section 113.061 of the Revised Code governing the format for filing returns by qualifying entities and electing pass-through entities that remit taxes by electronic funds transfer. The rules may provide for the filing of returns at less frequent intervals than otherwise required if the treasurer of state and the tax commissioner determine that remittance by electronic funds transfer warrants less frequent filing of returns.

(C) A qualifying entity or an electing pass-through entity required by this section to remit taxes by electronic funds transfer may apply to the treasurer of state in the manner prescribed by the treasurer of state to be excused from that requirement. The treasurer of state may excuse the ~~qualifying~~ entity from remittance by electronic funds transfer for good cause shown for the period of time requested by the ~~qualifying~~ entity or for a portion of that period. The treasurer of state shall notify the tax commissioner and the ~~qualifying~~ entity of the treasurer of state's decision as soon as is practicable.

(D) If a qualifying entity or an electing pass-through entity required by this section to remit taxes by electronic funds transfer remits those taxes by some means other than by electronic funds transfer as prescribed by this section and the rules adopted by the treasurer of state, and the treasurer of state determines that such failure was not due to reasonable cause or was due to willful neglect, the treasurer of state shall notify the tax commissioner of the failure to remit by electronic funds transfer and shall provide the commissioner with any information used in making that determination. The tax commissioner may collect an additional charge by assessment in the manner prescribed by section 5747.13 of the Revised Code. The additional charge shall equal five per cent of the amount of the taxes required to be paid by electronic funds transfer, but shall not exceed five thousand dollars. Any additional charge assessed under this section is in addition to any other penalty or charge imposed under this chapter or Chapter 5733. of the Revised Code, and shall be considered as revenue arising from the taxes imposed under sections 5733.41 and 5747.41 or under section 5747.38 of the Revised Code. The tax commissioner may remit all or a portion of such a charge and may adopt rules governing such remission.

No additional charge shall be assessed under this division against a qualifying entity or an electing pass-through entity that has been notified of its obligation to remit taxes under this section and that remits its first two tax payments after such notification by some means other than electronic funds transfer. The additional charge may be assessed upon the remittance of any subsequent tax payment that the ~~qualifying~~ entity remits by some means other than electronic funds transfer.

Sec. 5747.45. (A) A qualifying entity's qualifying taxable year is the same as its taxable year for federal income tax purposes. If a qualifying entity's taxable year is changed for federal income tax purposes, the qualifying taxable year for purposes of this chapter and sections 5733.40 and 5733.41 of the Revised Code is changed accordingly.

(B) A qualifying entity's and an electing pass-through entity's method of accounting shall be the same as its method of accounting for federal income tax purposes. In the absence of any method

of accounting for federal income tax purposes, income shall be computed under such method as in the opinion of the tax commissioner clearly reflects income.

If a qualifying entity's or an electing pass-through entity's method of accounting is changed for federal income tax purposes, its method of accounting for purposes of this chapter shall be changed accordingly.

(C) If any of the facts, figures, computations, or attachments required in a qualifying entity's or an electing pass-through entity's annual report to determine the taxes imposed by section 5733.41, 5747.38, or 5747.41 of the Revised Code must be altered as the result of an adjustment to the ~~qualifying~~ entity's federal income tax return, whether the adjustment is initiated by the ~~qualifying~~ entity or the internal revenue service, and such alteration affects the ~~qualifying~~ entity's tax liability under ~~one or both~~ any of those sections, the ~~qualifying~~ entity shall file an amended report with the tax commissioner in such form as the commissioner requires. The amended report shall be filed not later than one year after the adjustment has been agreed to or finally determined for federal income tax purposes or any federal income tax deficiency or refund, or the abatement or credit resulting therefrom, has been assessed or paid, whichever occurs first.

(1) In the case of an underpayment, the amended report shall be accompanied by payment of an additional tax and interest due and is a report subject to assessment under section 5747.13 of the Revised Code for the purpose of assessing any additional tax due under this division, together with any applicable penalty and interest. It shall not reopen those facts, figures, computations, or attachments from a previously filed report no longer subject to assessment that are not affected, either directly or indirectly, by the adjustment to the qualifying entity's or electing pass-through entity's federal income tax return.

(2) In the case of an overpayment, an application for refund may be filed under this division within the one-year period prescribed for filing the amended report even if it is filed beyond the period prescribed in division (B) of section 5747.11 of the Revised Code if it otherwise conforms to the requirements of that section. An application filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the qualifying entity's or electing pass-through entity's annual report that are affected, either directly or indirectly, by the adjustment to the ~~qualifying~~ entity's federal income tax return unless it is also filed within the time prescribed in division (B) of section 5747.11 of the Revised Code. It shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the qualifying entity's federal income tax return.

Sec. 5747.451. (A) The mere retirement from business or voluntary dissolution of a domestic or foreign qualifying entity or electing pass-through entity does not exempt it from the requirements to make reports as required under sections 5747.42 to 5747.44 or to pay the taxes imposed under section 5733.41, 5747.38, or 5747.41 of the Revised Code. If any qualifying entity or electing pass-through entity subject to the taxes imposed under section 5733.41, 5747.38, or 5747.41 of the Revised Code sells its business or stock of merchandise or quits its business, the taxes required to be paid prior to that time, together with any interest or penalty thereon, become due and payable immediately, and the ~~qualifying~~ entity shall make a final return within fifteen days after the date of selling or quitting business. The successor of the qualifying entity or electing pass-through entity shall withhold a sufficient amount of the purchase money to cover the amount of such taxes, interest,

and penalties due and unpaid until the ~~qualifying~~-entity produces a receipt from the tax commissioner showing that the taxes, interest, and penalties have been paid, or a certificate indicating that no taxes are due. If the purchaser of the business or stock of goods fails to withhold purchase money, the purchaser is personally liable for the payment of the taxes, interest, and penalties accrued and unpaid during the operation of the business by the ~~qualifying~~-entity. If the amount of those taxes, interest, and penalty unpaid at the time of the purchase exceeds the total purchase money, the tax commissioner may adjust the ~~qualifying~~-entity's liability for those taxes, interest, and penalty, or adjust the responsibility of the purchaser to pay that liability, in a manner calculated to maximize the collection of those liabilities.

(B) Annually, on the last day of each qualifying taxable year of a qualifying entity or taxable year of an electing pass-through entity, the taxes imposed under section 5733.41, ~~5747.38~~, or 5747.41 of the Revised Code, together with any penalties subsequently accruing thereon, become a lien on all property in this state of the ~~qualifying~~-entity, whether such property is employed by the ~~qualifying~~-entity in the prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the ~~qualifying~~-entity's creditors and investors. The lien shall continue until those taxes, together with any penalties subsequently accruing, are paid.

Upon failure of such a qualifying entity or an electing pass-through entity to pay those taxes on the day fixed for payment, the treasurer of state shall thereupon notify the tax commissioner, and the commissioner may file in the office of the county recorder in each county in this state in which the ~~qualifying~~-entity owns or has a beneficial interest in real estate, notice of the lien containing a brief description of such real estate. No fee shall be charged for such a filing. The lien is not valid as against any mortgagee, purchaser, or judgment creditor whose rights have attached prior to the time the notice is so filed in the county in which the real estate which is the subject of such mortgage, purchase, or judgment lien is located. The notice shall be recorded in the official records kept by the county recorder and indexed under the name of the ~~qualifying~~-entity charged with the tax. When the tax, together with any penalties subsequently accruing thereon, have been paid, the tax commissioner shall furnish to the ~~qualifying~~-entity an acknowledgment of such payment that the ~~qualifying~~-entity may record with the county recorder of each county in which notice of such lien has been filed, for which recording the county recorder shall charge and receive a fee of two dollars.

(C) In addition to all other remedies for the collection of any taxes or penalties due under law, whenever any taxes, interest, or penalties due from any qualifying entity or electing pass-through entity under section 5733.41 of the Revised Code or this chapter have remained unpaid for a period of ninety days, or whenever any qualifying entity or electing pass-through entity has failed for a period of ninety days to make any report or return required by law, or to pay any penalty for failure to make or file such report or return, the attorney general, upon the request of the tax commissioner, shall file a petition in the court of common pleas in the county of the state in which such ~~qualifying~~ entity has its principal place of business for a judgment for the amount of the taxes, interest, or penalties appearing to be due, the enforcement of any lien in favor of the state, and an injunction to restrain such ~~qualifying~~-entity and its officers, directors, and managing agents from the transaction of any business within this state, other than such acts as are incidental to liquidation or winding up, until the payment of such taxes, interest, and penalties, and the costs of the proceeding fixed by the court, or the making and filing of such report or return.

The petition shall be in the name of the state. Any of the qualifying entities or electing pass-through entities having its principal places of business in the county may be joined in one suit. On the motion of the attorney general, the court of common pleas shall enter an order requiring all defendants to answer by a day certain, and may appoint a special master commissioner to take testimony, with such other power and authority as the court confers, and permitting process to be served by registered mail and by publication in a newspaper of general circulation in the county, which publication need not be made more than once, setting forth the name of each delinquent ~~qualifying~~ entity, the matter in which the ~~qualifying~~ entity is delinquent, the names of its officers, directors, and managing agents, if set forth in the petition, and the amount of any taxes, fees, or penalties claimed to be owing by the ~~qualifying~~ entity.

All or any of the trustees or other fiduciaries, officers, directors, investors, beneficiaries, or managing agents of any qualifying entity or electing pass-through entity may be joined as defendants with the ~~qualifying~~ such entity.

If it appears to the court upon hearing that any qualifying entity or electing pass-through entity that is a party to the proceeding is indebted to the state for taxes imposed under section 5733.41, ~~5747.38~~, or 5747.41 of the Revised Code, or interest or penalties thereon, judgment shall be entered therefor with interest; and if it appears that any qualifying entity or electing pass-through entity has failed to make or file any report or return, a mandatory injunction may be issued against the ~~qualifying~~ entity, its trustees or other fiduciaries, officers, directors, and managing agents, enjoining them from the transaction of any business within this state, other than acts incidental to liquidation or winding up, until the making and filing of all proper reports or returns and until the payment in full of all taxes, interest, and penalties.

If the trustees or other fiduciaries, officers, directors, investors, beneficiaries, or managing agents of a qualifying entity or an electing pass-through entity are not made parties in the first instance, and a judgment or an injunction is rendered or issued against the ~~qualifying~~ entity, those officers, directors, investors, or managing agents may be made parties to such proceedings upon the motion of the attorney general, and, upon notice to them of the form and terms of such injunction, they shall be bound thereby as fully as if they had been made parties in the first instance.

In any action authorized by this division, a statement of the tax commissioner, or the secretary of state, when duly certified, shall be prima-facie evidence of the amount of taxes, interest, or penalties due from any qualifying entity or electing pass-through entity, or of the failure of any ~~qualifying~~ such entity to file with the commissioner or the secretary of state any report required by law, and any such certificate of the commissioner or the secretary of state may be required in evidence in any such proceeding.

On the application of any defendant and for good cause shown, the court may order a separate hearing of the issues as to any defendant.

The costs of the proceeding shall be apportioned among the parties as the court deems proper.

The court in such proceeding may make, enter, and enforce such other judgments and orders and grant such other relief as is necessary or incidental to the enforcement of the claims and lien of the state.

In the performance of the duties enjoined upon the attorney general by this division, the attorney general may direct any prosecuting attorney to bring an action, as authorized by this

division, in the name of the state with respect to any delinquent qualifying entities or delinquent electing pass-through entities within the prosecuting attorney's county, and like proceedings and orders shall be had as if such action were instituted by the attorney general.

(D) If any qualifying entity or electing pass-through entity fails to make and file the reports or returns required under this chapter, or to pay the penalties provided by law for failure to make and file such reports or returns for a period of ninety days after the time prescribed by this chapter, the attorney general, on the request of the tax commissioner, shall commence an action in quo warranto in the court of appeals of the county in which that ~~qualifying~~ entity has its principal place of business to forfeit and annul its privileges and franchises. If the court is satisfied that any such ~~qualifying~~ entity is in default, it shall render judgment ousting such ~~qualifying~~ entity from the exercise of its privileges and franchises within this state, and shall otherwise proceed as provided in sections 2733.02 to 2733.39 of the Revised Code.

Sec. 5747.453. An employee, an owner, or a beneficiary of, or an investor in, a qualifying entity or an electing pass-through entity having control or supervision of, or charged with the responsibility for, filing returns and making payments, or any trustee or other fiduciary, officer, member, or manager of the ~~qualifying~~ entity who is responsible for the execution of the ~~qualifying~~ entity's fiscal responsibilities, is personally liable for the failure to file any report or to pay any tax due as required by sections 5747.40 to 5747.453 of the Revised Code. The dissolution, termination, or bankruptcy of a qualifying entity or an electing pass-through entity does not discharge a responsible trustee's, fiduciary's, officer's, member's, manager's, employee's, investor's, owner's, or beneficiary's liability for failure of the ~~qualifying~~ entity to file any report or pay any tax due as required by those sections. The sum due for the liability may be collected by assessment in the manner provided in section 5747.13 of the Revised Code.

Sec. 5747.98. (A) To provide a uniform procedure for calculating a taxpayer's aggregate tax liability under section 5747.02 of the Revised Code, a taxpayer shall claim any credits to which the taxpayer is entitled in the following order:

Either the retirement income credit under division (B) of section 5747.055 of the Revised Code or the lump sum retirement income credits under divisions (C), (D), and (E) of that section;

Either the senior citizen credit under division (F) of section 5747.055 of the Revised Code or the lump sum distribution credit under division (G) of that section;

The dependent care credit under section 5747.054 of the Revised Code;

The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;

The campaign contribution credit under section 5747.29 of the Revised Code;

The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;

The joint filing credit under division (G) of section 5747.05 of the Revised Code;

The earned income credit under section 5747.71 of the Revised Code;

The nonrefundable credit for education expenses under section 5747.72 of the Revised Code;

The nonrefundable credit for donations to scholarship granting organizations under section 5747.73 of the Revised Code;

The nonrefundable credit for tuition paid to a nonchartered nonpublic school under section 5747.75 of the Revised Code;



The credit for adoption of a minor child under section 5747.37 of the Revised Code;  
The nonrefundable job retention credit under division (B) of section 5747.058 of the Revised Code;

The enterprise zone credit under section 5709.66 of the Revised Code;  
The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;

The small business investment credit under section 5747.81 of the Revised Code;

The nonrefundable lead abatement credit under section 5747.26 of the Revised Code;

The opportunity zone investment credit under section 122.84 of the Revised Code;

The enterprise zone credits under section 5709.65 of the Revised Code;

The research and development credit under section 5747.331 of the Revised Code;

The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;

The nonresident credit under division (A) of section 5747.05 of the Revised Code;

The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;

The refundable motion picture and Broadway theatrical production credit under section 5747.66 of the Revised Code;

The refundable jobs creation credit or job retention credit under division (A) of section 5747.058 of the Revised Code;

The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;

The refundable credits for taxes paid by a qualifying pass-through entity granted under division (I) of section 5747.08 of the Revised Code;

The refundable credit under section 5747.80 of the Revised Code for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code;

The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code;

The refundable credit under section 5747.39 of the Revised Code for taxes levied under section 5747.38 of the Revised Code paid by an electing pass-through entity.

(B) For any credit, except the refundable credits enumerated in this section and the credit granted under division (H) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the taxpayer's aggregate amount of tax due under section 5747.02 of the Revised Code, after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.

SECTION 2. That existing sections 5733.04, 5733.41, 5747.01, 5747.03, 5747.08, 5747.11, 5747.13, 5747.132, 5747.14, 5747.15, 5747.41, 5747.42, 5747.43, 5747.44, 5747.45, 5747.451, 5747.453, and 5747.98 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Am. S. B. No. 246

134th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_